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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 BUSINESS AND PROFESSIONS - THE RHODE ISLAND HEALTH
INFORMATION EXCHANGE ACT OF 2008

Introduced By: Representatives Kilmartin, and Sullivan

Date Introduced: February 12, 2008

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings:

2 (1) The people of Rhode Island expect health care services to be high quality, safe and of
3 high value; and

4 (2) The implementation of health information technology including electronic medical
5 records and the use of electronic prescribing increases the quality of health care delivery and to
6 prevent medication errors; and

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

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

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

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

1 progress toward meeting public health goals; and

2 (7) The State of Rhode Island desires to establish the authority for the Executive Office
3 of Health and Human Services to regulate the state-wide HIE system.

4 SECTION 2. Title 37 of the General Laws entitled "BUSINESSES AND
5 PROFESSIONS" is hereby amended by adding thereto the following chapter:

6 CHAPTER 37.7

7 RHODE ISLAND HEALTH INFORMATION EXCHANGE ACT OF 2008

8 **37-37.7-1. Short title.** -- This chapter shall be known and may be cited as the "Rhode
9 Island Health Information Exchange Act of 2008."

10 **37-37.7-2. Statement of purpose.** -- The purpose of this chapter is to establish
11 safeguards and confidentiality protections for the HIE in order to improve the quality, safety and
12 value of health care, keep confidential health information secure and confidential and use the HIE
13 to progress toward meeting public health goals.

14 **37-37.7-3. Definitions.** -- As used in this chapter:

15 (1) "Agency" means the executive office of health and human services.

16 (2) "Authorized representative" means:

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

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

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

28 (v) If the patient participant is deceased, his or her personal representative or, in the
29 absence of that representative, his or her heirs-at-law.

30 (3) "Authorization form" means electronic, written or other means by which a patient
31 participant provides authorization for the RHIO to allow access to, review of, and/or disclosure of
32 the patient participant's confidential health care information.

33 (4) "Authenticated Users" means those persons and/or entities that have been authorized
34 by a patient participant through an authorization form and authenticated by the RHIO to access,

- 1 review or to which a patient participant's confidential health care information may be disclosed.
- 2 (5) "Business Associate" means a business associate of a covered entity pursuant to the
- 3 health insurance portability and accountability act of 1996 ("HIPAA"), public law 104-191.
- 4 (6) "Confidential health care information" means all information relating to a patient
- 5 participant's health care history, diagnosis, condition, treatment, or evaluation.
- 6 (7) "Coordination of Care" means the process of coordinating, planning, monitoring,
- 7 sharing information relating to and assessing a care plan for treatment of a patient.
- 8 (8) "Department of Health" means the Rhode Island department of health.
- 9 (9) "Disclosure Report" means a report generated by the HIE relating to the record of
- 10 access to, review of and/or disclosure of a patient's confidential health care information held by
- 11 the HIE.
- 12 (10) "Executive Office of Health and Human Services" means the state office that
- 13 facilitates collaboration between the departments of health, children, youth and families, elderly
- 14 affairs, health, human services and mental health, retardation and hospitals.
- 15 (11) "Health care provider" means any person licensed by this state to provide or lawfully
- 16 providing health care services, including, but not limited to, a physician, hospital, intermediate
- 17 care facility or other health care facility, dentist, nurse, optometrist, podiatrist, physical therapist,
- 18 psychiatric social worker, pharmacist or psychologist, and any officer, employee, or agent of that
- 19 provider acting in the course and scope of his or her employment or agency related to or
- 20 supportive of health services.
- 21 (12) "Health care services" means acts of diagnosis, treatment, medical evaluation,
- 22 referral or counseling or any other acts that may be permissible under the health care licensing
- 23 statutes of this state.
- 24 (13) "Health Information Exchange (HIE)" means the technical system under state
- 25 authority allowing for the state-wide electronic mobilization of confidential health care
- 26 information, pursuant to this chapter.
- 27 (14) "HIE Advisory Commission" means the advisory body established by the executive
- 28 office of health and human services or its designee's regulation in order to provide community in-
- 29 put into the use of the confidential health care information of the statewide HIE, which will be
- 30 responsible for policy recommendations relating to the statewide HIE.
- 31 (15) "Participant" means a patient participant, a provider participant, and authenticated
- 32 user, the regional health information organization ("RHIO") and the Rhode Island department of
- 33 health each of which participate in the HIE through the mechanisms established in this chapter.
- 34 (16) "Participation" means a patient participant who receives health care services and

1 authorizes confidential health care information to be submitted to the HIE, a provider participant,
2 who is a data-submitting partner with the HIE, authenticated user, the RHIO and the Rhode Island
3 department of health which participate in the HIE through the authorization, submission and
4 disclosure of health information via the HIE.

5 (17) "Patient Participant" means a person who receives health care services from a
6 healthcare provider participant.

7 (18) "Patient Participant Form" means the electronic or written authorization of the
8 patient to participate in the HIE.

9 (19) "Provider Participant" means a pharmacy, laboratory or health care provider who is
10 providing health care services to a patient participant and/or is submitting health care information
11 to the HIE and has executed an electronic and/or written agreement regarding receipt, retention or
12 release of confidential health care information to the HIE;

13 (20) "Regional Health Information Organization" (RHIO) means the organization that
14 provides administrative and financial services, as well as operational support to the HIE and also
15 known as The Rhode Island regional health information organization.

16 **37-37.7-4. Participation in the health information exchange. --**

17 (1) There shall be established a state-wide HIE under state authority to allow for the
18 electronic mobilization of confidential health care information in Rhode Island.

19 (2) The state of Rhode Island has an interest in encouraging participation in the HIE by
20 all interested parties, including, but not limited to, health care providers, patients, entities
21 submitting information to the HIE, entities obtaining information from the HIE, Authenticated
22 Users, and the RHIO. The Rhode Island department of health is also considered a participant for
23 public health purposes.

24 (3) Patients and health care providers shall have the choice to participate in the HIE, as
25 defined by regulations in accordance with section 5-37.7-3.

26 (4) Participation in the HIE shall have no impact on the content of or use or disclosure of
27 confidential health care information of patient participants that is held in locations other than the
28 HIE.

29 **37-37.7-5. Regulatory oversight. --**

30 (a) The executive office of health and human services shall enforce the provisions of this
31 chapter and have regulatory authority over the HIE, and may delegate such authority to a
32 department within its jurisdiction, which shall promulgate such rules and regulations as are
33 necessary and proper to carry out the duties assigned by this chapter.

34 (b) The executive office of health and human services has exclusive jurisdiction over the

1 statewide HIE, except with respect to the jurisdiction conferred upon the attorney general in
2 section 5-37.7-13. This chapter shall not apply to any other private and/or public health
3 information systems utilized in Rhode Island, including other health information systems utilized
4 within a health care facility or organization.

5 (c) The executive office of health and human services or its designee shall promulgate
6 rules and regulations for the establishment of an HIE advisory commission that will be
7 responsible for recommendations relating to the use of the confidential health care information of
8 the statewide HIE, subject to regulatory oversight by the executive office of health and human
9 services. The commission shall report annually to the executive office of health and human
10 services and the RHIO, and such report shall be made public.

11 **37-37.7-6. Rhode Island health information organization.** -- The RHIO shall, subject
12 to and consistent with contractual obligations it has with the state of Rhode Island, be responsible
13 for all administrative, operational, and financial functions to support the HIE, including, but not
14 limited to, developing, implementing and enforcing policies for receiving, retaining, safeguarding
15 and disclosing confidential health information as required by this chapter. The RHIO is deemed
16 to be the steward of the confidential health care information for which it has administrative
17 responsibility. The HIE advisory commission shall be responsible for recommendations to the
18 executive office of health and human services, and in consultation with the RHIO regarding the
19 use of the confidential health care information.

20 **37-37.7-7. Disclosure.** -- (a)(1) Except as provided in subsection (b) of this section, a
21 patient participant's confidential health care information shall not be accessed, released or
22 transferred from the HIE without the electronic, written or other authorization of the patient or his
23 or her authorized representative, on an authorization from meeting the requirements of subsection
24 (c) of this section.

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

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

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

1 Island general laws; and

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

4 (c) The content of the authorization form for access to, or the disclosure, release or
5 transfer of confidential health care information from the HIE shall be prescribed by the RHIO,
6 and at a minimum shall contain the following information in a clear and conspicuous manner:

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

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

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

15 (e) Nothing contained in this chapter shall be construed to limit the permitted access to or
16 the release, transfer or disclosure of confidential health care information described in subsection
17 (b) of this section.

18 (f) Since confidential health care information contained as part of the HIE is received by
19 the HIE from the primary source of the information, the HIE is considered the business associate
20 of the primary source, and therefore, the HIE shall not be subject to subpoena. Such information
21 may be obtained from the primary source of the information. Notwithstanding this provision, the
22 HIE may be subject to subpoena in an action in which the HIE is an indispensable party.

23 **37-37.7-8. Security. -- The HIE must be subject to at least the following security**
24 **procedures:**

25 (a) Authenticate the recipient of any confidential health care information disclosed by the
26 HIE pursuant to this chapter pursuant to rules and regulations promulgated by the agency or its
27 designee.

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

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

33 (d) Provide an electronic or written statement to each employee or agent as to the
34 necessity of maintaining the security and confidentiality of confidential health care information,

1 and of the penalties provided for in this chapter for the unauthorized access, release, transfer, use,
2 or disclosure of this information;

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

5 **37-37.7-9. Secondary disclosure. --** Any confidential health care information obtained
6 by a provider participant pursuant to this chapter may be further disclosed by such provider
7 participant with or without authorization of the patient participant to the same extent that such
8 information may be disclosed pursuant to existing state and federal law, without regard to the
9 source of the information.

10 **37-37.7-10. Patient's rights. --** Pursuant to this chapter, a patient participant who has his
11 or her confidential health care information transferred through the HIE shall have the following
12 rights:

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

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

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

18 (d) To terminate his or her participation in the HIE in accordance with rules and
19 regulations promulgated by agency or its designee; and

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

21 **37-37.7-11. Immunity. --** Any health care provider who relies in good faith upon any
22 information provided through the HIE in his, her or its treatment of a patient, shall be immune
23 from any criminal or civil liability arising from any damages caused by such good faith reliance.
24 This immunity does not apply to acts or omissions constituting negligence or reckless, wanton or
25 intentional misconduct.

26 **37-37.7-12. Reconciliation with other authorities. --**

27 (a) This chapter shall only apply to the HIE system, and does not apply to any other
28 private and/or public health information systems utilized in Rhode Island, including other health
29 information systems utilized within or by a health care facility or organization.

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

1 (c) This chapter shall not be construed to interfere with any other federal or state laws or
2 regulations which provide more extensive protection than provided in this chapter for the
3 confidentiality of health care information. Notwithstanding such provision, because of the
4 extensive protections with regard to access to and disclosure of confidential health care
5 information by the HIE provided for in this chapter, patient authorization obtained for access to or
6 disclosure of information to or from the HIE or a provider participant shall be deemed the same
7 authorization required by other state or federal laws including information regarding mental
8 health (the Rhode Island mental health law, Rhode Island general laws section 40.1-5-1 et. seq.);
9 HIV (Rhode Island general laws section 23-6-17); sexually transmitted disease (Rhode Island
10 general laws sections 23-6-17 and 23-11-9); alcohol and drug abuse (Rhode Island general laws
11 section 23-1.10-1 et. seq., 42 U.S.C. section 290dd-2) or genetic information (Rhode Island
12 general laws section 27-41-53); (Rhode Island general laws section 27-20-39 and Rhode Island
13 general laws section 27-19-44).

14 **37-37.7-13. Penalties -- Attorney's fees for violations. --**

15 (a) Civil penalties. Any one who violates the provisions of this chapter may be held liable
16 for actual and exemplary damages.

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

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

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

25 **37-37.7-14. Waivers void. -- Any agreement purporting to waive the provisions of this**
26 **chapter is declared to be against public policy and void.**

27 **37-37.7-15. Severability. -- If any provision of this chapter is held by a court to be**
28 **invalid, that invalidity shall not affect the remaining provisions of the chapter, and to this end the**
29 **provisions of the chapter are declared severable.**

30 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESS AND PROFESSIONS - THE RHODE ISLAND HEALTH
INFORMATION EXCHANGE ACT OF 2008

- 1 This act would establish safeguards and confidentiality protection for health information
- 2 exchange.
- 3 This act would take effect upon passage.

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