

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 5

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

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

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underscored material = new  
[bracketed material] = delete

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 who  
8 is licensed, certified or otherwise authorized or permitted by  
9 the New Mexico Insurance Code to pay for or purchase health  
10 care on behalf of an identified individual or group of  
11 individuals, regardless of whether the cost of coverage or  
12 services is paid for by the purchaser or the persons receiving  
13 coverage or services;

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

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

24 J. "health information exchange" means an  
25 electronic system that searches, identifies or locates an

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1 individual patient's health information from one or more  
2 sources for disclosure in accordance with state and federal  
3 law;

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

7 L. "medical record" means a record of health care  
8 information;

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

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

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

20 P. "treatment" means the provision, coordination or  
21 management of health care and related services by one or more  
22 providers, including the coordination or management of health  
23 care by a provider with a third party; consultation between  
24 providers relating to an individual; or the referral of an  
25 individual for health care from one provider to another.

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

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

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

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

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

15           B.   If a law or rule requires a medical record to be  
16 presented or retained in its original form or provides  
17 consequences if the medical record is not presented or retained  
18 in its original form, that law or rule is satisfied by an  
19 electronic medical record retained in accordance with  
20 Subsection A of this section.

21           C.   A medical record retained as an electronic  
22 medical record in accordance with Subsection A of this section  
23 satisfies a law or rule requiring a person to retain a medical  
24 record for evidentiary, audit or other purposes.

25           Section 6.   USE AND DISCLOSURE OF ELECTRONIC HEALTH CARE

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1 INFORMATION.--

2 A. A provider, health care institution, health  
3 information exchange or health care group purchaser shall not  
4 use or disclose health care information in an individual's  
5 electronic medical record to another person in violation of  
6 state or federal law.

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

20 C. A health information exchange maintaining a  
21 record locator service shall maintain an audit log of persons  
22 obtaining access to information in the record locator service,  
23 which audit log shall contain, at a minimum, information on:

24 (1) the identity of the person obtaining  
25 access to the information;

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

3                   (3) the location from which the information  
4 was obtained;

5                   (4) the specific information obtained; and

6                   (5) the date that the information was  
7 obtained.

8                   D. The audit log shall be made available by a  
9 health information exchange on the request of the individual  
10 whose medical information is the subject of the audit log. The  
11 audit log shall be made available to the requesting individual  
12 annually for a reasonable fee as established by regulation of  
13 the department of health for access to medical records for  
14 disability benefits.

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

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1 that has provided a service to the patient and retains  
2 information about that service.

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

6 (1) the requesting provider or health care  
7 institution shall warrant that the request is for the treatment  
8 of the individual, is permitted by the individual's written  
9 authorization or is otherwise permitted by state or federal  
10 law; and

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

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

22 H. Notwithstanding any other provision of law,  
23 information in an individual's electronic medical record may be  
24 disclosed to a person that uses non-patient-specific  
25 information to maintain or improve the health of the general

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1 public or to conduct research that has been sanctioned by a  
2 legally authorized medical review board; provided, however,  
3 that the information disclosed does not include any data that  
4 could serve to identify specifically an individual patient and  
5 provided further that any individual whose data is disclosed  
6 for these purposes has provided written authorization for its  
7 use or is otherwise permitted by state or federal law.

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

13 Section 8. EXCLUSION OF CERTAIN INSURERS.--Nothing in the  
14 Electronic Medical Records Act shall be construed to apply to a  
15 person operating as a property and casualty insurer, workers'  
16 compensation insurer, life insurer, long-term care insurer or  
17 disability income insurer.

18 Section 9. PROHIBITION OF PROMULGATION OF RULES.--Except  
19 as provided in Subsection D of Section 6 of the Electronic  
20 Medical Records Act, nothing in that act shall be construed to  
21 allow an agency or political subdivision to promulgate rules  
22 pursuant to that act.