

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2037  
(Legislative Management)  
(Information Technology Committee)

AN ACT to create and enact four new sections to chapter 54-59 of the North Dakota Century Code, relating to the confidentiality of health information under the health information exchange and participation in the health information exchange; to amend and reenact sections 23-06.5-19, 54-59-25, and 54-59-26 of the North Dakota Century Code, relating to health information technology; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 23-06.5-19 of the North Dakota Century Code is amended and reenacted as follows:

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

1. As used in this section:
  - a. "Health care record" means a health care directive or a revocation of a health care directive executed in accordance with this chapter.
  - b. "Registration form" means a form prescribed by the ~~secretary of state~~information technology department to facilitate the filing of a health care record.
2.
  - a. The ~~secretary of state~~information technology department may establish and maintain a health care record registry, through which a health care record may be filed. The registry must be accessible through a website maintained by the ~~secretary of state~~information technology department.
  - b. An individual who is the subject of a health care record, or that individual's agent, may submit to the ~~secretary of state~~information technology department for registration, using a registration form, a health care record executed in accordance with this chapter.
3. Failure to register a health care record with the ~~secretary of state~~information technology department under this section does not affect the validity of the health care record. Failure to notify the ~~secretary of state~~information technology department of the revocation of a health care record filed under this section does not affect the validity of a revocation that otherwise meets the statutory requirements for revocation.
4.
  - a. Upon receipt of a health care record and completed registration form, the ~~secretary of state~~information technology department shall create a digital reproduction of the health care record, enter the reproduced health care record into the health care record registry database, and assign each registration a unique file number. The ~~secretary of state~~information technology department is not required to review a health care record to ensure the health care record complies with any particular statutory requirements that may apply to the health care record.
  - b. The ~~secretary of state~~information technology department shall delete a health care record filed with the registry under this section upon receipt of a revocation of the health care record along with that document's file number.

- c. The entry of a health care record under this section does not affect or otherwise create a presumption regarding the validity of the health care record or the accuracy of the information contained in the health care record.
5.
  - a. The registry must be accessible by entering the file number and password on the internet website. Registration forms, file numbers, and other information maintained by the ~~secretary of state~~information technology department under this section are confidential and the state may not disclose this information to any 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, the chairman of the house human services committee and the chairman of the senate human services committee or if either or both of them are unwilling or unable to serve then the chairman of the legislative management shall appoint a replacement who is a member of the same legislative chamber as the individual being replaced, 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.
  - c. Adopt rules under chapter 28-32 for the use of health information, use of the health information exchange, and participation in the health information exchange.
  - d. Adopt rules under chapter 28-32 for accessing the health information exchange to ensure appropriate and required privacy and security protections and relating to the authority of the director to suspend, eliminate, or terminate the right to participate in the health information exchange.
  - e. Establish a health information technology loan program to provide loans to health care providers for the purpose of purchasing and upgrading certified electronic health record technology, training personnel in the use of such technology, and improving the secure electronic exchange of health information, and for any other purpose under section 6-09-42.
  - e.f. Establish a health information technology planning loan program to provide low-interest loans to health care entities to assist those entities in improving their health information technology infrastructure under section 6-09-43.
  - d.g. Facilitate and expand electronic health information exchange in the state, directly or by awarding grants.
  - e.h. Establish an application process and eligibility criteria for and accept and process applications for loans and grants under subdivisions ~~b~~e, ~~e~~f, and ~~d~~g. The eligibility criteria must be consistent with federal requirements associated with federal funds received under subdivision a. The eligibility criteria for loans under subdivision ~~e~~f must include a requirement that the recipient's approved health information technology be strategically

aligned with the state's health information technology plan and the associated federal standards and that the recipient has passed an onsite electronic medical record readiness assessment conducted by an assessment team determined by the health information technology advisory committee and the health information technology office director.

- i. Determine fees and charges for access and participation in the health information exchange. Any moneys collected under this subdivision must be deposited in the 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 and state agencies 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.
3. If the health information technology advisory committee determines that establishing a health information exchange with another state or states will assist in providing health information exchange services in a cost-effective manner, the health information technology office director, in collaboration with the health information technology advisory committee, may join with another state or states to establish, implement, and administer a health information exchange consistent with other provisions of this chapter.

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

**SECTION 6.** 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 section does not apply to acts or omissions constituting gross negligence or reckless, wanton, or intentional misconduct.

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

**Certified electronic health records systems.**

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

**SECTION 8. EFFECTIVE DATE.** Section 7 of this Act becomes effective on January 1, 2015.

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President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2037.

Senate Vote:    Yeas 47            Nays 0            Absent 0

House Vote:    Yeas 86            Nays 2            Absent 6

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State