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**STATE OF MAINE  
ONE HUNDRED AND THIRTIETH LEGISLATURE  
COMMITTEE ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES**

**TO:** Sen. Anne Carney, Senate Chair  
Rep. Thomas Harnett, House Chair  
Joint Standing Committee on Judiciary

**FROM:** Sen. Heather B. Sanborn, Senate Chair <sup>HSB</sup>  
Rep. Denise A. Tepler, House Chair <sup>DAT</sup>  
Joint Standing Committee on Health Coverage, Insurance and Financial Services

**DATE:** February 19, 2021

**RE:** Public Records Exception Review of LD 5

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We are writing to request review of LD 5, An Act Concerning the Reporting of Health Care Information to the Emergency Medical Services' Board, pursuant to Title 1, section 434, subsection 2. The committee held a public hearing on LD 5 in compliance with the public hearing requirement of Title 1, section 434, subsection 1. The committee voted unanimously OTP-A. A copy of the draft amendment as voted by the committee is attached.

During the 129<sup>th</sup> Legislature, this same bill was considered as LD 1996, An Concerning the Reporting of Health Care Information to the Emergency Medical Services' Board. Although LD 1996 was reported out of the HCIFS Committee, it could not be fully considered by the Legislature due to the pandemic. As part of the committee process, the Judiciary had the opportunity to review the proposed public records exception in LD 1996 and recommended no changes in the language. See attached memo. When LD 5 was reintroduced in the 130<sup>th</sup> Legislature, it included the same proposed public records exception from LD 1996.

The relevant provision in LD 5 we are asking to be reviewed protects as confidential health care information or records provided to the Emergency Medical Services' Board or health care information or records requested by the Emergency Medical Services' Board for the purposes of monitoring and improving the provision of emergency medical services and outcomes within the State if that information or records identifies or permits the identification of a patient or a member of that patient's family. See proposed section §91-B, sub-§ 1, ¶¶ E and F in Section 2 and 3 of LD 5.

We have reviewed the statutory criteria in Title 1, section 434, subsection 2 and we offer the following comments on LD 5:

*A. Whether the record protected by the proposed exception needs to be collected and maintained.*

*B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception.*

A & B. It is important for the Emergency Medical Services' Board to have access to this information and records for the purposes of monitoring and improving the provision of emergency medical services and outcomes within the State. The bill was introduced by the Board so the Board could request health care information and records from hospitals and physicians regarding patients that are treated by emergency medical services personnel. The Board believes this information is needed to evaluate the impact of emergency medical treatment and the quality of care that is being provided. Specifically, this statutory authority will also allow the Board to participate in a national program to evaluate the role of treatment provided by emergency medical services personnel in the continuum of care for certain time-sensitive conditions like heart attack and stroke.

*C. Whether federal law requires a record covered by the proposed exception to be confidential.*

C. The provision in LD 5 is consistent with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), which generally protects as confidential personally-identifiable health care information.

*D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records.*

D. We believe that the confidentiality of this information is necessary to protect a patient's privacy. While there is a strong interest in personal privacy, we note that it is mitigated by the authorization for information that does not identify or permit the identification of a patient or a member of that patient's family to be shared publicly.

*E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records.*

E. We do not believe paragraph E is applicable.

*F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records.*

F. We do not believe paragraph F is applicable.

*G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records.*

G. The ability to share health care information and records without identifying or permit the identification of a patient or a member of that patient's family provides the appropriate balancing of any safety interest and any public interest in disclosure.

*H. Whether the proposed exception is as narrowly tailored as possible.*

H. Yes, we believe the language is crafted in this manner. While the language generally protects the confidentiality of any personally-identifiable information from the public, the language also authorizes disclosure of information in the aggregate or any other manner that does not identify or permit the identification of a patient or a member of that patient's family.

*I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.*

I. We do not offer any further comments.

Thank you for your consideration of our comments. Please contact us or our legislative analyst, Colleen McCarthy Reid, if you have any questions or need additional information. We look forward to discussing this with your committee in work session.

Enclosure: LD 5 and Draft Committee Amendment, JUD memo on LD 1996

cc: Members, Joint Standing Committee on Health Coverage, Insurance and Financial Services

**LD 5**  
**OTP-A**  
**FOR HCIFS REVIEW**  
**Changes from bill highlighted in yellow**

Committee: HCIFS  
LA: CMR  
File Name: G:\COMMITTEES\IFS\Bill amendments\130th 1st\017602.docx  
LR (item): 0176 (02)  
New Title?: n  
Add Emergency?: Y  
Date: February 19, 2021

**COMMITTEE AMENDMENT ". TO LD 5, An Act Concerning the Reporting of Health Care Information or Records to the Emergency Medical Services' Board**

Amend the bill by inserting before the enacting clause the following:

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas**, this legislation was previously considered in the 129<sup>th</sup> Legislature but not enacted by the Legislature due to the COVID-19 pandemic; and

**Whereas**, this legislation has been reintroduced for consideration by the 130<sup>th</sup> Legislature; and

**Whereas**, in order to be fully implemented, this legislation requires the adoption of rules by the Maine Emergency Medical Services' Board; and

**Whereas**, it is important for the board to be able to begin the rulemaking process as soon as possible; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Amend the bill by striking out section 4 and inserting in its place the following:

**Sec. 4. 32 MRSA §96** is enacted to read:

**§96. Monitoring and improving the provision of emergency medical services and health outcomes**

For the purpose of monitoring and improving the provision of emergency medical services and health outcomes within the State, the board may request and collect health care information or records, including information or records that identify or permit identification of any patient, concerning individuals who have received emergency medical treatment within the State, except for any information or records identifying a patient, in any format, that include HIV or AIDS status or test results, **that relate to abortion, miscarriage, domestic violence or sexual assault** or that relate to referral, treatment or services for a behavioral or mental health disorder or substance use disorder.

**LD 5**  
**OTP-A**  
**FOR HCIFS REVIEW**  
**Changes from bill highlighted in yellow**

**1. Reporting by hospitals and physicians.** Hospitals and physicians shall report health care information or records concerning individuals who have received emergency medical treatment as follows and in accordance with this section and rules adopted by the board.

A. A hospital shall report to the board health care information or records requested by the board, including information or records that identify or permit identification of any patient, concerning an individual under or formerly under that hospital's care who received emergency medical treatment.

B. A physician shall report to the board health care information or records requested by the board, including information or records that identify or permit identification of any patient, concerning an individual under or formerly under that physician's care who received emergency medical treatment.

**2. Access to health care information or records through a state-designated statewide health information exchange or direct reporting.** A hospital or physician may satisfy the board's request for health care information or records under subsection 1 as follows.

A. A hospital or physician that participates in a state-designated statewide health information exchange as described in Title 22, section 1711-C may satisfy the board's request for health care information or records by authorizing the board to retrieve that hospital's or physician's data from the health information exchange.

B. A hospital or physician that participates in a state-designated statewide health information exchange as described in Title 22, section 1711-C that does not authorize the board to retrieve that hospital's or physician's data from the health information exchange shall provide the health care information or records to the board directly in the manner specified by rule.

**3. Health care information and records requested.** When requesting health care information or records pursuant to this section and any rules adopted by the board, the board shall request only the minimum amount of information or number of records necessary to fulfill the purposes of this section.

**4. No liability for hospital or physician reporting in good faith.** A hospital or physician that reports in good faith in accordance with this section is not liable for any civil damages for making the report.

**5. Rulemaking.** The board shall adopt rules regarding the collection and reporting of health care information and records pursuant to this section, including, but not limited to, the frequency of reporting by hospitals and physicians. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Amend the bill at the end before the summary the following:

**LD 5**  
**OTP-A**  
**FOR HCIFS REVIEW**  
**Changes from bill highlighted in yellow**

**Emergency clause.** In view of the emergency cited in the preamble, the Act takes effect when approved.

**SUMMARY**

This amendment clarifies that the Maine Emergency Medical Services' Board may not collect health care information or records identifying a patient that relate to abortion, miscarriage, domestic violence or sexual assault. The bill does not permit the collection of information identifying a patient that includes HIV or AIDS status or test results or that relates to referral, treatment or services for a behavioral or mental health disorder or substance use disorder.

This amendment also adds an emergency preamble and emergency clause to the bill.



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 5

S.P. 12

In Senate, January 13, 2021

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### **An Act Concerning the Reporting of Health Care Information or Records to the Emergency Medical Services' Board**

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Submitted by the Department of Public Safety pursuant to Joint Rule 204.

Received by the Secretary of the Senate on January 11, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator SANBORN, H. of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 32 MRSA §88, sub-§2, ¶K** is enacted to read:

3 K. The board may collect or receive health care information or records, including  
4 information or records that identify or permit identification of any patient, for the  
5 purpose of monitoring and improving the provision of emergency medical services and  
6 health outcomes within the State.

7 **Sec. 2. 32 MRSA §91-B, sub-§1, ¶E** is enacted to read:

8 E. Health care information or records provided to the board under section 88,  
9 subsection 2, paragraph K are confidential if the information or records identify or  
10 permit the identification of a patient or a member of that patient's family.

11 **Sec. 3. 32 MRSA §91-B, sub-§1, ¶F** is enacted to read:

12 F. Health care information or records provided to the board under section 96 are  
13 confidential if the information or records identify or permit the identification of a  
14 patient who received emergency medical treatment or a member of that patient's  
15 family.

16 **Sec. 4. 32 MRSA §96** is enacted to read:

17 **§96. Monitoring and improving the provision of emergency medical services and**  
18 **health outcomes**

19 For the purpose of monitoring and improving the provision of emergency medical  
20 services and health outcomes within the State, the board may request and collect health  
21 care information or records, including information or records that identify or permit  
22 identification of any patient, concerning individuals who have received emergency medical  
23 treatment within the State, except for any information or records identifying a patient, in  
24 any format, that include HIV or AIDS status or test results or that relate to referral,  
25 treatment or services for a behavioral or mental health disorder or substance use disorder.

26 **1. Reporting by hospitals and physicians.** Hospitals and physicians shall report  
27 health care information or records concerning individuals who have received emergency  
28 medical treatment as follows and in accordance with this section and rules adopted by the  
29 board.

30 A. A hospital shall report to the board health care information or records requested by  
31 the board, including information or records that identify or permit identification of any  
32 patient, concerning an individual under or formerly under that hospital's care who  
33 received emergency medical treatment.

34 B. A physician shall report to the board health care information or records requested  
35 by the board, including information or records that identify or permit identification of  
36 any patient, concerning an individual under or formerly under that physician's care who  
37 received emergency medical treatment.

38 **2. Access to health care information or records through a state-designated**  
39 **statewide health information exchange or direct reporting.** A hospital or physician  
40 may satisfy the board's request for health care information or records under subsection 1 as  
41 follows.





1 records, including information or records that identify a patient. The bill also requires  
2 hospitals and physicians, upon request by the board for the purpose of monitoring and  
3 improving the provision of emergency medical services and health outcomes, to provide  
4 health care information or records concerning individuals who have received emergency  
5 medical treatment, except for information or records that include HIV or AIDS status or  
6 test results or that relate to referral, treatment or services for a behavioral or mental health  
7 disorder or substance use disorder.

8 The bill makes the reportable health care information or records confidential.

9 The bill also requires the board to adopt routine technical rules related to quality  
10 initiatives adopted by the board, the authorization and revocation of authorization for a  
11 state-designated statewide health information exchange to provide health care information  
12 and records to the board and the tracking of health care information and records provided  
13 by the exchange to the board.

**SENATE**

**MICHAEL E. CARPENTER**, DISTRICT 2, CHAIR  
**SHENNA BELLOWS**, DISTRICT 14  
**LISA M. KEIM**, DISTRICT 18

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**MARGARET J. REINSCH**, SENIOR LEGISLATIVE ANALYST  
**LYNNE CASWELL**, LEGISLATIVE ANALYST  
**SUSAN M. PINETTE**, COMMITTEE CLERK



**HOUSE**

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**JEFFREY EVANGELOS**, FRIENDSHIP

**STATE OF MAINE**  
**ONE HUNDRED AND TWENTY-NINTH LEGISLATURE**  
**COMMITTEE ON JUDICIARY**

July 29, 2020

**TO:** Senator Heather B. Sanborn, Senate Chair  
Representative Denise A. Tepler, House Chair  
Joint Standing Committee on Health Care, Insurance and Financial Services

**FROM:** Senator Michael Carpenter, Senate Chair  
Representative Donna Bailey, House Chair  
Joint Standing Committee on Judiciary

**Re:** LD 1996, An Act Concerning the reporting of Health Care Information to the Emergency Medical Services' Board

This memo memorializes the recommendations of the Joint Standing Committee on Judiciary pursuant to Title 1, section 434 on the proposed committee amendment to LD 1996, An Act Concerning the reporting of Health Care Information to the Emergency Medical Services' Board. Please let us know if you would like a more detailed report of our evaluation and review.

The Committee reviewed the draft attached to the July 7, 2020 memo, and recommends no changes concerning freedom of access issues in the proposed language.

We would appreciate the work that went into the memo transmitting the amended bill to our committee for review and evaluation.

Thank you for your serious consideration of the Freedom of Access issues, and for your cooperation in this process.

Please contact us if you have any questions.