

Introduced by

Senators Sitte, Schaible, Wardner

Representatives Becker, Rohr, Streyle

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.

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]. The
15 term does not include:
 - 16 a. A health care provider who is an individual;
 - 17 b. An entity that is subject to title 26.1 or which is a health plan as defined in the
18 privacy rule; and
 - 19 c. Health care providers when exchanging individually identifiable health information
20 directly between the health care provider, without a separate organization
21 governing the exchange.
- 22 4. "Individual" means the individual who is the subject of the individually identifiable
23 health information and has the same meaning as provided in the privacy rule.

- 1 5. "Individually identifiable health information" has the same meaning as provided in the
2 privacy rule.
- 3 6. "Opt-out" means an individual's written decision that the individual's individually
4 identifiable health information may not be shared through a health information
5 organization, except as otherwise required by law.
- 6 7. "Privacy rule" means the Health Insurance Portability and Accountability Act of 1996
7 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] privacy rule under title 45,
8 Code of Federal Regulations, part 160 and part 164, subpart E.
- 9 8. "Security rule" means the Health Insurance Portability and Accountability Act of 1996
10 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] security rule under title 45,
11 Code of Federal Regulations, part 160 and part 164, subparts A and C.
- 12 9. "Treatment" has the same meaning as provided in the privacy rule.
- 13 10. "Workforce" has the same meaning as provided in the privacy rule.
- 14 11. "Written" means a record that is inscribed on a tangible medium or which is stored in
15 an electronic or other medium and is retrievable in perceivable form as the term
16 "record" is defined in section 9-16-01.

17 **23-47-02. Individual rights.**

18 In dealing with a health information organization, an individual may:

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

1 4. Request an accounting of disclosures of the individual's individually identifiable health
2 information through the health information organization during the three-year period
3 before the individual's request. The health information organization shall provide the
4 list to the individual within five days of the individual's request.

5 **23-47-03. Voluntary participation in health information organizations - Prohibition on**
6 **withholding care or benefits.**

7 1. An individual may opt-out of participating in a health information organization by
8 providing notice to the organization. If an individual chooses to opt-out, the individual
9 must have the option of:

10 a. Completely opting out of participating in the health information organization; or
11 b. Conditionally opting out, in which case the accessibility of the individual's
12 individually identifiable health information is limited to access a health care
13 provider determines is required by a medical emergency.

14 2. An individual's decision to opt-out of participating in a health care information
15 organization may be changed at any time by the individual by providing written notice
16 to the health information organization.

17 3. A health care provider, health insurer, or government health plan may not withhold
18 coverage or care from an individual nor may a health insurer deny an individual a
19 health insurance benefit plan based solely on that individual's choice to participate or
20 to opt-out of a health information organization.

21 **23-47-04. Notice of health information practices.**

22 1. A health information organization shall maintain a written notice, in at least
23 twelve-point type, of health information practices which describes the following:

24 a. Individually identifiable health information the health information organization
25 collects about individuals;

26 b. The categories of persons that have access to information, including individually
27 identifiable health information, through the health information organization;

28 c. The purposes for which access to the information, including individually
29 identifiable health information, is provided through the health information
30 organization;

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

1 manner and within the same time period as is required under title 45, Code of Federal
2 Regulations, section 164.528, in relation to the health care provider's notice of privacy
3 practices, whichever comes first.

4 **23-47-05. Disclosure of individually identifiable health information.**

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

20 **23-47-06. Required policies.**

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

- 24 1. Implement the individual rights under section 23-47-02.
- 25 2. Address the individual's right to opt-out of participating in the health information
26 organization under section 23-47-03.
- 27 3. Address the content and distribution of the notice of health information practices under
28 section 23-47-04.
- 29 4. Implement the limitations on disclosure of individually identifiable health information
30 under section 23-47-05.

- 1 5. Address security safeguards to protect individually identifiable health information, as
2 required by the security rule.
- 3 6. Appoint and designate the responsibilities of people that are responsible for
4 maintaining privacy and security procedures for the health information organization.
- 5 7. Require training of each member of the workforce of the health information
6 organization about the health information organization's policies, including the need to
7 maintain the privacy and security of individually identifiable health information and the
8 penalties provided for the unauthorized access, use, or disclosure of individually
9 identifiable health information. The health information organization shall provide this
10 training before a member of the workforce may have access to individually identifiable
11 health information available to the health information organization and annually for all
12 members of the workforce.
- 13 8. Provide an individual notice under title 45, Code of Federal Regulations, part 164,
14 subpart D, of a breach at the health information organization which affects the
15 individual's individually identifiable health information.

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

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