

SENATE BILL NO. 2250

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.~~ for an Act to create and enact a new section to chapter 23-12 of
3 the North Dakota Century Code, relating to participation in the health information organization.

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

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

7 ~~23-47-01. Definitions.~~

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

9 ~~1. "Breach" has the same meaning as provided under title 45, Code of Federal~~
10 ~~Regulations, part 164, subpart D.~~

11 ~~2. "Health care provider" has the same meaning as provided in the privacy rule.~~

12 ~~3. "Health information organization" means the health information exchange created~~
13 ~~under chapter 54-59 and any other entity that provides data transmission of protected~~
14 ~~individually identifiable health information which is treated as a business associate~~
15 ~~under title 42, United States Code, section 17938 [Pub. L. 111-5; 123 Stat. 271]. The~~
16 ~~term does not include:~~

17 ~~a. A health care provider who is an individual;~~

18 ~~b. An entity that is subject to title 26.1 or which is a health plan as defined in the~~
19 ~~privacy rule; and~~

20 ~~c. Health care providers when exchanging individually identifiable health information~~
21 ~~directly between the health care provider, without a separate organization~~
22 ~~governing the exchange.~~

23 ~~4. "Individual" means the individual who is the subject of the individually identifiable~~
24 ~~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.~~

24 **SECTION 1.** A new section to chapter 23-12 of the North Dakota Century Code is created
25 and enacted as follows:

26 **Voluntary participation in the health information organization - Prohibition on**
27 **withholding care or benefits.**

28 1. As used in this section:

29 a. "Health information organization" means the health information exchange created
30 under chapter 54-59.

- 1 b. "Individually identifiable health information" has the meaning set forth in title 45,
2 Code of Federal Regulations, section 160.103.
- 3 2. An individual may opt-out of participating in the health information organization by
4 providing notice to the organization. If an individual chooses to opt-out of participating
5 in the health information organization, the individual's individually identifiable health
6 information may not be accessed by search by a health insurer, government health
7 plan, or health care provider other than the provider who originally created or ordered
8 the creation of the individually identifiable health information.
- 9 3. In opting out of participating in the health information organization under this section,
10 the individual must have the option of:
- 11 a. Opting out of participating; or
- 12 b. Conditionally opting out, in which case the accessibility of the individual's
13 individually identifiable health information is limited to access by a health care
14 provider who determines access is required by a medical emergency.
- 15 4. An individual's decision to opt-out of participating in the health information
16 organization:
- 17 a. May be changed at any time by the individual by providing written notice to the
18 health information organization.
- 19 b. Does not prohibit use or disclosure of individually identifiable health information
20 which is required by law.
- 21 5. A health care provider, health insurer, or government health plan may not withhold
22 coverage or care from an individual nor may a health insurer deny an individual a
23 health insurance benefit plan based solely on that individual's choice to participate or
24 to opt-out of the health information organization.