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## FISCAL IMPACT REPORT

5/sHJC/aHFL#1/aHFL  
#2/aSFL#1/aSFL#2/aS  
FL#3/aSFL#4/aSFL#5/  
aSFL#6/aCC

**SPONSOR** HJC **ORIGINAL DATE** 8/17/08 **LAST UPDATED** 8/19/08 **HB**

**SHORT TITLE** Electronic Medical Records Act **SB**

**ANALYST** Francis/Earnest

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
Human Services Department (HSD)  
Department of Health (DOH)  
Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Conference Committee Substitute

The Conference Committee version:

1. removes the immunity amended back by Senate Floor amendment #1
2. strikes senate floor amendment #3 but replaces it with a modified version of the house floor amendment. The section pertaining to rule promulgation now reads: "The agency or political subdivision may only promulgate rules for the disclosure and protection of electronic medical records."
3. Strikes the house floor amendment 2 and adds similar language prohibiting disclosure in violation of state or federal law and without consent of the individual.
4. Adds language to require a written waiver of liability if the exclusion of information requested by an individual leads to harm.
5. Adds a new section that releases a health care provider, record locator service, health care institution or health information exchange from liability for any harm by the exclusion of individual information if exclusion was requested by the individual.

6. Changes Senate floor amendment #4 to remove the words “third party,” changes “record locator service” in the definition of health information exchange to “health information exchange,” and adds “contains demographic information and location of” in lieu of “locates health care” to the second definition.
7. strikes senate floor amendment #5 that added an effective date.
8. strikes the credit for electronic record equipment.

Synopsis of SFL Amendments #1, #2, #3, #4, #5 and #6

The House Judiciary Committee substitute for House Bill 5 as amended was amended five times on the Senate Floor.

- The first amendment restores the immunity to health care representatives for complying with an information request from an apparent authority or denying a request based on a belief the requestor lacked authority.
- The second amendment includes provider groups, health care institutions or provider organizations in the exception to a record locator service exclusion of information if the entity provided a service to a patient requesting the exclusion.
- The third amendment strikes house floor amendment one which expanded the scope of rules promulgation to rules pertaining to the use, disclosure and protection of electronic records.
- The fourth amendment redefines health information exchange and record locator service to be more precise than the definition of the federal Health Insurance Portability and Accountability Act of 1996.
- The fifth amendment delays the start date to July 1, 2009.
- The six amendment adds a tax credit to offset the costs of purchasing equipment to be used for electronic record keeping. Senate Bill 13 creates a credit against personal income tax liability for the purchase of equipment necessary for the processing, storage and transmittal of patient medical records in electronic format in an amount equal to the cost of that equipment. The credit may be deducted from the taxpayer’s income tax liability for the taxable year in which the equipment was purchased and the four succeeding taxable years. The credit for a single taxable year shall not exceed twenty percent of the total cost of the equipment. Any individual who claims this credit for equipment owned by a business association can only claim a credit in proportion to the individual’s interest in the business association.

Synopsis of HFL Amendments #1 and #2

The House Judiciary Committee substitute for House Bill 5 was amended twice on the House Floor. Amendment number one changes the prohibition on the promulgation of rules to allow the Human Services Department to promulgate rules for the use, disclosure and protection of electronic medical records as long as there are no rules that require the use of electronic records other than to satisfy federal requirements.

The second amendment adds an additional requirement on the disclosure of information for written consent of the individual.

### Synopsis of HJC Substitute

The House Judiciary Committee substitute for House Bill 5, the Electronic Medical Records Act, will codify electronic records and establish parameters around the proper use and dissemination of those records.

- Electronic records and electronic signatures will satisfy any law requiring a written medical record or signature.
- Prohibits the use or disclosure of electronic medical records unless it is in connection with treatment (which must be warranted by the requestor), authorized by patient or in accordance with state or federal law.
- Requires record locator services to properly document access to records and allow access to audit log to the individual.
- Allows patients to exclude information from their medical record that is stored with a record locator service.
- Allows for access to electronic records in emergencies that pose immediate threat to the life of an individual.
- Prohibits promulgation of rules.

### **Changes from Original bill:**

The HJC substitute

- Removes a paragraph that refers to the retention of documents relating to the electronic delivery of documents, such as a fax cover page. (section 4)
- Modifies the definition of “health care group purchaser” which explicitly excluded persons licensed as a property and casualty or worker’s compensation insurer in the original and excludes these insurers explicitly in a new section 8. (section 3)
- Provides a way for a patient to request the audit log that the health information exchange must keep on who accesses records. (Section 6)
- Allows the dissemination of EMR information to be released if permitted by the patient or permitted by state or federal law. (Section 6)
- Eliminates the immunity health care representatives received under the original bill
- Adds a section to prohibit the promulgation of rules.

### **FISCAL IMPLICATIONS**

The Conference Committee version of HB5/CS/a does not have a fiscal impact.

### **SIGNIFICANT ISSUES**

The bill is similar to House Bill 37 of the 2008 regular session, with the exclusion of provisions requiring the New Mexico Health Information Technology Commission (HITC) to plan for the expansion of electronic medical records. HB 37 passed the House but failed in the Senate during the 2008 session. The HITC is working to develop a plan to increase the use of EMRs.

The Department of Health has implemented electronic medical records in all of its 49 public health offices that provide clinical services across the state.

According to the Department of Health:

A news report from *Government Technology* indicated a majority of people surveyed agreed that Electronic Medical Records (EMRs) hold out the promise of: 1) significantly decreasing medical errors, 2) significantly decreasing healthcare costs, and 3) improving the quality of care by reducing unnecessary test and procedures. However, the majority of them surveyed also were concerned that the adoption of EMRs will make it "more difficult to ensure patients' privacy".

House Bill 5 would help alleviate these concerns by establishing the legal recognition of electronic medical records and electronic signatures. It would also apply existing privacy and retention requirements of paper medical records to electronic records. The Electronic Medical Records Act would also specifically allow the use of aggregate data for surveillance and monitoring activities.

HSD has indicated that this bill updates New Mexico's laws to match the protection provided by the federal Health Insurance Portability and Accountability Act (HIPAA) for electronic records.

A little less than 25% of office-based physicians nationwide have gone digital, and only 10% write their prescriptions electronically according to data from the Centers for Disease Control and Prevention. Health care providers have reported that the primary barriers to health information technology adoption are high initial acquisition and implementation costs and the disruptive effects on their practices during implementation.

The maintenance of proper medical records is an important part of providing proper medical care. A recent report by the New Mexico Health Policy Commission (HPC) noted that one of the major barriers to the implantation of proper medical record technology systems by physicians is the significant capital costs associated with them. This bill would lessen those costs by providing a tax credit equal to the cost of implementation, processing, storage, and physical equipment associated with these systems.

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