

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Protecting the Confidentiality of Prescription Information

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

Sec. 1. 22 MRSA §1711-E, as enacted by PL 2005, c. 589, §1, is amended to read:

§ 1711-E. Confidentiality of prescription drug information

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3.

A-1. "Administrator" has the same meaning as in Title 24-A, section 1901, subsection 1.

A-2. "Commercial purpose" means advertising, marketing, promoting or engaging in any similar activity for the purpose of influencing sales or the market share of a prescription drug, influencing or increasing the prescribing behavior of a prescriber, marketing prescription drugs to individuals or improving the effectiveness of a professional prescription drug detailing sales force.

A-3. "Detailing" means, with respect to prescription drugs, one-to-one contact undertaken to increase prescribing of a prescription drug identified with the person making the contact.

B. "Electronic transmission intermediary" means an entity that provides the infrastructure that connects the computer systems or other electronic devices used by and between health care practitioners, prescribers, pharmacies, health care facilities and, pharmacy benefit managers to, carriers and administrators and agents and contractors of those carriers and agents persons and entities in order to facilitate the secure transmission of an individual's prescription drug order, refill, authorization request, claim, payment or other prescription drug information.

C. "Health care facility" has the same meanings as in section 1711-C, subsection 1, paragraph D.

D. "Health care practitioner" has the same meanings as in section 1711-C, subsection 1, paragraph F.

E. "Health plan" means a health plan providing prescription drug coverage as authorized under the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003, Public Law 108-173.

F. "Individual" means a natural person who is the subject of prescription drug information.

F-1. "Pharmacy" means a licensed mail order prescription pharmacy as defined in Title 32, section 13702, subsection 13 or a licensed drug outlet as defined in Title 32, section 13702, subsection 10.

G. "Pharmacy benefits manager" has the same meaning as in section 2699, subsection 1, paragraph F.

G-1. "Prescriber" means a person who is licensed, registered or otherwise authorized in the appropriate jurisdiction to prescribe and administer drugs in the course of professional practice.

H. "Prescription drug information" means information concerning prescription drugs as defined in Title 32, section 13702, subsection 24 and includes prescription drug orders as defined in Title 32, section 13702, subsection 25.

I. "Prescription drug information intermediary" means a person or entity that communicates, facilitates or participates in the exchange of prescription drug information regarding an individual or a prescriber. "Prescription drug information intermediary" includes, but is not limited to, a pharmacy benefits manager, a health plan, an administrator and an electronic transmission intermediary.

J. "Regulated transaction" means a transaction for a prescription for a drug that is written by a prescriber within the State or that is dispensed within the State.

2. Confidentiality of health care information. ~~A~~With regard to a regulated transaction, a prescriber, carrier, pharmacy or prescription drug information intermediary may not license, use, sell, transfer or exchange for value, for any commercial purpose, prescription drug information that identifies directly or indirectly the individual except if for the prescriber unless the regulated transaction is expressly permitted under section 1711-C, Title 24, Title 24-A or the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended~~allowed under subsection 4.~~

3. Enforcement. A violation of this section is a violation of the Maine Unfair Trade Practices Act.

4. Regulated transactions that are allowed. The following regulated transactions are allowed and are not subject to the prohibitions of this section:

A. Transfers of prescription drug information, including identification of the individual and prescriber, as required under the Controlled Substances Prescription Monitoring Program under section 7248;

B. The dispensing of prescription drugs to an individual or the individual's authorized representative, the transmission of prescription drug information between a prescriber and a pharmacy or other health care practitioner caring for the individual and the transfer of prescription information between pharmacies;

C. The transfer of prescription records that may occur when a pharmacy's ownership is changed or transferred;

D. Care management educational communications provided to an individual about the individual's health condition or adherence to a prescribed course of therapy or other information relating to the drug being dispensed, treatment options or clinical trials;

E. Transfers for the limited purpose of pharmacy reimbursement, prescription drug formulary or prior authorization compliance, patient care management, utilization review or health care research or transfers that are required by law; and

F. The collection, use, transfer or sale of prescription drug information that does not and cannot be used to directly or indirectly identify the individual or the prescriber.

SUMMARY

This bill extends the privacy of prescription drug information from individuals to prescribers and clarifies that privacy applies to certain regulated transactions. In addition it extends the law to cover transfers of information by pharmacies and administrators for health plans. The bill provides exceptions for transfers related to dispensing prescription drugs, patient care, pharmacy reimbursement, utilization review, formulary and prior authorization compliance, care management, changes in pharmacy ownership, the Controlled Substances Prescription Monitoring Program and data that cannot be used to identify the individual or the provider. It removes the exception for disclosures expressly permitted by the Maine Revised Statutes, Title 22, section 1711-C; Title 24; Title 24-A; and the federal Health Insurance Portability and Accountability Act.