

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.

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

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

16        **54-59-26. Health information technology office - Duties - Loan and grant programs.**

- 17        1.    The health information technology office is created in the department. The health  
18            information technology advisory committee shall make recommendations to the health  
19            information technology office for implementing a statewide interoperable health  
20            information infrastructure that is consistent with emerging national standards; promote  
21            the adoption and use of electronic health records and other health information  
22            technologies; and promote interoperability of health information systems for the  
23            purpose of improving health care quality, patient safety, and the overall efficiency of  
24            health care and public health services.
- 25        2.    The health information technology office director, in collaboration with the health  
26            information technology advisory committee, shall:
  - 27            a.    Apply for federal funds that may be available to assist the state and health care  
28            providers in implementing and improving health information technology.
  - 29            b.    Implement and administer a health information exchange that utilizes information  
30            infrastructure and systems in a secure and cost-effective manner to facilitate the  
31            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.

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

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

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

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

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

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

28          A health care provider that relies in good faith upon any information provided through the  
29          health information exchange in the treatment of a patient is immune from criminal or civil liability  
30          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.