

Rational For MHDO Legislative Proposal: An Act to Amend Laws relating to Health Care Data

Data users of the Maine Health Data Organization (MHDO) have requested the use of Protected Health Information (PHI) in very specific circumstances to advance health care delivery system and payment reform initiatives which will ultimately benefit Maine citizens with lower costs and improved outcomes. In order for this to occur, payers and providers need to better understand the risk profiles and health history of their patients. For example care givers need organized information on their patients so that they can understand the services their patients are accessing. This information will allow the provider to develop more targeted interventions for patients i.e. with chronic disease and patients who overuse the emergency department. The ultimate goal is to use information to improve patient outcomes and at the same time reduce costs and unnecessary services.

The MHDO is currently precluded by Maine law from releasing PHI.

However, PHI is being used and disclosed today in Maine by covered entities. For example Medicare is releasing PHI on those Medicare beneficiaries in the State of Maine that are in the MAPCP (Patient Centered Medical Home pilot) demonstration.

Purpose of the MHDO:

The purpose of the MHDO is to create and maintain a useful, objective, reliable and comprehensive health information database that is accessible and is used to improve the health of Maine citizens.

MHDO's Governing Statute:

The law that governs MHDO (Title 22, Chapter 1683) prohibits the MHDO from releasing health information that is individually identifiable. The statute allows the MHDO to release de-identified health information which neither identifies nor provides a reasonable basis to identify an individual.

The Bill amends existing State law and allows for the release of Personal Health Information (PHI) by conforming to the restrictions and limitations in HIPAA (*Health Insurance Portability and Accountability Act*)-Federal rule 45 CFR 160.103

What is Protected Health Information (PHI)?

Protected Health Information (PHI) is defined in the Health Insurance Portability and Accountability Act (HIPAA) of 1996 as information **that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.** It also includes individually identifiable health information such as demographic information about an individual.....

HIPAA and the Privacy Rule:

The *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule) established, for the first time, a set of national standards for the protection of certain health information. The U.S.

Department of Health and Human Services (HHS) issued the Privacy Rule to implement the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

The Privacy Rule assures that individuals’ health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well-being. The Rule strikes a balance that permits use of information, while protecting the privacy of people who seek care.

The Privacy Rule defines and limits the circumstances in which an individual’s protected health information may be used or disclosed by “covered entities.”

A Covered Entity:

The Privacy Rule defines health plans, health care clearinghouses (entities that process nonstandard information they receive from another entity into a standard format or data content) and health care providers who transmit health information in electronic form as **Covered Entities**.

MHDO’s Customers:

One example of a system delivery/payment reform initiative for which PHI has been requested from the MHDO is the **Patient Centered Medical Home Demonstration (PCMH)**. The major commercial payers and both Medicaid and Medicare participate in this demonstration. The physicians who are part of the demonstration have requested identified claims data on their patients in order to better understand their patients and improve their outcomes. Both Medicaid and Medicare recognize the value of providing identified claims data to the physicians participating in the demonstration and make identifiable data available as allowed under HIPAA. Through MHDO, these providers will be able to access identifiable claims data on their commercially insured patients as well. This is one example of where providing PHI to physicians with appropriate protections will advance one of the more significant delivery system and payment reform initiatives in the State.

LD 1818 Working Group:

The LD 1818 Working Group (DHHS established and convened this multi-stakeholder working group to evaluate options and actions available to improve the availability of and access to health care data and to examine the all payor claims database system in the State...) discussed the issue of releasing PHI in order to support delivery system and payment reform initiatives.

The group discussed how identifiable health care data enables the combining of different data sources to provide a more meaningful and longitudinal understanding of utilization, care patterns, and outcomes. The group also discussed the importance of protecting how and when identifiable health care data is released.

In the Final Report of the LD 1818 Working Group there is the following statement:

one way to improve access to PHI is to allow the MHDO to have the same legal rights and responsibilities to release PHI as federal and State laws allow for other entities. This may be accomplished by the Legislature amending the MHDO statute to allow MHDO to modify its

existing rule to improve access to PHI for purposes allowed under HIPAA and other federal and State laws.

MHDO Board Action:

The MHDO Board of Directors established the Subcommittee on Appropriate Access to PHI in March 2013 to develop and provide recommendations, including proposed legislation, to the MHDO Board at the Board’s retreat in August 2013.

The Board members of the PHI Subcommittee represented a multi-stakeholder group of providers, employers, consumers, health plans, and the public sector (the Agency’s AAG provided technical assistance to the subcommittee).

The PHI Subcommittee presented to the full MHDO Board a suggested framework including legislative language to allow the MHDO to release PHI consistent with the provisions in HIPAA. The Board agreed with the recommendation and submitted legislative language which is titled **An Act to Amend Laws Relating to Health Care Data.**

The use and limits of protected health information have been extensively examined, refined, and specified in the HIPAA regulations.

The MHDO bill is consistent with HIPAA and in some cases provides for more stringent requirements than those in HIPAA. For example, the choice regarding disclosure of PHI provides a level of choice not required by HIPAA.

Summary of the Bill “An Act to Amend Laws relating to Health Care Data”

- Amends existing State law and allows for the release of Personal Health Information (PHI) by conforming to the restrictions in HIPAA (*Health Insurance Portability and Accountability Act*)- Federal law 45 CFR 160.103
- Covered Entities are the only entities that have access to PHI for treatment, payment and operations and public health studies
- PHI shall be limited to only that which is necessary for the stated purpose,
- Data releases shall be governed by Data Use Agreements that provide adequate privacy and security measures;
- There shall be provisions for follow-up to make sure data is used as specified and that no PHI is publically revealed, including rules for data suppression,
- Release of PHI (other than a limited data set) shall require MHDO board approval.