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HOUSE BILL 5

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2008**

INTRODUCED BY

Peter Wirth

AN ACT

CREATING THE ELECTRONIC MEDICAL RECORDS ACT; AUTHORIZING THE  
CREATION, MAINTENANCE AND USE OF ELECTRONIC MEDICAL RECORDS;  
CLARIFYING INDIVIDUAL RIGHTS WITH RESPECT TO THE DISCLOSURE OF  
INFORMATION CONTAINED IN ELECTRONIC MEDICAL RECORDS; CLARIFYING  
THE PROTECTION OF PRIVACY OF ELECTRONIC MEDICAL RECORDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Electronic Medical Records Act".

Section 2. PURPOSE.--The purpose of the Electronic  
Medical Records Act is to provide for the use, disclosure and  
protection of electronic medical records.

Section 3. DEFINITIONS.--As used in the Electronic  
Medical Records Act:

A. "demographic information" means information in

1 an electronic medical record that identifies the individual who  
2 is the subject of the medical record, including the  
3 individual's name, date of birth and address and other  
4 information that identifies the individual, that may be used to  
5 identify the individual or that associates the individual with  
6 the individual's electronic medical record;

7 B. "disclosure" means the release, transfer,  
8 provision or otherwise divulging of an individual's electronic  
9 medical records to a person other than the holder of the  
10 records and includes having access to those records;

11 C. "electronic" means relating to technology having  
12 electrical, digital, magnetic, wireless, optical,  
13 electromagnetic or similar capabilities;

14 D. "electronic medical record" means an electronic  
15 record of an individual patient's health information that  
16 contains demographic or health care information;

17 E. "electronic signature" means an electronic  
18 sound, symbol or process attached to or logically associated  
19 with a record and executed or adopted by an individual with the  
20 intent to sign the record;

21 F. "health care" means care, services or supplies  
22 related to the health of an individual and includes:

23 (1) preventive, diagnostic, therapeutic,  
24 rehabilitative, maintenance or palliative care and counseling;

25 (2) services, assessments or procedures that

1 are concerned with the physical or mental condition or  
2 functional status of an individual or that affect the structure  
3 or function of the body of an individual; and

4 (3) the sale or dispensing of a drug, a  
5 device, a piece of equipment or other item in accordance with a  
6 prescription;

7 G. "health care group purchaser" means a person,  
8 other than a person licensed as a property and casualty or  
9 workers' compensation insurer, who is licensed, certified or  
10 otherwise authorized or permitted by the New Mexico Insurance  
11 Code to pay for or purchase health care on behalf of an  
12 identified individual or group of individuals, except for life  
13 insurers and disability income insurers, regardless of whether  
14 the cost of coverage or services is paid for by the purchaser  
15 or the persons receiving coverage or services;

16 H. "health care information" means any information,  
17 whether oral or recorded in any form or medium, related to the  
18 past, present or future physical or mental health or condition  
19 of an individual; the provision of health care to an  
20 individual; or the past, present or future payment for the  
21 provision of health care to an individual;

22 I. "health care institution" means an institution,  
23 facility or agency licensed, certified or otherwise authorized  
24 or permitted by law to provide health care in the ordinary  
25 course of business;

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1           J. "health information exchange" means an  
2 electronic system that searches, identifies or locates an  
3 individual patient's health information from one or more  
4 sources for disclosure in accordance with state and federal  
5 law;

6           K. "information" means data, including text,  
7 images, sounds and codes and computer programs, software and  
8 databases;

9           L. "medical record" means a record of health care  
10 information;

11           M. "provider" means an individual who is licensed,  
12 certified or otherwise authorized or permitted by law to  
13 provide health care in the ordinary course of business or  
14 practice of a profession;

15           N. "record" means information that is inscribed on  
16 a tangible medium or that is stored in an electronic or other  
17 medium and is retrievable in perceivable form;

18           O. "record locator service" means a system that  
19 provides a means of identification of the existence and  
20 location of the electronic medical records of a specified  
21 individual; and

22           P. "treatment" means the provision, coordination or  
23 management of health care and related services by one or more  
24 providers, including the coordination or management of health  
25 care by a provider with a third party; consultation between

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1 providers relating to an individual; or the referral of an  
2 individual for health care from one provider to another.

3 Section 4. ELECTRONIC MEDICAL RECORDS--ELECTRONIC  
4 SIGNATURES--LEGAL RECOGNITION.--If a law or rule requires a  
5 medical record to be in writing, or if a law or rule requires a  
6 signature pertaining to a medical record, an electronic medical  
7 record or an electronic signature satisfies that law or rule.

8 Section 5. RETENTION OF ELECTRONIC MEDICAL RECORDS.--

9 A. If a law or rule requires that a medical record  
10 be retained, the requirement is satisfied by retaining an  
11 electronic record that:

12 (1) accurately reflects the medical record  
13 after it was first generated and in its final form as an  
14 electronic medical record or otherwise; and

15 (2) remains accessible and is capable of being  
16 accurately reproduced for later reference.

17 B. A requirement to retain a medical record in  
18 accordance with Subsection A of this section does not apply to  
19 any information the sole purpose of which is to enable the  
20 medical record to be sent, communicated or received.

21 C. If a law or rule requires a medical record to be  
22 presented or retained in its original form or provides  
23 consequences if the medical record is not presented or retained  
24 in its original form, that law or rule is satisfied by an  
25 electronic medical record retained in accordance with

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1 Subsection A of this section.

2 D. A medical record retained as an electronic  
3 medical record in accordance with Subsection A of this section  
4 satisfies a law or rule requiring a person to retain a medical  
5 record for evidentiary, audit or other purposes.

6 Section 6. USE AND DISCLOSURE OF ELECTRONIC HEALTH CARE  
7 INFORMATION.--

8 A. A provider, health care institution, health  
9 information exchange or health care group purchaser shall not  
10 use or disclose health care information in an individual's  
11 electronic medical record to another person in violation of  
12 state or federal law.

13 B. A provider, health care institution or health  
14 care group purchaser may disclose demographic information and  
15 information about the location of an individual's electronic  
16 medical records to a record locator service in accordance with  
17 state or federal law. A provider or health care institution  
18 participating in a health information exchange using a record  
19 locator service shall not have access to demographic  
20 information, information about the location of the individual's  
21 electronic medical records or information in an individual's  
22 electronic medical record except in connection with the  
23 treatment of the individual or as permitted by the individual's  
24 written authorization or as otherwise permitted by state or  
25 federal law.

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1 C. A health information exchange maintaining a  
2 record locator service shall maintain an audit log of persons  
3 obtaining access to information in the record locator service,  
4 which audit log shall contain, at a minimum, information on:

5 (1) the identity of the person obtaining  
6 access to the information;

7 (2) the identity of the individual whose  
8 information was obtained;

9 (3) the location from which the information  
10 was obtained;

11 (4) the specific information obtained; and

12 (5) the date that the information was  
13 obtained.

14 D. A person operating a record locator service or a  
15 health information exchange shall provide a mechanism under  
16 which individuals may exclude their demographic information and  
17 information about the location of their electronic medical  
18 records from the record locator service. A person operating a  
19 record locator service or a health information exchange that  
20 receives an individual's request to exclude all of the  
21 individual's information from the record locator service is  
22 responsible for removing that information from the record  
23 locator service within thirty days; provided, however, that the  
24 request to exclude information shall not apply to a provider  
25 that has provided a service to the patient and retains

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1 information about that service.

2 E. When demographic information or information in  
3 an individual's electronic medical record is requested using a  
4 record locator service or a health information exchange:

5 (1) the requesting provider or health care  
6 institution shall warrant that the request is for the treatment  
7 of the individual; and

8 (2) the person releasing the information may  
9 rely upon the warranty of the person making the request that  
10 the request is for the treatment of the individual, is  
11 permitted by the individual's written authorization or is  
12 otherwise permitted by state or federal law.

13 F. Notwithstanding any other provision of law,  
14 information in an individual's electronic medical record may be  
15 disclosed to a provider that has a need for information about  
16 the individual to treat a condition that poses an immediate  
17 threat to the life of any individual and that requires  
18 immediate medical attention.

19 G. Notwithstanding any other provision of law,  
20 information in an individual's electronic medical record may be  
21 disclosed to a person that uses non-patient-specific  
22 information to maintain or improve the health of the general  
23 public or to conduct research that has been sanctioned by a  
24 legally authorized medical review board; provided, however,  
25 that the information disclosed does not include any data that

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1 could serve to identify specifically an individual patient and  
2 provided further that any individual whose data is disclosed  
3 for these purposes has provided written authorization for its  
4 use or is otherwise permitted by state or federal law.

5 Section 7. OUT-OF-STATE DISCLOSURES.--A disclosure  
6 otherwise permissible under the Electronic Medical Records Act  
7 may be made to providers, health care group purchasers, health  
8 care institutions, health information exchanges or record  
9 locator services located or operating outside of the state.

10 Section 8. HEALTH CARE REPRESENTATIVES.--A provider,  
11 health care institution, health information exchange or health  
12 care group purchaser is not subject to regulatory or  
13 disciplinary actions or civil liability for:

14 A. complying with a request or authorization made  
15 by a person having apparent authority to exercise the rights  
16 and powers of an individual pursuant to the Electronic Medical  
17 Records Act; or

18 B. declining to comply with a request or  
19 authorization made by a person based on a reasonable belief  
20 that the person lacked authority to exercise the rights and  
21 powers of an individual pursuant to the Electronic Medical  
22 Records Act.