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LC01827/SUB A/2
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - THE RHODE ISLAND HEALTH
INFORMATION EXCHANGE ACT OF 2008

Introduced By: Senators Paiva-Weed, Perry, C Levesque, Blais, and Bates

Date Introduced: February 26, 2008

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings:

2 WHEREAS, the people of Rhode Island expect health care services to be high quality,
3 safe and of high value; and

4 WHEREAS, the implementation of health information technology including electronic
5 medical records and the use of electronic prescribing increases the quality of health care delivery
6 and the prevention of medication errors; and

7 WHEREAS, the implementation of health information technology will support a
8 transformed health care system in Rhode Island that is safe, effective, patient-centered, timely,
9 efficient and equitable; and

10 WHEREAS, the General Assembly has endorsed the adoption of an electronic medical
11 records and health information exchange system in Rhode Island to improve the quality, safety
12 and value of health care through a Resolution adopted in 2007; and

13 WHEREAS, the State of Rhode Island has an interest in encouraging the implementation
14 of a statewide health information exchange system to allow the widespread utilization of
15 electronic health records by health care providers; and

16 WHEREAS, the State of Rhode Island has an interest in popularizing the use of a
17 statewide Health Information Exchange system ("HIE") in order to improve the quality, safety
18 and value of health care, keep confidential health information secure and confidential and use the

1 HIE system to progress toward meeting public health goals; and

2 WHEREAS, the State of Rhode Island desires to establish the authority for the
3 Department of Health to regulate the statewide HIE system.

4 SECTION 2. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"
5 is hereby amended by adding thereto the following chapter:

6 CHAPTER 37.7

7 RHODE ISLAND HEALTH INFORMATION EXCHANGE ACT OF 2008

8 **5-37.7-1. Short title.** -- This chapter shall be known and may be cited as the "Rhode
9 Island Health Information Exchange Act of 2008."

10 **5-37.7-2. Statement of purpose.** -- The purpose of this chapter is to establish safeguards
11 and confidentiality protections for the HIE in order to improve the quality, safety and value of
12 health care, keep confidential health information secure and confidential and use the HIE to
13 progress toward meeting public health goals.

14 **5-37.7-3. Definitions.** -- As used in this chapter:

15 (a) "Agency" means the Rhode Island department of health.

16 (b) "Authorized representative" means:

17 (1) A person empowered by the patient participant to assert or to waive the
18 confidentiality, or to disclose or authorize the disclosure of confidential information, as
19 established by this chapter. That person is not, except by explicit authorization, empowered to
20 wave confidentiality or to disclose or consent to the disclosure of confidential information; or

21 (2) A person appointed by the patient participant to make health care decisions on his or
22 her behalf through a valid durable power of attorney for health care as set forth in Rhode Island
23 general laws section 23-4.10-2; or

24 (3) A guardian or conservator, with authority to make health care decisions, if the patient
25 participant is decisionally impaired; or

26 (4) Another legally appropriate medical decision maker temporarily if the patient
27 participant is decisionally impaired and no health care agent, guardian or conservator is available;
28 or

29 (5) If the patient participant is deceased, his or her personal representative or, in the
30 absence of that representative, his or her heirs-at-law; or

31 (6) A parent with the authority to make health care decisions for the parent's child.

32 (c) "Authorization form" means the form described in section 5-37.7-7 of this chapter and
33 by which a patient participant provides authorization for the RHIO to allow access to, review of,
34 and/or disclosure of the patient participant's confidential health care information by electronic,

1 written or other means.

2 (d) "Business associate" means a business associate as defined by HIPAA.

3 (e) "Confidential health care information" means all information relating to a patient
4 participant's health care history, diagnosis, condition, treatment, or evaluation.

5 (f) "Coordination of care" means the process of coordinating, planning, monitoring,
6 and/or sharing information relating to and assessing a care plan for treatment of a patient.

7 (g) "Data submitting partner" means an individual, organization or entity that has entered
8 into a business associate agreement with the RHIO and submits patient participants' confidential
9 health care information through the HIE.

10 (h) "Department of health" means the Rhode Island department of health.

11 (i) "Disclosure report" means a report generated by the HIE relating to the record of
12 access to, review of and/or disclosure of a patient's confidential health care information received,
13 accessed or held by the HIE.

14 (j) "Electronic mobilization" means the capability to move clinical information
15 electronically between disparate health care information systems while maintaining the accuracy
16 of the information being exchanged.

17 (k) "Emergency" means the sudden onset of a medical, mental or substance abuse or
18 other condition manifesting itself by acute symptoms of severity (e.g. severe pain) where the
19 absence of medical attention could reasonably be expected, by a prudent lay person, to result in
20 placing the patient's health in serious jeopardy, serious impairment to bodily or mental functions,
21 or serious dysfunction of any bodily organ or part.

22 (l) "Health care provider" means any person or entity licensed by this state to provide or
23 lawfully providing health care services, including, but not limited to, a physician, hospital,
24 intermediate care facility or other health care facility, dentist, nurse, optometrist, podiatrist,
25 physical therapist, psychiatric social worker, pharmacist or psychologist, and any officer,
26 employee, or agent of that provider acting in the course and scope of his or her employment or
27 agency related to or supportive of health care services.

28 (m) "Health care services" means acts of diagnosis, treatment, medical evaluation,
29 referral or counseling or any other acts that may be permissible under the health care licensing
30 statutes of this state.

31 (n) "Health Information Exchange" or "HIE" means the technical system operated, or to
32 be operated, by the RHIO under state authority allowing for the statewide electronic mobilization
33 of confidential health care information, pursuant to this chapter.

34 (o) "HIE Advisory Commission" means the advisory body established by the department

1 of health in order to provide community input and policy recommendations regarding the use of
2 the confidential health care information of the HIE.

3 (p) "HIPAA" means the health insurance portability and accountability act of 1996, as
4 amended.

5 (q) "Participant" means a patient participant, a patient participant's authorized
6 representative, a provider participant, a data submitting partner, the regional health information
7 organization and the department of health, that has agreed to authorize, submit, access and/or
8 disclose confidential health care information via the HIE in accordance with this chapter.

9 (r) "Participation" means a participant's authorization, submission, access and/or
10 disclosure of confidential health care information in accordance with this chapter.

11 (s) "Patient participant" means a person who receives health care services from a provider
12 participant and has agreed to participate in the HIE through the mechanisms established in this
13 chapter.

14 (t) "Provider participant" means a pharmacy, laboratory or health care provider who is
15 providing health care services to a patient participant and/or is submitting or accessing health care
16 information through the HIE and has executed an electronic and/or written agreement regarding
17 disclosure, access, receipt, retention or release of confidential health care information to the HIE;

18 (u) "Regional health information organization" or "RHIO" means the organization
19 designated as the RHIO by the state to provide administrative and operational support to the HIE.

20 **5-37.7-4. Participation in the health information exchange.** -- (a) There shall be
21 established a statewide HIE under state authority to allow for the electronic mobilization of
22 confidential health care information in Rhode Island. Confidential health care information may
23 only be accessed, released or transferred from the HIE in accordance with this chapter.

24 (b) The state of Rhode Island has an interest in encouraging participation in the HIE by
25 all interested parties, including, but not limited to, health care providers, patients, entities
26 submitting information to the HIE, entities obtaining information from the HIE and the RHIO.
27 The Rhode Island department of health is also considered a participant for public health purposes.

28 (c) Patients and health care providers shall have the choice to participate in the HIE, as
29 defined by regulations in accordance with section 5-37.7-3 provided however that provider
30 participants must continue to maintain their own medical record meeting the documentation and
31 other standards imposed by otherwise applicable law.

32 (d) Participation in the HIE shall have no impact on the content of or use or disclosure of
33 confidential health care information of patient participants that is held in locations other than the
34 HIE. Nothing in this chapter shall be construed to limit, change or otherwise affect entities' rights

1 or obligations to exchange confidential health care information in accordance with other
2 applicable laws.

3 (e) The state of Rhode Island hereby imposes on the HIE and the RHIO as a matter of
4 state law, the obligation to maintain, and abide by the terms of, HIPAA complaint business
5 associate agreements, including, without limitation, the obligations to use appropriate safeguards
6 to prevent use or disclosure of confidential health care information in accordance with HIPAA
7 and this chapter, not to use or disclose confidential health care information other than as
8 permitted by HIPAA and this chapter, or to make any amendment to a confidential health care
9 record that a provider participant so directs and to respond to a request by a patient participant to
10 make an amendment to the patient participant's confidential health care record.

11 **5-37.7-5. Regulatory oversight.** -- (a) The director of the department of health shall
12 develop regulations regarding the confidentiality of patient participant information received,
13 accessed or held by the HIE and is authorized to promulgate such other regulations as the director
14 deems necessary or desirable to implement the provisions of this chapter, in accordance with the
15 provisions set forth in chapter 17 of title 23 and chapter 35 of title 42 of the general laws.

16 (b) The department of health has exclusive jurisdiction over the HIE, except with respect
17 to the jurisdiction conferred upon the attorney general in section 5-37.7-13. This chapter shall not
18 apply to any other private and/or public health information systems utilized within a health care
19 provider or other organization that provides health care services.

20 (c) The department of health shall promulgate rules and regulations for the establishment
21 of an HIE advisory commission that will be responsible for recommendations relating to the use
22 of, and appropriate confidentiality protections for, the confidential health care information of the
23 HIE, subject to regulatory oversight by the department of health. Said commission members shall
24 be subject to the advice and consent of the senate. The commission shall report annually to the
25 department of health and the RHIO, and such report shall be made public.

26 **5-37.7-6. Rhode Island health information organization.** -- The RHIO shall, subject to
27 and consistent with department regulations and contractual obligations it has with the state of
28 Rhode Island, be responsible for all administrative, operational, and financial functions to support
29 the HIE, including, but not limited to, implementing and enforcing policies for receiving,
30 retaining, safeguarding and disclosing confidential health care information as required by this
31 chapter. The RHIO is deemed to be the steward of the confidential health care information for
32 which it has administrative responsibility. The HIE advisory commission shall be responsible for
33 recommendations to the department of health, and in consultation with the RHIO regarding the
34 use of the confidential health care information.

1 **5-37.7-7. Disclosure.** -- (a)(1) Except as provided in subsection (b) of this section, a
2 patient participant's confidential health care information may only be accessed, released or
3 transferred from the HIE in accordance with an authorization form signed by the patient
4 participant or the patient's authorized representative.

5 (b) No authorization for release or transfer of confidential health care information from
6 the HIE shall be required in the following situations:

7 (1) To a health care provider who believes, in good faith, that the information is
8 necessary for diagnosis or treatment of that individual in an emergency; or

9 (2) To public health authorities in order to carry out their functions as described in this
10 title and titles 21 and 23, and rules promulgated under those titles. These functions include, but
11 are not restricted to, investigations into the causes of disease, the control of public health hazards,
12 enforcement of sanitary laws, investigation of reportable diseases, certification and licensure of
13 health professionals and facilities, review of health care such as that required by the federal
14 government and other governmental agencies, and mandatory reporting laws set forth in Rhode
15 Island general laws; and

16 (3) To the RHIO in order for it to effectuate the operation and administrative oversight of
17 the HIE.

18 (c) The content of the authorization form for access to, or the disclosure, release or
19 transfer of confidential health care information from the HIE shall be prescribed by the RHIO in
20 accordance with applicable department of health regulations, but at a minimum shall contain the
21 following information in a clear and conspicuous manner:

22 (1) A statement of the need for and proposed uses of that information; and

23 (2) A statement that the authorization for access to, disclosure of and/or release of
24 information may be withdrawn at any future time and is subject to revocation.

25 (3) That the patient has the right not to participate in the HIE; and

26 (4) The patient's right to choose to: (i) enroll in and participate fully in the HIE; or (ii)
27 designate only specific health care providers that may access the patient participant's confidential
28 health care information.

29 (d) Except as specifically provided by law or this chapter, or use for clinical care, a
30 patient participant's confidential health care information shall not be accessed by, given, sold,
31 transferred, or in any way relayed from the HIE to any other person or entity not specified in the
32 patient participant authorization form meeting the requirements of subsection (c) of this section
33 without first obtaining additional authorization.

34 (e) Nothing contained in this chapter shall be construed to limit the permitted access to or

1 the release, transfer, access or disclosure of confidential health care information described in
2 subsection (b) of this section or under other applicable law.

3 (f) Confidential health care information received, disclosed or held by the HIE shall not
4 be subject to subpoena directed to the HIE or RHIO unless the following procedures have been
5 completed: (i) the person seeking the confidential health care information has already requested
6 and received the confidential health care information from the health care provider that was the
7 original source of the information; and (ii) a determination has been made by the superior court
8 upon motion and notice to the HIE or RHIO and the parties to the litigation in which the
9 subpoena is served that the confidential health care information sought from the HIE is not
10 available from another source and is either relevant to the subject matter involved in the pending
11 action or is reasonably calculated to lead to the discovery of admissible evidence in such pending
12 action. Any person issuing a subpoena to the HIE or RHIO pursuant to this section shall certify
13 that such measures have been completed prior to the issuance of the subpoena.

14 (g) Nothing herein shall interfere with or impact upon any rights or obligations imposed
15 by the Workers Compensation Act as contained in title 28, chapters 29 through 38, of these
16 General Laws.

17 **5-37.7-8. Security.** -- The HIE must be subject to at least the following security
18 procedures:

19 (a) Authenticate the recipient of any confidential health care information disclosed by the
20 HIE pursuant to this chapter pursuant to rules and regulations promulgated by the agency.

21 (b) Limit authorized access to personally identifiable confidential health care information
22 to persons having a need to know that information; additional employees or agents may have
23 access to de-identified information;

24 (c) Identify an individual or individuals who have responsibility for maintaining security
25 procedures for the HIE;

26 (d) Provide an electronic or written statement to each employee or agent as to the
27 necessity of maintaining the security and confidentiality of confidential health care information,
28 and of the penalties provided for in this chapter for the unauthorized access, release, transfer, use,
29 or disclosure of this information;

30 (e) Take no disciplinary or punitive action against any employee or agent for bringing
31 evidence of violation of this chapter to the attention of any person.

32 **5-37.7-9. Secondary disclosure.** -- Any confidential health care information obtained by
33 a provider participant pursuant to this chapter may be further disclosed by such provider
34 participant with or without authorization of the patient participant to the same extent that such

1 information may be disclosed pursuant to existing state and federal law, without regard to the
2 source of the information.

3 **5-37.7-10. Patient's rights.** -- Pursuant to this chapter, a patient participant who has his
4 or her confidential health care information transferred through the HIE shall have the following
5 rights:

6 (a) To obtain a copy of his or her confidential health care information from the HIE;

7 (b) To obtain a copy of the disclosure report pertaining to his or her confidential health
8 care information;

9 (c) To be notified as required by chapter 49.2 of title 11, the Rhode Island identity theft
10 protection act, of a breach of the security system of the HIE;

11 (d) To terminate his or her participation in the HIE in accordance with rules and
12 regulations promulgated by the agency; and

13 (e) To request to amend his or her own information through the provider participant.

14 **5-37.7-11. Immunity.** -- Any health care provider who relies in good faith upon any
15 information provided through the HIE in his, her or its treatment of a patient, shall be immune
16 from any criminal or civil liability arising from any damages caused by such good faith reliance.
17 This immunity does not apply to acts or omissions constituting negligence or reckless, wanton or
18 intentional misconduct.

19 **5-37.7-12. Reconciliation with other authorities.** -- (a) This chapter shall only apply to
20 the HIE system, and does not apply to any other private and/or public health information systems
21 utilized in Rhode Island, including other health information systems utilized within or by a health
22 care facility or organization.

23 (b) As this chapter provides extensive protection with regard to access to and disclosure
24 of confidential health care information by the HIE, it supplements, with respect to the HIE only,
25 any less stringent disclosure requirements, including, but not limited to, those contained in
26 chapter 37.3 of this title, the health insurance portability and accountability act (HIPAA) and
27 regulations promulgated thereunder, and any other less stringent federal or state law.

28 (c) This chapter shall not be construed to interfere with any other federal or state laws or
29 regulations which provide more extensive protection than provided in this chapter for the
30 confidentiality of health care information. Notwithstanding such provision, because of the
31 extensive protections with regard to access to and disclosure of confidential health care
32 information by the HIE provided for in this chapter, patient authorization obtained for access to or
33 disclosure of information to or from the HIE or a provider participant shall be deemed the same
34 authorization required by other state or federal laws including information regarding mental

1 health (the Rhode Island mental health law, Rhode Island general laws section 40.1-5-1 et seq.);
2 HIV (Rhode Island general laws section 23-6-17); sexually transmitted disease (Rhode Island
3 general laws sections 23-6-17 and 23-11-9); alcohol and drug abuse (Rhode Island general laws
4 section 23-1.10-1 et seq., 42 U.S.C. section 290dd-2) or genetic information (Rhode Island
5 general laws section 27-41-53, Rhode Island general laws section 27-20-39 and Rhode Island
6 general laws section 27-19-44).

7 **5-37.7-13. Penalties – Attorneys' fees for violations.** -- (a) Civil penalties. Anyone who
8 violates the provisions of this chapter may be held liable for actual and exemplary damages.

9 (b) Criminal penalties. Anyone who intentionally and knowingly violates the provisions
10 of this chapter shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) per
11 patient, per violation, or imprisoned for not more than one year, or both.

12 (c) Commission of crime. The civil and criminal penalties in this section shall also be
13 applicable to anyone who obtains confidential health care information maintained under the
14 provisions of this chapter through the commission of a crime.

15 (d) Attorneys' fees. Attorneys' fees may be awarded at the discretion of the court, to the
16 successful party in any action under this chapter.

17 **5-37.7-14. Waivers void.** -- Any agreement purporting to waive the provisions of this
18 chapter is declared to be against public policy and void.

19 **5-37.7-15. Severability.** -- If any provision of this chapter is held by a court to be invalid,
20 that invalidity shall not affect the remaining provisions of the chapter, and to this end the
21 provisions of the chapter are declared severable.

22 SECTION 3. This act shall take effect on March 1, 2009.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - THE RHODE ISLAND HEALTH
INFORMATION EXCHANGE ACT OF 2008

1 This act would establish the "Rhode Island Health Information Exchange Act of 2008"
2 for the purpose of providing safeguards and confidentiality protection for health information
3 exchange.

4 This act would take effect on March 1, 2009.

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RELATING TO BUSINESSES AND PROFESSIONS - THE RHODE ISLAND HEALTH
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Presented by