F I S C A L I M P A C T R E P O R T

SPONSOR SFl **ORIGINAL DATE** 03/05/09 **LAST UPDATED** 3/15/09 **HB**

SHORT TITLE Electronic Medical Records Act **SB** CS/278/aSFl#1/aHJC

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 could besignificant	$0.1 could be significant		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Health (DOH)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment within the definition of "demographic information", clarifies that such information is "necessary to identify" an individual who is the subject of health care information; and, prohibits the use and disclosure of electronic health care information "without the consent of the individual except as allowed by state or federal law".

Synopsis of SFL #1 Amendment

The Senate Floor Amendment provides that if a state agency requires the use of electronic medical records, it must use software or hardware that complies with federal interoperability laws or rules.

Synopsis of Original Substitute Bill

Senate Bill 278 enacts the Electronic Medical Records Act which authorizes the creation, maintenance and use of electronic medical records; establishes the legal authority of electronic medical records as an equivalent to existing hard copy records; clarifies individual rights with respect to the disclosure of information contained in electronic medical records; and clarifies the protection of privacy of electronic medical records.

Specifically the bill would:

- recognize the legal equivalency of electronic records and signatures;
- provide for the accurate retention and accessibility of electronic medical records;
- limit disclosure of information in an electronic medical record unless the patient consents; it is required for emergency treatment; it is necessary for the operation of the record locator service and the health information exchange; or, otherwise permitted by state or federal law;
- require an audit log of individuals obtaining access to an electronic medical record;
- require an audit log be made available to an individual health care consumer provided that it only include information related to that person;
- permit a fee not to exceed twenty five cents ($.25) per page to a requesting individual;
- provide a mechanism for an individual to exclude demographic information and the location of their electronic medical records from the record locator service;
- require that providers or institutions warrant that a request for an individual's electronic medical record has consent of the individual or is otherwise permitted by state or federal law;
- give providers, health care institutions or health information exchanges exclusion from liability for any harm caused by an individual's exclusion of information;
- provide for both in-state and out-of-state disclosure of information; and
- exclude property and casualty, workers' compensation, life, long-term care and disability income insurers from the provisions in the act.

FISCAL IMPLICATIONS

The activities within this bill have the potential to require a GF appropriation depending upon the extent to which agencies access and implement electronic patient medical records; for start-up costs, maintenance, training and on-going technical support for users statewide. The bill does not include an appropriation to support these efforts.

DOH reports that the use of electronic medical records improves patients' health outcomes and helps control costs by avoiding duplicative procedures.

SIGNIFICANT ISSUES

Currently, when physicians exchange information through traditional means, they are required to exercise due diligence to ensure they are providing information to an authorized requester. SB278 extends this responsibility to physicians using a health information exchange and to a record locator service.

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.

PERFORMANCE IMPLICATIONS

DOH reports that use of electronic medical records and health information exchanges is outstripping the legal framework protecting patients' privacy. SB 278sa would extend privacy and security protections consistent with the federal health Portability and Accountability Act (HIPAA).

ADMINISTRATIVE IMPLICATIONS

DOH currently participates in a record locator service or health information exchange.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB105; appropriating $500 thousand to DOH to implement electronic patient health records in primary care clinics eligible to receive funds under the Rural Primary Health Care Act.

Relates to HB 378: posing stricter requirements on the use and exchange of electronic medical records.

SB 278sa is part of the Governor's legislative health reform agenda which includes insurance reforms, electronic medical records, and public insurance consolidation.

TECHNICAL ISSUES

DOH notes that the proposed elimination of provisions permitting use of health record data for research purposes may create problems for epidemiological and health policy efforts.

DOH also notes that SB 278sa would allow a patient to remove information about the location of his or her medical record from a record locator service. This provision could limit the effectiveness of such a service.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A statewide electronic medical claims submission and electronic medical records implementation plan will not be initiated by way of this bill.

POSSIBLE QUESTIONS

Is it anticipated that there will be emotional costs for older providers who are not comfortable with the information technology age? Could these providers be discouraged from continuing to care for patients and leave or close their practices?

Could the cost to implement a computerized system push fixed costs for small providers beyond current reimbursement rates?

AHO/svb:mt