

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D., 2008

AN ACT

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

Introduced By:

Date Introduced:

Referred To:

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

WHEREAS, the implementation of health information technology including electronic medical records and the use of electronic prescribing increases the quality of health care delivery and to prevent medication errors; and

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

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

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

WHEREAS, the State of Rhode Island has an interest in popularizing the use of a state-wide Health Information Exchange system ("HIE") in order to improve the quality, safety and value of health care, keep confidential health information secure and confidential and use the HIE system to progress toward meeting public health goals; and

WHEREAS, the State of Rhode Island desires to establish the authority for the Executive Office of Health and Human Services to regulate the state-wide HIE system.

It is enacted by the General Assembly as follows:

SECTION 1. Title 37 of the General Laws entitled “BUSINESSES AND PROFESSIONS” is hereby amended by adding thereto the following chapter:

CHAPTER 37.7

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

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

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

(1) “AGENCY” means the Executive Office of Health and Human Services.

(2) “Authorized representative” means:

(i) A person empowered by the Patient Participant to assert or to waive the confidentiality, or to disclose or authorize the disclosure of confidential information, as established by this chapter. That person is not, except by explicit authorization, empowered to waive confidentiality or to disclose or consent to the disclosure of confidential information; or

(ii) A person appointed by the Patient Participant to make health care decisions on his or her behalf through a valid Durable Power of Attorney for Health Care as set forth in R.I.G.L. §23-4.10-2; or

(iii) A guardian or conservator, with authority to make health care decisions, if the Patient Participant is decisionally impaired; or

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

(v) If the Patient Participant is deceased, his or her personal representative or, in the absence of that representative, his or her heirs-at-law.

(3) “Authorization form” means electronic, written or other means by which a Patient Participant provides authorization for the RHIO to allow access to, review of, and/or disclosure of the Patient Participant’s confidential health care information.

(4) “Authenticated Users” means those persons and/or entities that have been authorized by a Patient Participant through an Authorization Form and authenticated by the RHIO to access, review or to which a Patient Participant’s confidential health care information may be disclosed.

- (5) “Business Associate” means a business associate of a Covered Entity pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Public Law 104-191.
- (6) “Confidential health care information” means all information relating to a Patient Participant’s health care history, diagnosis, condition, treatment, or evaluation.
- (7) “Coordination of Care” means the process of coordinating, planning, monitoring, sharing information relating to and assessing a care plan for treatment of a patient.
- (8) “Department of Health” means the Rhode Island Department of Health.
- (9) “Disclosure Report” means a report generated by the HIE relating to the record of access to, review of and/or disclosure of a patient’s confidential health care information held by the HIE.
- (10) “Executive Office of Health and Human Services” means the State office that facilitates collaboration between the Departments of Health, Children, Youth and Families, Elderly Affairs, Health, Human Services and Mental Health, Retardation and Hospitals.
- (11) “Health care provider” means any person licensed by this state to provide or lawfully providing health care services, including, but not limited to, a physician, hospital, intermediate care facility or other health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychiatric social worker, pharmacist or psychologist, and any officer, employee, or agent of that provider acting in the course and scope of his or her employment or agency related to or supportive of health services.
- (12) “Health care services” means acts of diagnosis, treatment, medical evaluation, referral or counseling or any other acts that may be permissible under the health care licensing statutes of this state.
- (13) “Health Information Exchange (HIE)” means the technical system under State authority allowing for the state-wide electronic mobilization of confidential health care information, pursuant to this chapter.
- (14) “HIE Advisory Commission” means the advisory body established by the Executive Office of Health and Human Services or its designee’s regulation in order to provide community in-put into the use of the confidential health care information of the state-wide HIE, which will be responsible for policy recommendations relating to the state-wide HIE.
- (15) “Participant” means a Patient Participant, a Provider Participant, an Authenticated User, the Regional Health Information Organization (“RHIO”) and the Rhode Island Department of Health each of which participate in the HIE through the mechanisms established in this chapter.
- (16) “Participation” means a Patient Participant who receives health care services and authorizes confidential health care information to be submitted to the HIE, a Provider Participant, who is a data-submitting partner with the HIE, Authenticated Users, the RHIO

and the Rhode Island Department of Health which participate in the HIE through the authorization, submission and disclosure of health information via the HIE.

- (17) “Patient Participant” means a person who receives health care services from a health care Provider Participant.
- (18) “Patient Participant Form” means the electronic or written authorization of the patient to participate in the HIE.
- (19) “Provider Participant” means a pharmacy, laboratory or health care provider who is providing health care services to a Patient Participant and/or is submitting health care information to the HIE and has executed an electronic and/or written agreement regarding receipt, retention or release of confidential health care information to the HIE;
- (20) “Regional Health Information Organization” (“RHIO”) means the organization that provides administrative and financial services, as well as operational support to the HIE, and also known as The Rhode Island Regional Health Information Organization.

5-37.7-4 Participation in the Health Information Exchange. –

- (1) There shall be established a state-wide HIE under State authority to allow for the electronic mobilization of confidential health care information in Rhode Island.
- (2) The State of Rhode Island has an interest in encouraging participation in the HIE by all interested parties, including, but not limited to, health care providers, patients, entities submitting information to the HIE, entities obtaining information from the HIE, Authenticated Users, and the RHIO. The Rhode Island Department of Health is also considered a participant for public health purposes.
- (3) Patients and health care providers shall have the choice to participate in the HIE, as defined by regulations in accordance with Section 5-37.7-3.
- (4) Participation in the HIE shall have no impact on the content of or use or disclosure of confidential health care information of Patient Participants that is held in locations other than the HIE.

5-37.7-5 Regulatory oversight. –

- (a) The Executive Office of Health and Human Services shall enforce the provisions of this chapter and have regulatory authority over the HIE, and may delegate such authority to a Department within its jurisdiction, which shall promulgate such rules and regulations as are necessary and proper to carry out the duties assigned by this chapter.
- (b) The Executive Office of Health and Human Services has exclusive jurisdiction over the state-wide HIE, except with respect to the jurisdiction conferred upon the Attorney General in Section 5-37.7-13. This chapter shall not apply to any other private and/or public health information systems utilized in Rhode Island, including other health information systems utilized within a health care facility or organization.

(c) The Executive Office of Health and Human Services or its designee shall promulgate rules and regulations for the establishment of an HIE Advisory Commission that will be responsible for recommendations relating to the use of the confidential health care information of the state-wide HIE, subject to regulatory oversight by the Executive Office of Health and Human Services. The Commission shall report annually to the Executive Office of Health and Human Services and the RHIO, and such report shall be made public.

5.37.7-6 Rhode Island Health Information Organization. –The RHIO shall, subject to and consistent with contractual obligations it has with the State of Rhode Island, be responsible for all administrative, operational, and financial functions to support the HIE, including, but not limited to, developing, implementing and enforcing policies for receiving, retaining, safeguarding and disclosing confidential health information as required by this chapter. The RHIO is deemed to be the steward of the confidential health care information for which it has administrative responsibility. The HIE Advisory Commission shall be responsible for recommendations to the Executive Office of Health and Human Services, and in consultation with the RHIO regarding the use of the confidential health care information.

5-37.7-7 Disclosure. –

(a) (1) Except as provided in subsection (b) of this section, a Patient Participant’s confidential health care information shall not be accessed, released or transferred from the HIE without the electronic, written or other authorization of the patient or his or her authorized representative, on an authorization form meeting the requirements of subsection (c) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5-37.7-9 Secondary disclosure. -- Any confidential health care information obtained by a Provider Participant pursuant to this chapter may be further disclosed by such Provider Participant with or without authorization of the Patient Participant to the same extent that such information may be disclosed pursuant to existing state and federal law, without regard to the source of the information.

5-37.7-10 Patients' rights. – Pursuant to this chapter, a Patient Participant who has his or her confidential health care information transferred through the HIE shall have the following rights:

- (a) To obtain a copy of his or her confidential health care information from the HIE;
- (b) To obtain a copy of the Disclosure Report pertaining to his or her confidential health care information;
- (c) To be notified as required by chapter 49.2 of title 11, the Rhode Identity Theft Protection Act, of a breach of the security system of the HIE;
- (d) To terminate his or her participation in the HIE in accordance with rules and regulations promulgated by Agency or its designee.
- (e) To request to amend his or her own information through the Provider Participant.

5-37.7-11. Immunity. –

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

5-37.7-12 Reconciliation with other authorities. –

- (a) This chapter shall only apply to the HIE system, and does not apply to any other private and/or public health information systems utilized in Rhode Island, including other health information systems utilized within or by a health care facility or organization.
- (b) As this chapter provides extensive protection with regard to access to and disclosure of confidential health care information by the HIE, it supplements, with respect to the HIE only, any less stringent disclosure requirements, including but not limited to those contained in chapter 37.3 of this title, the Health Insurance Portability and Accountability Act (“HIPAA”) and regulations promulgated thereunder, and any other less stringent federal or state law.
- (c) This chapter shall not be construed to interfere with any other federal or state laws or regulations which provide more extensive protection than provided in this chapter for the confidentiality of health care information. Notwithstanding such provision, because of the extensive protections with regard to access to and disclosure of confidential health care information by the HIE provided for in this chapter, patient authorization obtained for access to or disclosure of information to or from the HIE or a Provider Participant shall be deemed the same authorization required by other state or federal laws including information regarding mental health (the Rhode Island Mental Health Law, R.I. Gen. Laws, § 40.1.-5-1 *et. seq.*); HIV (R.I. Gen. Laws §23-6-17); sexually transmitted disease (R.I. Gen. Laws §23-6-17 and §23-11-9); alcohol and drug abuse (R.I. Gen. Laws §23-1.10-1 *et seq.*, 42 U.S.C. § 290dd-2) or genetic information (R. I. Gen. Laws §27-41-53; R.I. Gen. Laws §27-20-39 and R.I. Gen. Laws § 27-19-44).

5-37.7-13 Penalties. -- Attorney's fees for violations. --

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

(b) Criminal Penalties. Any one who intentionally and knowingly violates the provisions of this chapter shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) per patient per violation, or imprisoned for not more than one (1) year, or both.

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

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

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

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

SECTION 2. This act shall take effect upon adoption of the Regulations relating hereto.