

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~~four new
2 sections to chapter 54-59 of the North Dakota Century Code, relating to the confidentiality of
3 health information under the health information exchange and participation in the health
4 information exchange; to amend and reenact sections 23-06.5-19, 54-59-25, and 54-59-26 of
5 the North Dakota Century Code, relating to health information technology; to provide a penalty;
6 and to provide an effective 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 1. AMENDMENT.** Section 23-06.5-19 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **23-06.5-19. Health care record registry - Fees.**

18 1. As used in this section:

19 a. "Health care record" means a health care directive or a revocation of a health
20 care directive executed in accordance with this chapter.

21 b. "Registration form" means a form prescribed by the ~~secretary of state~~information
22 technology department to facilitate the filing of a health care record.

23 2. a. The ~~secretary of state~~information technology department may establish and
24 maintain a health care record registry, through which a health care record may be

1 filed. The registry must be accessible through a website maintained by the
2 ~~secretary of state~~information technology department.

3 b. An individual who is the subject of a health care record, or that individual's agent,
4 may submit to the ~~secretary of state~~information technology department for
5 registration, using a registration form, a health care record executed in
6 accordance with this chapter.

7 3. Failure to register a health care record with the ~~secretary of state~~information
8 technology department under this section does not affect the validity of the health care
9 record. Failure to notify the ~~secretary of state~~information technology department of the
10 revocation of a health care record filed under this section does not affect the validity of
11 a revocation that otherwise meets the statutory requirements for revocation.

12 4. a. Upon receipt of a health care record and completed registration form, the
13 ~~secretary of state~~information technology department shall create a digital
14 reproduction of the health care record, enter the reproduced health care record
15 into the health care record registry database, and assign each registration a
16 unique file number. The ~~secretary of state~~information technology department is
17 not required to review a health care record to ensure the health care record
18 complies with any particular statutory requirements that may apply to the health
19 care record.

20 b. The ~~secretary of state~~information technology department shall delete a health
21 care record filed with the registry under this section upon receipt of a revocation
22 of the health care record along with that document's file number.

23 c. The entry of a health care record under this section does not affect or otherwise
24 create a presumption regarding the validity of the health care record or the
25 accuracy of the information contained in the health care record.

26 5. a. The registry must be accessible by entering the file number and password on the
27 internet website. Registration forms, file numbers, and other information
28 maintained by the ~~secretary of state~~information technology department under this
29 section are confidential and the state may not disclose this information to any
30 person other than the subject of the document, or the subject's agent. The

~~secretary of state~~ information technology department may not use information contained in the registry except as provided under this chapter.

b. At the request of the subject of the health care record, or the subject's agent, the ~~secretary of state~~ information technology department may transmit the information received regarding the health care record to the registry system of another jurisdiction as identified by the requester.

c. This section does not require a health care provider to seek to access registry information about whether a patient has executed a health care record that may be registered under this section. A health care provider who makes good-faith health care decisions in reliance on the provisions of an apparently genuine health care record received from the registry is immune from criminal and civil liability to the same extent and under the same conditions as prescribed in section 23-06.5-12. This section does not affect the duty of a health care provider to provide information to a patient regarding health care directives as may be required under federal law.

6. ~~The secretary of state may accept a gift, grant, donation, bequest, or other form of voluntary contribution to establish, support, promote, and maintain the registry. Any funds contributed under this subsection and any fees collected under this section must be deposited in the secretary of state's general services operating fund. The secretary of state shall~~ information technology department may charge and collect a reasonable fee for filing a health care record and a revocation of a health care record.

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

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

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

Health information exchange - Confidential records.

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

1 information relating to patients, individuals, or individually identifiable demographic information
2 contained in a master client index submitted to, stored in or transmitted by the health
3 information exchange or in the possession of the health information technology office is an
4 exempt record.

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

7 **Immunity for reliance on data from the health information exchange.**

8 A health care provider that relies in good faith upon any information provided through the
9 health information exchange in the treatment of a patient is immune from criminal or civil liability
10 arising from any damages caused by that good-faith reliance. The immunity granted under this
11 section does not apply to acts or omissions constituting gross negligence or reckless, wanton,
12 or intentional misconduct.

13 **SECTION 7.** A new section to chapter 54-59 of the North Dakota Century Code is created
14 and enacted as follows:

15 **Certified electronic health records systems.**

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

20 **SECTION 8. EFFECTIVE DATE.** Section 67 of this Act becomes effective on January 1,
21 2015.