HOUSE DOCKET, NO. 2819 FILED ON: 1/18/2013

HOUSE . . . . . No. 1909

The Commonwealth of Massachusetts

PRESENTED BY:

James M. Cantwell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act ensuring patient privacy and control with regard to health information exchanges.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James M. Cantwell	*4th Plymouth*

HOUSE DOCKET, NO. 2819 FILED ON: 1/18/2013

HOUSE . . . . . No. 1909

By Mr. Cantwell of Marshfield, a petition (accompanied by bill, House, No. 1909) of James M. Cantwell relative to the disclosure of health care information. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act ensuring patient privacy and control with regard to health information exchanges.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 111 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting the following after line 76:-

"Authorized representative of an individual" or "authorized representative" means an individual's legal guardian; or other authorized representative or, after death, that person's personal representative or a person identified in section 70I subsection (d). For a minor who has not consented to health care treatment in accordance with the provisions of state law, "authorized representative" means the minor's parent, legal guardian or guardian ad litem.

"Authorization to disclose" means authorization to disclose health care information in accordance with chapter 70I.

"Disclosure" means the release, transfer of or provision of access to health care information in any manner obtained as a result of a professional health care relationship between the individual and the health care practitioner or facility to a person or entity other than the individual.

"Health care" means preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, treatment, procedures or counseling, including appropriate assistance with disease or symptom management and maintenance, that affects an individual's physical, mental or behavioral condition, including individual cells or their components or genetic information, or the structure or function of the human body or any part of the human body. Health care includes prescribing, dispensing or furnishing to an individual drugs, biologicals, medical devices or health care equipment and supplies; providing hospice services to an individual; and the banking of blood, sperm, organs or any other tissue.

22 “Health care facility" or "facility" means a facility, institution or entity licensed pursuant
23 to this Title that offers health care to persons in this State, including a home health care provider,
24 hospice program and a pharmacy licensed pursuant to the General Laws. For the purposes of this
25 section, "health care facility" does not include a state mental health institute, the Elizabeth
26 Levinson Center, the Aroostook Residential Center or Freeport Towne Square.

27 "Health care information" means information that directly identifies the individual and
28 that relates to an individual's physical, mental or behavioral condition, personal or family
29 medical history or medical treatment or the health care provided to that individual. "Health care
30 information" does not include information that protects the anonymity of the individual by means
31 of encryption or encoding of individual identifiers or information pertaining to or derived from
32 federally sponsored, authorized or regulated research governed by 21 Code of Federal
33 Regulations, Parts 50 and 56 and 45 Code of Federal Regulations, Part 46, to the extent that such
34 information is used in a manner that protects the identification of individuals. The Board of
35 Directors of the Maine Health Data Organization shall adopt rules to define health care
36 information that directly identifies an individual. Rules adopted pursuant to this paragraph are
37 routine technical rules as defined in the General Laws.

38 "Health care information" does not include information that is created or received by a
39 member of the clergy or other person using spiritual means alone for healing as provided in the
40 General Laws.

41 "Health care practitioner" means a person licensed by this State to provide or otherwise
42 lawfully providing health care or a partnership or corporation made up of those persons or an
43 officer, employee, agent or contractor of that person acting in the course and scope of
44 employment, agency or contract related to or supportive of the provision of health care to
45 individuals.

46 "Individual" means a natural person who is the subject of the health care information
47 under consideration and, in the context of disclosure of health care information, includes the
48 individual's authorized representative.

49 "Third party" or "3rd party" means a person other than the individual to whom the health
50 care information relates.

51 SECTION 2. Chapter 111 of the General Laws, as appearing in the 2010 Official Edition,
52 is hereby amended by inserting after section 70H the following section:-

53 Section 70I – Confidentiality of Health Care Information

54 (a) Confidentiality of health information; disclosure. An individual's health care
55 information is confidential and may not be disclosed other than to the individual by the health
56 care practitioner or facility except as provided in this section. Nothing in this section prohibits a

57 health care practitioner or health care facility from adhering to applicable ethical or professional
58 standards provided that these standards do not decrease the protection of confidentiality granted
59 by this section.

60 (b) Written authorization to disclose. A health care practitioner or facility may disclose
61 health care information pursuant to a written authorization signed by an individual for the
62 specific purpose stated in the authorization. A written authorization to disclose health care
63 information must be retained with the individual's health care information. A written
64 authorization to disclose is valid whether it is in an original, facsimile or electronic form. A
65 written authorization to disclose must contain the following elements:

66 (1) The name and signature of the individual and the date of signature. If the
67 authorization is in electronic form, a unique identifier of the individual and the date the
68 individual authenticated the electronic authorization must be stated in place of the individual's
69 signature and date of signature;

70 (2) The types of persons authorized to disclose health care information and the nature of
71 the health care information to be disclosed;

72 (3) The identity or description of the 3rd party to whom the information is to be
73 disclosed;

74 (4) The specific purpose or purposes of the disclosure and whether any subsequent
75 disclosures may be made pursuant to the same authorization. An authorization to disclose health
76 care information related to substance abuse treatment or care subject to the requirements of 42
77 United States Code, Section 290dd-2 (Supplement 1998) is governed by the provisions of that
78 law;

79 (5) The duration of the authorization;

80 (6) A statement that the individual may refuse authorization to disclose all or some health
81 care information but that refusal may result in improper diagnosis or treatment, denial of
82 coverage or a claim for health benefits or other insurance or other adverse consequences;

83 (7) A statement that the authorization may be revoked at any time by the individual by
84 executing a written revocation, subject to the right of any person who acted in reliance on the
85 authorization prior to receiving notice of revocation, instructions on how to revoke an
86 authorization and a statement that revocation may be the basis for denial of health benefits or
87 other insurance coverage or benefits; and

88 (8) A statement that the individual is entitled to a copy of the authorization form.

89 (c) Oral authorization to disclose. When it is not practical to obtain written authorization
90 under subsection 3 from an individual or person acting pursuant to subsection D or when a

91 person chooses to give oral authorization to disclose, a health care practitioner or facility may
92 disclose health care information pursuant to oral authorization. A health care practitioner or
93 facility shall record with the individual's health care information receipt of oral authorization to
94 disclose, including the name of the authorizing person, the date, the information and purposes for
95 which disclosure is authorized and the identity or description of the 3rd party to whom the
96 information is to be disclosed.

97 (d) Authorization to disclose provided by a 3rd party. When an individual or an
98 authorized representative is unable to provide authorization to disclose under subsection B or C,
99 a health care practitioner or facility may disclose health care information pursuant to
100 authorization to disclose that meets the requirements of subsection B or C given by a 3rd party
101 listed in this subsection. A health care practitioner or facility may determine not to obtain
102 authorization from a person listed in this subsection when the practitioner or facility determines
103 it would not be in the best interest of the individual to do so. In making this decision, the health
104 care practitioner or facility shall respect the safety of the individual and shall consider any
105 indicators, suspicion or substantiation of abuse. Persons who may authorize disclosure under this
106 subsection include:

107 (1) The spouse of the individual;

108 (2) A parent of the individual;

109 (3) An adult who is a child, grandchild or sibling of the individual;

110 (4) An adult who is an aunt, uncle, niece or nephew of the individual, related by blood or
111 adoption;

112 (5) An adult related to the individual, by blood or adoption, who is familiar with the
113 individual's personal values; and

114 (6) An adult who has exhibited special concern for the individual and who is familiar
115 with the individual's personal values.

116 (e) Duration of authorization to disclose. An authorization to disclose may not extend
117 longer than 30 months, except that the duration of an authorization for the purposes of insurance
118 coverage is governed by the relevant provisions of the General Laws.

119 (f) Revocation of authorization to disclose. A person who may authorize disclosure may
120 revoke authorization to disclose at any time, subject to the rights of any person who acted in
121 reliance on the authorization prior to receiving notice of revocation. A written revocation of
122 authorization must be signed and dated. If the revocation is in electronic form, a unique identifier
123 of the individual and the date the individual authenticated the electronic authorization must be
124 stated in place of the individual's signature and date of signature. A health care practitioner or
125 facility shall record receipt of oral revocation of authorization, including the name of the person

126 revoking authorization and the date. A revocation of authorization must be retained with the
127 authorization and the individual's health care information.

128 (g) Disclosure without authorization to disclose. A health care practitioner or facility
129 may disclose, or when required by law must disclose, health care information without
130 authorization to disclose under the circumstances stated in this subsection or as provided in
131 subsection (l). Disclosure may be made without authorization as follows:

132 (1) To another health care practitioner or facility for diagnosis, treatment or care of
133 individuals or to complete the responsibilities of a health care practitioner or facility that
134 provided diagnosis, treatment or care of individuals, as provided in this paragraph.

135 (i) For a disclosure within the office, practice or organizational affiliate of the health care
136 practitioner or facility, no authorization is required.

137 (ii) For a disclosure outside of the office, practice or organizational affiliate of the health
138 care practitioner or facility, authorization is not required, except that in nonemergency
139 circumstances authorization is required for health care information derived from mental health
140 services provided by:

141 (A) A clinical nurse specialist licensed under the provisions of the General Laws;

142 (B) A psychologist licensed under the provisions of the General Laws;

143 (C) A social worker licensed under the provisions of the General Laws;

144 (D) A counseling professional licensed under the provisions of the General Laws; or

145 (E) A physician specializing in psychiatry licensed under the provisions of the General
146 Laws.

147 This subparagraph does not prohibit the disclosure of health care information between a
148 licensed pharmacist and a health care practitioner or facility providing mental health services for
149 the purpose of dispensing medication to an individual.

150 This subparagraph does not prohibit the disclosure without authorization of health care
151 information covered under this section to a state-designated statewide health information
152 exchange that satisfies the requirement in subsection 18, paragraph C of providing a general opt-
153 out provision to an individual at all times and that provides and maintains an individual
154 protection mechanism by which an individual may choose to opt in to allow the state-designated
155 statewide health information exchange to disclose that individual's health care information
156 covered under the General Laws;

157 (2) To an agent, employee, independent contractor or successor in interest of the health
158 care practitioner or facility including a state-designated statewide health information exchange

159 that makes health care information available electronically to health care practitioners and
160 facilities or to a member of a quality assurance, utilization review or peer review team to the
161 extent necessary to carry out the usual and customary activities relating to the delivery of health
162 care and for the practitioner's or facility's lawful purposes in diagnosing, treating or caring for
163 individuals, including billing and collection, risk management, quality assurance, utilization
164 review and peer review. Disclosure for a purpose listed in this paragraph is not a disclosure for
165 the purpose of marketing or sales;

166 (3) To a family or household member unless expressly prohibited by the individual or a
167 person acting pursuant to subsection (d);

168 (4) To appropriate persons when a health care practitioner or facility that is providing or
169 has provided diagnosis, treatment or care to the individual has determined, based on reasonable
170 professional judgment, that the individual poses a direct threat of imminent harm to the health or
171 safety of any individual. A disclosure pursuant to this paragraph must protect the confidentiality
172 of the health care information consistent with sound professional judgment;

173 (5) To federal, state or local governmental entities in order to protect the public health
174 and welfare when reporting is required or authorized by law, to report a suspected crime against
175 the health care practitioner or facility or to report information that the health care facility's
176 officials or health care practitioner in good faith believes constitutes evidence of criminal
177 conduct that occurred on the premises of the health care facility or health care practitioner;

178 (6) As directed by order of a court or as authorized or required by statute;

179 (7) To a governmental entity pursuant to a lawful subpoena requesting health care
180 information to which the governmental entity is entitled according to statute or rules of court;

181 (8) To a person when necessary to conduct scientific research approved by an
182 institutional review board or by the board of a nonprofit health research organization or when
183 necessary for a clinical trial sponsored, authorized or regulated by the federal Food and Drug
184 Administration. A person conducting research or a clinical trial may not identify any individual
185 patient in any report arising from the research or clinical trial. For the purposes of this paragraph,
186 "institutional review board" means any board, committee or other group formally designated by a
187 health care facility and authorized under federal law to review, approve or conduct periodic
188 review of research programs. Health care information disclosed pursuant to this paragraph that
189 identifies an individual must be returned to the health care practitioner or facility from which it
190 was obtained or must be destroyed when it is no longer required for the research or clinical trial.
191 Disclosure for a purpose listed in this paragraph is not a disclosure for the purpose of marketing
192 or sales;

193 (9) To a person engaged in the assessment, evaluation or investigation of the provision of
194 or payment for health care or the practices of a health care practitioner or facility or to an agent,

195 employee or contractor of such a person, pursuant to statutory or professional standards or
196 requirements. Disclosure for a purpose listed in this paragraph is not a disclosure for the purpose
197 of marketing or sales;

198 (10) To a person engaged in the regulation, accreditation, licensure or certification of a
199 health care practitioner or facility or to an agent, employee or contractor of such a person,
200 pursuant to standards or requirements for regulation, accreditation, licensure or certification;

201 (11) To a person engaged in the review of the provision of health care by a health care
202 practitioner or facility or payment for such health care under the General Laws or under a public
203 program for the payment of health care or professional liability insurance for a health care
204 practitioner or facility or to an agent, employee or contractor of such a person;

205 (12) To attorneys for the health care practitioner or facility that is disclosing the health
206 care information or to a person as required in the context of legal proceedings or in disclosure to
207 a court or governmental entity, as determined by the practitioner or facility to be required for the
208 practitioner's or facility's own legal representation;

209 (13) To a person outside the office of the health care practitioner or facility engaged in
210 payment activities, including but not limited to submission to payors for the purposes of billing,
211 payment, claims management, medical data processing, determination of coverage or
212 adjudication of health benefit or subrogation claims, review of health care services with respect
213 to coverage or justification of charges or other administrative services. Payment activities also
214 include but are not limited to:

215 (i) Activities necessary to determine responsibility for coverage;

216 (ii) Activities undertaken to obtain payment for health care provided to an individual; and

217 (iii) Quality assessment and utilization review activities, including precertification and
218 preauthorization of services and operations or services audits relating to diagnosis, treatment or
219 care rendered to individuals by the health care practitioner or facility and covered by a health
220 plan or other payor;

221 (14) To schools, educational institutions, youth camps licensed under the General Laws,
222 correctional facilities, health care practitioners and facilities, providers of emergency services or
223 a branch of federal or state military forces, information regarding immunization of an individual;

224 (15) To a person when disclosure is needed to set or confirm the date and time of an
225 appointment or test or to make arrangements for the individual to receive those services;

226 (16) To a person when disclosure is needed to obtain or convey information about
227 prescription medication or supplies or to provide medication or supplies under a prescription;

228 (17) To a person representing emergency services, health care and relief agencies,
229 corrections facilities or a branch of federal or state military forces, of brief confirmation of
230 general health status;

231 (18) To a member of the clergy, of information about the presence of an individual in a
232 health care facility, including the person's room number, place of residence and religious
233 affiliation unless expressly prohibited by the individual or a person acting pursuant to subsection
234 (d);

235 (19) To a member of the media who asks a health care facility about an individual by
236 name, of brief confirmation of general health status unless expressly prohibited by the individual
237 or a person acting pursuant to subsection (d); and

238 (20) To a member of the public who asks a health care facility about an individual by
239 name, of the room number of the individual and brief confirmation of general health status unless
240 expressly prohibited by the individual or a person acting pursuant to subsection (d).

241 (h) Confidentiality policies. A health care practitioner, facility or state-designated
242 statewide health information exchange shall develop and implement policies, standards and
243 procedures to protect the confidentiality, security and integrity of health care information to
244 ensure that information is not negligently, inappropriately or unlawfully disclosed. The policies
245 of health care facilities must provide that an individual being admitted for inpatient care be given
246 notice of the right of the individual to control the disclosure of health care information. The
247 policies must provide that routine admission forms include clear written notice of the individual's
248 ability to direct that that individual's name be removed from the directory listing of persons cared
249 for at the facility and notice that removal may result in the inability of the facility to direct
250 visitors and telephone calls to the individual.

251 (i) Prohibited disclosure. A health care practitioner, facility or state-designated statewide
252 health information exchange may not disclose health care information for the purpose of
253 marketing or sales without written or oral authorization for the disclosure.

254 (j) Disclosures of corrections or clarifications to health care information. A health care
255 practitioner or facility shall provide to a 3rd party a copy of an addition submitted by an
256 individual to the individual's health care information if:

257 (1) The health care practitioner or facility provided a copy of the original health care
258 record to the 3rd party on or after February 1, 2000;

259 (2) The correction or clarification was submitted by the individual pursuant to the
260 General Laws and relates to diagnosis, treatment or care;

261 (3) The individual requests that a copy be sent to the 3rd party and provides an
262 authorization that meets the requirements of subsection (b), (c) or (d); and

263 (4) If requested by the health care practitioner or facility, the individual pays to the health
264 care practitioner or facility all reasonable costs requested by that practitioner or facility.

265 (k) Requirements for disclosures. Except as otherwise provided by law, disclosures of
266 health care information pursuant to this section are subject to the professional judgment of the
267 health care practitioner and to the following requirements.

268 (1) A health care practitioner or facility that discloses health care information pursuant to
269 subsection (b), (c) or (d) may not disclose information in excess of the information requested in
270 the authorization.

271 (2) A health care practitioner or facility that discloses health care information pursuant to
272 subsections (b), (c), (d) or (g) may not disclose information in excess of the information
273 reasonably required for the purpose for which it is disclosed.

274 (3) If a health care practitioner or facility believes that release of health care information
275 to the individual would be detrimental to the health of the individual, the health care practitioner
276 or facility shall advise the individual and make copies of the records available to the individual's
277 authorized representative upon receipt of a written authorization.

278 (4) If a health care practitioner or facility discloses partial or incomplete health care
279 information, as compared to the request or directive to disclose under subsection (b), (c), (d) or
280 (g), the disclosure must expressly indicate that the information disclosed is partial or incomplete.

281 (l) Health care information subject to other laws, rules and regulations. Health care
282 information that is subject to the provisions of other provisions of state or federal law, rule or
283 regulation is governed solely by those provisions.

284 (m) Minors. If a minor has consented to health care in accordance with the laws of this
285 State, authorization to disclose health care information pursuant to this section must be given by
286 the minor unless otherwise provided by law.

287 (n) Enforcement. This section may be enforced within 2 years of the date a disclosure in
288 violation of this section was or should reasonably have been discovered.

289 (1) When the Attorney General has reason to believe that a person has intentionally
290 violated a provision of this section, the Attorney General may bring an action to enjoin unlawful
291 disclosure of health care information.

292 (2) An individual who is aggrieved by conduct in violation of this section may bring a
293 civil action against a person who has intentionally unlawfully disclosed health care information
294 in the Superior Court in the county in which the individual resides or the disclosure occurred.
295 The action may seek to enjoin unlawful disclosure and may seek costs and a forfeiture or penalty

296 under paragraph 3. An applicant for injunctive relief under this paragraph may not be required to
297 give security as a condition of the issuance of the injunction.

298 (3) A person who intentionally violates this section is subject to a civil penalty not to
299 exceed $5,000, payable to the State, plus costs. If a court finds that intentional violations of this
300 section have occurred after due notice of the violating conduct with sufficient frequency to
301 constitute a general business practice, the person is subject to a civil penalty not to exceed
302 $10,000 for health care practitioners and $50,000 for health care facilities, payable to the State.
303 A civil penalty under this subsection is recoverable in a civil action.

304 (4) Nothing in this section may be construed to prohibit a person aggrieved by conduct in
305 violation of this section from pursuing all available common law remedies, including but not
306 limited to an action based on negligence.

307 (o) Waiver prohibited. Any agreement to waive the provisions of this section is against
308 public policy and void.

309 (p) Immunity. A cause of action in the nature of defamation, invasion of privacy or
310 negligence does not arise against any person for disclosing health care information in accordance
311 with this section. This section provides no immunity for disclosing information with malice or
312 willful intent to injure any person.

313 (q) Application. This section applies to all requests, directives and authorizations to
314 disclose health care information executed on or after February 1, 2000. An authorization to
315 disclose health care information executed prior to February 1, 2000 that does not meet the
316 standards of this section is deemed to comply with the requirements of this section until the next
317 health care encounter between the individual and the health care practitioner or facility.

318 (r) Participation in a state-designated statewide health information exchange. The
319 following provisions apply to participation in a state-designated statewide health information
320 exchange.

321 (1) A health care practitioner may not deny a patient health care treatment and a health
322 insurer may not deny a patient a health insurance benefit based solely on the provider's or
323 patient's decision not to participate in a state-designated statewide health information exchange.
324 Except when otherwise required by federal law, a payor of health care benefits may not require
325 participation in a state-designated statewide health information exchange as a condition of
326 participating in the payor's provider network.

327 (2) Recovery for professional negligence is not allowed against any health care
328 practitioner or health care facility on the grounds of a health care practitioner's or a health care
329 facility's nonparticipation in a state-designated statewide health information exchange arising out
330 of or in connection with the provision of or failure to provide health care services. In any civil

331 action for professional negligence or in any proceeding related to such a civil action or in any
332 arbitration, proof of a health care practitioner's, a health care facility's or a patient's participation
333 or nonparticipation in a state-designated statewide health information exchange is inadmissible
334 as evidence of liability or nonliability arising out of or in connection with the provision of or
335 failure to provide health care services. This paragraph does not prohibit recovery or the
336 admission of evidence of reliance on information in a state-designated statewide electronic health
337 information exchange when there was participation by both the patient and the patient's health
338 care practitioner.

339 (3) A state-designated statewide health information exchange to which health care
340 information is disclosed under this section shall provide an individual protection mechanism by
341 which an individual may opt out from participation to prohibit the state-designated statewide
342 health information exchange from disclosing the individual's health care information to a health
343 care practitioner or health care facility.

344 (4) At point of initial contact, a health care practitioner, health care facility or other entity
345 participating in a state-designated statewide health information exchange shall provide to each
346 patient, on a separate form, at minimum:

347 (i) Information about the state-designated statewide health information exchange,
348 including a description of benefits and risks of participation in the state-designated statewide
349 health information exchange;

350 (ii) A description of how and where to obtain more information about or contact the state-
351 designated statewide health information exchange;

352 (iii) An opportunity for the patient to decline participation in the state-designated
353 statewide health information exchange; and

354 (iv) A declaration that a health care practitioner, health care facility or other entity may
355 not deny a patient health care treatment based solely on the provider's or patient's decision not to
356 participate in a state-designated statewide health information exchange.

357 The state-designated statewide health information exchange shall develop the form for
358 use under this paragraph, with input from consumers and providers. The form must be approved
359 by the office of the state coordinator for health information technology within the Governor's
360 office of health policy and finance.

361 (5) A health care practitioner, health care facility or other entity participating in a state-
362 designated statewide health information exchange shall communicate to the exchange the
363 decision of each patient who has declined participation and shall do so within a reasonable time
364 frame, but not more than 2 business days following the receipt of a signed form, as described in
365 paragraph 4, from the patient, or shall establish a mechanism by which the patient may decline

366 participation in the state-designated statewide health information exchange at no cost to the
367 patient.

368 (6) A state-designated statewide health information exchange shall process the request of
369 a patient who has decided not to participate in the state-designated statewide health information
370 exchange within 2 business days of receiving the patient's decision to decline, unless additional
371 time is needed to verify the identity of the patient. A signed authorization from the patient is
372 required before a patient is newly entered or reentered into the system if the patient chooses to
373 begin participation at a later date.

374 Except as otherwise required by applicable law, regulation or rule or state or federal
375 contract, or when the state-designated statewide health information exchange is acting as the
376 agent of a health care practitioner, health care facility or other entity, the state-designated
377 statewide health information exchange shall remove health information of individuals who have
378 declined participation in the exchange. In no event may health information retained in the state-
379 designated statewide health information exchange as set forth in this paragraph be made
380 available to health care practitioners, health care facilities or other entities except as otherwise
381 required by applicable law, regulation or rule or state or federal contract, or when the health care
382 practitioner, health care facility or other entity is the originator of the information.

383 (7) A state-designated statewide health information exchange shall establish a secure
384 website accessible to patients. This website must:

385 (i) Permit a patient to request a report of who has accessed that patient's records and
386 when the access occurred. This report must be delivered to the patient within 2 business days
387 upon verification of the patient's identity by the state-designated statewide health information
388 exchange;

389 (ii) Provide a mechanism for a patient to decline participation in the state-designated
390 statewide health information exchange; and

391 (iii) Provide a mechanism for the patient to consent to participation in the state-
392 designated statewide health information exchange if the patient had previously declined
393 participation.

394 (8) A state-designated statewide health information exchange shall establish for patients
395 an alternate procedure to that provided for in paragraph 6 that does not require Internet access. A
396 health care practitioner, health care facility or other entity participating in the state-designated
397 statewide health information exchange shall provide information about this alternate procedure
398 to all patients. The information must be included on the form identified in paragraph 4.

399 (9) A state-designated statewide health information exchange shall maintain records
400 regarding all disclosures of health care information by and through the state-designated statewide

401 health information exchange, including the requesting party and the dates and times of the
402 requests and disclosures.

403 (10) A state-designated statewide health information exchange may not charge a patient
404 or an authorized representative of a patient any fee for access or communication as provided in
405 this subsection.

406 (11) Notwithstanding any provision of this subsection to the contrary, a health care
407 practitioner, health care facility or other entity shall provide the form and communication
408 required by paragraphs 4 and 6 to all existing patients following the effective date of this
409 subsection.

410 (12) A state-designated statewide health information exchange shall meet or exceed all
411 applicable federal laws and regulations pertaining to privacy, security and breach notification
412 regarding personally identifiable protected health information, as defined in 45 Code of Federal
413 Regulations, Part 160. If a breach occurs, the state-designated statewide health information
414 exchange shall arrange with its participants for notification of each individual whose protected
415 health information has been, or is reasonably believed by the exchange to have been, breached.
416 For purposes of this paragraph, "breach" has the same meaning as in 45 Code of Federal
417 Regulations, Part 164, as amended.

418 (13) The state-designated statewide health information exchange shall develop a quality
419 management plan, including auditing mechanisms, in consultation with the office of the state
420 coordinator for health information technology within the department, who shall review the plan
421 and results.

422 (s) Exemption from freedom of access laws. Except as provided in this section, the
423 names and other identifying information of individuals in a state-designated statewide health
424 information exchange are confidential.