

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

CREATING THE ELECTRONIC MEDICAL RECORDS ACT; ALLOWING 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
that identifies the individual who is the subject of the
health care information, including the individual's name,
date of birth and address and other information necessary to
identify the individual, that may be used to identify the
individual or that associates the individual with the
individual's electronic medical record;

B. "disclose" means to release, transfer, provide,
give access to or otherwise divulge in any other manner

1 information outside the entity holding the information;

2 C. "electronic" means relating to technology
3 having electrical, digital, magnetic, wireless, optical,
4 electromagnetic or similar capabilities;

5 D. "electronic medical record" means an electronic
6 record of an individual patient's health care information
7 that may contain demographic information;

8 E. "electronic signature" means an electronic
9 sound, symbol or process attached to or logically associated
10 with a record and executed or adopted by an individual with
11 the intent to sign the record;

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

14 (1) preventive, diagnostic, therapeutic,
15 rehabilitative, maintenance or palliative care and
16 counseling;

17 (2) services, assessments or procedures that
18 are concerned with the physical or mental condition or
19 functional status of an individual or that affect the
20 structure or function of the body of an individual; and

21 (3) the sale or dispensing of a drug, a
22 device, a piece of equipment or other item in accordance with
23 a prescription;

24 G. "health care group purchaser" means a person
25 who is licensed, certified or otherwise authorized or

1 permitted by the New Mexico Insurance Code to pay for or
2 purchase health care on behalf of an identified individual or
3 group of individuals, regardless of whether the cost of
4 coverage or services is paid for by the purchaser or the
5 persons receiving coverage or services;

6 H. "health care information" means any
7 information, whether oral or recorded in any form or medium,
8 related to the past, present or future physical or mental
9 health or condition of an individual; the provision of health
10 care to an individual; or the past, present or future payment
11 for the provision of health care to an individual;

12 I. "health care institution" means an institution,
13 facility or agency licensed, certified or otherwise
14 authorized or permitted by law to provide health care in the
15 ordinary course of business;

16 J. "health information exchange" means an
17 arrangement among persons participating in a defined secure
18 electronic network service, such as a regional health
19 information organization, that allows the sharing of health
20 care information about individual patients among different
21 health care institutions or unaffiliated providers. The use
22 of an electronic medical record system by a health care
23 provider, by or within a health care institution or by an
24 organized health care arrangement as defined by the federal
25 Health Insurance Portability and Accountability Act of 1996

1 does not constitute a health information exchange;

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

5 L. "provider" means an individual who is licensed,
6 certified or otherwise authorized or permitted by law to
7 provide health care in the ordinary course of business or
8 practice of a profession;

9 M. "record" means information that is inscribed on
10 a tangible medium or that is stored in an electronic or other
11 medium and is retrievable in perceivable form;

12 N. "record locator service" means an information
13 service that contains demographic information and the
14 location of health care information of a specified individual
15 across different health care institutions or unaffiliated
16 providers that participate in the service. The use of an
17 electronic medical record system by a health care provider or
18 by an organized health care arrangement as defined by the
19 federal Health Insurance Portability and Accountability Act
20 of 1996 does not constitute a record locator service; and

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

1 of an individual for health care from one provider to
2 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
6 a signature pertaining to a medical record, an electronic
7 medical record or an electronic signature satisfies that law
8 or rule, except for a court rule.

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

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

13 (1) accurately reflects the medical record;
14 and

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

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

23 C. A medical record retained as an electronic
24 medical record in accordance with Subsection A of this
25 section satisfies a law or rule requiring a person to retain

1 a medical record for evidentiary, audit or other purposes.

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

4 A. A provider, health care institution, health
5 information exchange or health care group purchaser shall not
6 use or disclose health care information in an individual's
7 electronic medical record to another person without the
8 consent of the individual except as allowed by state or
9 federal law.

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

23 C. A record locator service shall maintain an
24 audit log of persons obtaining access to information in the
25 record locator service, which audit log shall contain, at a

1 minimum, information on:

2 (1) the identity of the person obtaining
3 access to the information;

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

6 (3) the location from which the information
7 was obtained;

8 (4) the specific information obtained; and

9 (5) the date that the information was
10 obtained.

11 D. The audit log shall be made available by a
12 health information exchange on the request of an individual
13 whose health care information is the subject of the audit
14 log; provided, however, that the audit log made available to
15 the individual shall include only information related to that
16 individual. The audit log shall be made available to the
17 requesting individual annually for a fee not to exceed
18 twenty-five cents (\$.25) per page as established by the
19 department of health.

20 E. A record locator service shall provide a
21 mechanism under which individuals may exclude their
22 demographic information and information about the location of
23 their electronic medical records from the record locator
24 service. A person operating a record locator service or a
25 health information exchange that receives an individual's

1 request to exclude all of the individual's information from
2 the record locator service is responsible for removing that
3 information from the record locator service within thirty
4 days. An individual's request for exclusion of information
5 shall be in writing and shall include a waiver of liability
6 for any harm caused by the exclusion of the individual's
7 information.

8 F. When information in an individual's electronic
9 medical record is requested using a record locator service or
10 a health information exchange:

11 (1) the requesting provider or health care
12 institution shall warrant that the request is for the
13 treatment of the individual, is permitted by the individual's
14 written authorization or is otherwise permitted by state or
15 federal law; and

16 (2) the person disclosing the information
17 may rely upon the warranty of the person making the request
18 that the request is for the treatment of the individual, is
19 permitted with the consent of the individual or is otherwise
20 permitted by state or federal law.

21 G. Notwithstanding any other provision of law,
22 information in an individual's electronic medical record may
23 be disclosed:

24 (1) to a provider that has a need for
25 information about the individual to treat a condition that

1 poses an immediate threat to the life of any individual and
2 that requires immediate medical attention; and

3 (2) except as provided in the Electronic
4 Medical Records Act, to a record locator service or a health
5 information exchange for the development and operation of the
6 record locator service and the health information exchange.

7 Section 7. LIABILITY.--If an individual requests to
8 exclude all of the individual's information from the record
9 locator service pursuant to Subsection E of Section 6 of the
10 Electronic Medical Records Act, the record locator service,
11 health information exchange, health care institution or
12 provider shall not be liable for any harm to the individual
13 caused by the exclusion of the individual's information.

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

20 Section 9. EXCLUSION OF CERTAIN INSURERS.--Nothing in
21 the Electronic Medical Records Act shall be construed to
22 apply to a person operating as a property and casualty
23 insurer, workers' compensation insurer, life insurer,
24 long-term care insurer or disability income insurer.

25 Section 10. STATE AGENCY--ELECTRONIC MEDICAL RECORDS.--

1 If a state agency requires the use of electronic medical
2 records for any type of health care or health coverage
3 program, the agency shall allow a health care group purchaser,
4 health care institution, health information exchange,
5 provider, record locator service or any other person to use
6 any public, proprietary or open source hardware or software;
7 provided that the hardware or software complies with federal
8 interoperability-certified laws or rules. _____

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25