

Introduced by

Senator Sitte

1 A BILL for an Act to create and enact chapter 23-47 of the North Dakota Century Code, relating
2 to privacy of medical records; and to provide a penalty.

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

4 **SECTION 1.** Chapter 23-47 of the North Dakota Century Code is created and enacted as
5 follows:

6 **23-47-01. Definitions.**

7 As used in this chapter, unless the context requires otherwise:

- 8 1. "Breach" has the same meaning as provided under title 45, Code of Federal
9 Regulations, part 164, subpart D.
- 10 2. "Health care provider" has the same meaning as provided in the privacy rule.
- 11 3. "Health information organization" means the health information exchange created
12 under chapter 54-59 and any other entity that provides data transmission of protected
13 individually identifiable health information which is treated as a business associate
14 under title 42, United States Code, section 17938 [Pub. L. 111-5; 123 Stat. 271].
- 15 4. "Individual" means the individual who is the subject of the individually identifiable
16 health information and has the same meaning as provided in the privacy rule.
- 17 5. "Individually identifiable health information" has the same meaning as provided in the
18 privacy rule.
- 19 6. "Opt-out" means an individual's written decision that the individual's individually
20 identifiable health information may not be shared through a health information
21 organization, except as otherwise required by law.
- 22 7. "Privacy rule" means the Health Insurance Portability and Accountability Act of 1996
23 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] privacy rule under title 45,
24 Code of Federal Regulations, part 160 and part 164, subpart E.

1 8. "Security rule" means the Health Insurance Portability and Accountability Act of 1996
2 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] security rule under title 45,
3 Code of Federal Regulations, part 160 and part 164, subparts A and C.

4 9. "Treatment" has the same meaning as provided in the privacy rule.

5 10. "Workforce" has the same meaning as provided in the privacy rule.

6 11. "Written" means a record that is inscribed on a tangible medium or which is stored in
7 an electronic or other medium and is retrievable in perceivable form as the term
8 "record" is defined in section 9-16-01.

9 **23-47-02. Individual rights.**

10 Aln dealing with a health information organization shall provide the following rights to-
11 individuals, an individual may:

- 12 1. Opt-out of participating in the health information organization under section 23-47-03.
- 13 2. Request a copy of the individual's individually identifiable health information that is
14 available through the health information organization. The health information
15 organization shall provide the requested health information directly to the requesting
16 individual or shall require health care providers participating in the health information
17 organization to provide access to individually identifiable health information to the
18 individual. The copy may be provided electronically, if the individual requesting the
19 copy consents to electronic delivery of the individually identifiable health information,
20 and the copy must be provided to the individual within five days after the individual's
21 request. Fees for a copy of an individual's health information are governed by title 45,
22 Code of Federal Regulations, part 164, section 524.
- 23 3. Request amendment of incorrect individually identifiable health information available
24 through the health information organization.
- 25 4. Request an accounting of disclosures of the individual's individually identifiable health
26 information through the health information organization during the three-year period
27 before the individual's request. The health information organization shall provide the
28 list to the individual within five days of the individual's request.

1 **23-47-03. Voluntary participation in health information organizations - Prohibition on**
2 **withholding care or benefits.**

- 3 1. An individual may opt-out of participating in a health information organization by
4 providing notice to the organization. If an individual chooses to opt-out, the individual
5 must have the option of:
- 6 a. Completely opting out of participating in the health information organization; or
7 b. Conditionally opting out, in which case the accessibility of the individual's
8 individually identifiable health information is limited to access a health care
9 provider determines is required by a medical emergency.
- 10 2. An individual's decision to opt-out of participating in a health care information
11 organization may be changed at any time by the individual by providing written notice
12 to the health information organization.
- 13 3. A health care provider, health insurer, or government health plan may not withhold
14 coverage or care from an individual nor may a health insurer deny an individual a
15 health insurance benefit based solely on that individual's choice to participate or to
16 opt-out of a health information organization.

17 **23-47-04. Notice of health information practices.**

- 18 1. A health information organization shall maintain a written notice, in at least twelve-
19 point type, of health information practices which describes the following:
- 20 a. Individually identifiable health information the health information organization
21 collects about individuals;
- 22 b. The categories of persons that have access to information, including individually
23 identifiable health information, through the health information organization;
- 24 c. The purposes for which access to the information, including individually
25 identifiable health information, is provided through the health information
26 organization;
- 27 d. The individual's right to opt-out of participating in the health information
28 organization; and
- 29 e. An explanation of how an individual may opt-out of participating in the health
30 information organization.

- 1 2. The notice of health information practices must include a statement informing an
2 individual of the individual's right to choose to keep individually identifiable health
3 information out of the health information organization.
- 4 3. A health information organization that maintains a website must post the health
5 information organization's notice of health information practices on the organization's
6 website in a conspicuous manner.
- 7 4. Notwithstanding any other requirement in this section, a health information
8 organization shall provide an individual with a copy of the health information
9 organization's notice of health information practices within five days after receiving a
10 written request for that information.
- 11 5. A health care provider participating in a health information organization shall provide
12 the health information organization's notice of health information practices to each of
13 the provider's patients before or at the provider's first encounter with the patients. A
14 health care provider shall document the provider has provided the health information
15 organization's notice of health information practices to a patient. Documentation must
16 be in the form of a signature by the patient indicating the patient has received, read,
17 and understood the notice of health information practices and whether the patient
18 chose to opt-out. As technology develops and electronic methods of receiving
19 documentation from the patient exist, the health information organization may use any
20 such electronic documentation.
- 21 6. Except as otherwise required by law, if an individual opts out of the health information
22 organization, the individually identifiable health information of the individual's health
23 information may not be accessible through the health information organization no later
24 than five days after the individual opts out.
- 25 7. If there is a material change to a health information organization's notice of health
26 information practices, the health care provider shall redistribute the notice of health
27 information practices at the next point of contact with the patient or in the same
28 manner and within the same time period as is required under title 45, Code of Federal
29 Regulations, section 164.528, in relation to the health care provider's notice of privacy
30 practices, whichever comes first.

1 **23-47-05. Disclosure of individually identifiable health information.**

- 2 1. A health information organization may disclose an individual's individually identifiable
3 health information only if:
- 4 a. The individual has not opted out of participating in the health information
5 organization;
- 6 b. The type of disclosure is explained in the health information organization's notice
7 of health information practices; and
- 8 c. The disclosure complies with the privacy rule and the security rule.
- 9 2. A health information organization or a health information organization's vendor may
10 not sell or otherwise make commercial use of an individual's individually identifiable
11 health information without the written authorization of the individual.
- 12 3. A health information organization may not disclose individually identifiable health
13 information for research unless the disclosure is in accordance with the requirements
14 of title 45, Code of Federal Regulations, part 164, section 508 and section 512(i).
15 However, a health care organization may disclose a limited data set as that term is
16 defined in the privacy rule.

17 **23-47-06. Required policies.**

18 A health information organization shall implement and enforce policies governing the
19 privacy and security of individually identifiable health information in compliance with this
20 chapter. These policies must:

- 21 1. Implement the individual rights under section 23-47-02;
- 22 2. Address the individual's right to opt-out of participating in the health information
23 organization under section 23-47-03;
- 24 3. Address the content and distribution of the notice of health information practices under
25 section 23-47-04;
- 26 4. Implement the limitations on disclosure of individually identifiable health information
27 under section 23-47-05;
- 28 5. Address security safeguards to protect individually identifiable health information, as
29 required by the security rule;

1 6. Appoint and designate the responsibilities of people that are responsible for
2 maintaining privacy and security procedures for the health information organization;
3 and

4 7. Require training of each member of the workforce of the health information
5 organization about the health information organization's policies, including the need to
6 maintain the privacy and security of individually identifiable health information and the
7 penalties provided for the unauthorized access, use, or disclosure of individually
8 identifiable health information. The health information organization shall provide this
9 training before a member of the workforce may have access to individually identifiable
10 health information available to the health information organization and twice a year for
11 all members of the workforce.

12 8. Provide an individual notice under title 45, Code of Federal Regulations, part 164,
13 subpart D, of a breach at the health information organization which affects the
14 individual's individually identifiable health information.

15 **23-47-07. Implementing individual preference for using and disclosing individually**
16 **identifiable health information.**

17 Before August 1, 2016, a health information organization must have technological capability
18 to implement individual preferences for using and disclosing individually identifiable health
19 information or for segregating individually identifiable health information. After the health
20 information organization implements the functionality to permit individual preferences for using
21 and disclosing or for segregating individually identifiable health information, the health care
22 provider shall provide notice to the individual of the change under section 23-47-04.

23 **23-47-08. Penalty.**

24 A person that knowingly uses a unique health identifier, or causes one to be used;
25 knowingly obtains individually identifiable health information relating to an individual; or
26 knowingly discloses individually identifiable health information to another person in violation of
27 this chapter is guilty of:

28 1. A class C felony if the offense is committed with intent to sell, transfer, or use
29 individually identifiable health information for commercial advantage, personal gain, or
30 malicious harm;

31 2. A class A misdemeanor if the offense is committed under false pretenses; and

- 1 3. A class B misdemeanor in any other case.