

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2037

Introduced by

Legislative Management

(Information Technology Committee)

1 A BILL for an Act to create and enact a new section to chapter 44-04 and three new sections to
2 chapter 54-59 of the North Dakota Century Code, relating to the confidentiality of health
3 information under the health information exchange and participation in the health information
4 exchange; to amend and reenact sections 54-59-25 and 54-59-26 of the North Dakota Century
5 Code, relating to health information technology; to provide a penalty; and to provide an effective
6 date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Health information exchange - Confidential records.**

11 Any identified or de-identified information, as defined under the federal Health Insurance
12 Portability and Accountability Act of 1996 [Pub. L. 104-191], submitted to, contained in, or
13 transmitted by the health information exchange under chapter 54-59 and any such data or
14 record in the possession of the health information technology office is confidential.

15 **SECTION 2. AMENDMENT.** Section 54-59-25 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **54-59-25. Health information technology advisory committee - Duties.**

18 1. The health information technology advisory committee consists of the state chief
19 information officer or the chief information officer's designee, the state health officer or
20 the state health officer's designee, the governor or the governor's designee, the
21 executive director of the department of human services or the executive director's
22 designee, and individuals appointed by the governor and the state health officer to
23 represent a broad range of public and private health information technology
24 stakeholders.

2. The health information technology advisory committee shall collaborate with and make recommendations to the health information technology office, as provided under sections 6-09-42, 6-09-43, 54-59-26, and 54-59-27.
3. As requested by the health information technology advisory committee, the department shall provide or arrange for administrative services to assist the health information technology advisory committee.
4. The health information technology advisory committee may employ an executive director who serves at the pleasure of and under the direct supervision of the health information technology advisory committee. The executive director may employ personnel as necessary for the administration of this section.
5. The health information technology advisory committee may accept private contributions, gifts, and grants from any source to carry out the purposes of the committee and the health information technology office.

SECTION 3. AMENDMENT. Section 54-59-26 of the North Dakota Century Code is amended and reenacted as follows:

54-59-26. Health information technology office - Duties - Loan and grant programs.

1. The health information technology office is created in the department. The health information technology advisory committee shall make recommendations to the health information technology office for implementing a statewide interoperable health information infrastructure that is consistent with emerging national standards; promote the adoption and use of electronic health records and other health information technologies; and promote interoperability of health information systems for the purpose of improving health care quality, patient safety, and the overall efficiency of health care and public health services.
2. The health information technology office director, in collaboration with the health information technology advisory committee, shall:
 - a. Apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology.
 - b. Implement and administer a health information exchange that utilizes information infrastructure and systems in a secure and cost-effective manner to facilitate the collection, storage, and transmission of health records.

- 1 c. Establish policies and adopt rules and standards for the use of health
2 information and establish requirements for the use of the health information
3 exchange and participation in the health information exchange.
- 4 d. Establish minimum standards for accessing the health information exchange to
5 ensure appropriate and required privacy and security protections and adopt rules
6 relating to the authority of the director to suspend, eliminate, or terminate the
7 right to participate in the health information exchange.
- 8 e. Establish a health information technology loan program to provide loans to health
9 care providers for the purpose of purchasing and upgrading certified electronic
10 health record technology, training personnel in the use of such technology, and
11 improving the secure electronic exchange of health information, and for any other
12 purpose under section 6-09-42.
- 13 e-f. Establish a health information technology planning loan program to provide
14 low-interest loans to health care entities to assist those entities in improving their
15 health information technology infrastructure under section 6-09-43.
- 16 d-g. Facilitate and expand electronic health information exchange in the state, directly
17 or by awarding grants.
- 18 e-h. Establish an application process and eligibility criteria for and accept and process
19 applications for loans and grants under subdivisions b-e, e-f, and d-g. The eligibility
20 criteria must be consistent with federal requirements associated with federal
21 funds received under subdivision a. The eligibility criteria for loans under
22 subdivision e-f must include a requirement that the recipient's approved health
23 information technology be strategically aligned with the state's health information
24 technology plan and the associated federal standards and that the recipient has
25 passed an onsite electronic medical record readiness assessment conducted by
26 an assessment team determined by the health information technology advisory
27 committee and the health information technology office director.
- 28 i. Determine fees and charges for access and participation in the health information
29 exchange. Any moneys collected under this subdivision must be deposited in the
30 electronic health information exchange fund.

- j. Consult and coordinate with the state department of health and the department of human services to facilitate the collection of health information from health care providers for public health purposes, including identifiable health information that may be used by state agencies, departments, or institutions to comply with applicable state or federal laws.

SECTION 4. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Participation in the health information exchange by executive branch state agencies and institutions of higher education.

1. Before January 1, 2015, each executive branch state agency and each institution of higher education that implements, acquires, or upgrades health information technology systems shall use health information technology systems and products that meet minimum standards adopted by the health information technology office for accessing the health information exchange. A state agency or institution of higher education that participates in or has health information that supports or develops the health information exchange shall provide access to patient-specific data to complete the patient record within the health information exchange. Notwithstanding any other provision of law, each participating agency and institution shall provide patient-specific data to the health information exchange.
2. Participation in the health information exchange by a state agency or institution has no effect on the content, use, or disclosure of health information of patient participants which is held in locations other than the exchange. This section does not limit or change the obligation of an agency or institution to exchange health information in accordance with other applicable federal and state laws or rules.

SECTION 5. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Immunity for reliance on data from the health information exchange.

A health care provider that relies in good faith upon any information provided through the health information exchange in the treatment of a patient is immune from criminal or civil liability arising from any damages caused by that good-faith reliance. The immunity granted under this

1 section does not apply to acts or omissions constituting gross negligence or reckless, wanton,
2 or intentional misconduct.

3 **SECTION 6.** A new section to chapter 54-59 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Certified electronic health records systems.**

6 An executive branch state agency, an institution of higher education, and any health care
7 provider or other person participating in the health information exchange may use only an
8 electronic health record system for use in the exchange which is certified under rules adopted
9 by the office of the national coordinator for health information technology.

10 **SECTION 7. EFFECTIVE DATE.** Section 6 of this Act becomes effective on January 1,
11 2015.