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FISCAL IMPACT REPORT

SPONSOR Barela ORIGINAL DATE 02/08/09
LAST UPDATED _____ HB 378
SHORT TITLE Patient Information Privacy Act SB _____
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1 unknown			Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 378 enacts the "Patient Information Privacy Act," to prohibit a person from using or disclosing health care information in an individual's electronic medical record.

Specific provisions within the act:

Section 1: the title of the act;

Section 2: definitions including "record locator service," to mean a system that provides a means of identification of the existence and location of the electronic medical records of a specific individual;

Section 3: use and disclosure of health care information to be only upon written consent of the individual, except in the event of an emergency; individuals shall not be required to waive their rights under the act as a condition of eligibility in a health care plan; establishes mechanism for release of health care information from a record locator service;

Section 4: establishes privacy practices for health care providers when using and releasing health care information;

Section 5: out-of-state disclosures;

Section 6: limits civil liability of health care providers and representatives acting in good faith;

Section 7: requires notification of the hacking of a data system after discovery to individuals whose medical records might have been accessed unlawfully;

Section 8: establishes a framework for the type of relief and damages for a violation of the act; contains a two-year statute of limitations; and

Section 9: establishes mechanism for handling requests, denials, and subsequent appeals for an individual desiring to amend an electronic medical record.

The effective date of the act is set for January 1, 2010.

FISCAL IMPLICATIONS

Costs would be directly proportional to which agencies currently operate an electronic health record system for clinical services and any system upgrades that would now be required to meet the provisions within the act.

SIGNIFICANT ISSUES

The bill makes the exchange of electronic health information dependent upon a patient's written consent each time, except for emergencies. DOH reports that this requirement is more stringent than provisions within Federal Health Insurance Portability and Accountability Act (HIPAA) which allow for periodic patient consent (usually annually). HIPAA provides that a covered entity may use or disclose personal health information for treatment, payment or health care operations without an authorization.

The bill would allow the use and disclosure of psychotherapy notes in an emergency. This would be less stringent than HIPAA which specifically requires prior authorization before this may occur.

DOH believes that the creation of new penalties and liabilities may slow down the adoption of electronic medical records in New Mexico.

PERFORMANCE IMPLICATIONS

DOH reports that the predominant argument in favor of the inclusion of privacy provisions is the increased privacy protection afforded. The arguments against their inclusion are 1) HIPAA already provides sufficient privacy protection, 2) provisions contrary and less stringent than HIPAA are preempted by HIPAA, and 3) enacting privacy provisions applicable to electronic medical records will create a variance in privacy protections between paper and electronic records.

State laws that are contrary to HIPAA are preempted unless a specific exception applies. One such exception is if the law relates to the privacy of individually identifiable health information and is more stringent than HIPAA. In a situation where a more stringent provision of state law is contrary to a provision of HIPAA, the HIPAA exception to preemption would apply, and the state law would prevail. DOH has concerns that many of the provisions within the act are contrary to HIPAA. The act also creates a discrepancy in the law by making the requirements for electronic medical record system use and maintenance different than paper health records systems.

ADMINISTRATIVE IMPLICATIONS

DOH notes that the Federal Centers for Medicare and Medicaid Services has set as a goal the shift from paper health records systems to electronic health records systems.

RELATIONSHIP

Related to SB 278; which discusses privacy and disclosure of information in electronic medical records.

TECHNICAL ISSUES

The bill is unclear as to the Secretary of Health's and Department's duties under the act.

The bill does not refer to the purpose of disclosing an individual's electronic medical record (page 4, Section 3, A).

A provider's "notice of privacy practices" is not required to contain a statement as to the right to revoke an authorization. DOH says the notice does not refer to certain exceptions contained in HIPAA that are not applicable to correctional facilities.

DOH notes that once certain information from an entity in New Mexico is transferred to an out-of-state entity, the information will no longer be protected in the same manner as it is in New Mexico.

ALTERNATIVES

DOH could assist with the development of amendments to reconcile the differences between HIPAA and HB 378.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Individual health information will remain protected under HIPAA privacy rules, and applicable state laws if more stringent.

AHO/mt

