

1 SENATE BILL 189

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH CARE INFORMATION; LIMITING LIABILITY FOR  
12 PARTICIPATION IN A HEALTH INFORMATION EXCHANGE; REQUIRING THE  
13 DEVELOPMENT OF A PLAN FOR THE INTEROPERABILITY OF ELECTRONIC  
14 HEALTH RECORDS ACROSS HEALTH CARE PROVIDERS STATEWIDE;  
15 REQUIRING PARTICIPATION IN A STATEWIDE INTEROPERABLE INTEGRATED  
16 HEALTH INFORMATION EXCHANGE; PROVIDING FOR CRIMINAL PENALTIES.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 24-14B-1 NMSA 1978 (being Laws 2009,  
20 Chapter 69, Section 1) is amended to read:

21 "24-14B-1. SHORT TITLE.--~~[This act]~~ Chapter 24, Article  
22 14B NMSA 1978 may be cited as the "Electronic ~~[Medical]~~ Health  
23 Records Act"."

24 SECTION 2. Section 24-14B-2 NMSA 1978 (being Laws 2009,  
25 Chapter 69, Section 2) is amended to read:

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1 "24-14B-2. PURPOSE.--The purpose of the Electronic  
2 [~~Medical~~] Health Records Act is to provide for the use,  
3 disclosure and protection of electronic [~~medical~~] health  
4 records."

5 SECTION 3. Section 24-14B-3 NMSA 1978 (being Laws 2009,  
6 Chapter 69, Section 3) is amended to read:

7 "24-14B-3. DEFINITIONS.--As used in the Electronic  
8 [~~Medical~~] Health Records Act:

9 A. "demographic information" means information that  
10 identifies the individual who is the subject of the health care  
11 information, including the individual's name, date of birth and  
12 address and other information necessary to identify the  
13 individual, that may be used to identify the individual or that  
14 associates the individual with the individual's electronic  
15 [~~medical~~] health record;

16 B. "disclose" means to release, transfer, provide,  
17 give access to or otherwise divulge in any other manner  
18 information outside the entity holding the information;

19 C. "electronic" means relating to technology having  
20 electrical, digital, magnetic, wireless, optical,  
21 electromagnetic or similar capabilities;

22 D. "electronic [~~medical~~] health record" means an  
23 electronic record of an individual patient's health care  
24 information [~~that may contain demographic information~~];

25 E. "electronic health record system" means a system

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1 that meets requirements specified in Section 8 of this 2017  
2 act, national requirements for certification pursuant to the  
3 federal Health Information Technology for Economic and Clinical  
4 Health Act, enacted as part of the federal American Recovery  
5 and Reinvestment Act of 2009, and federal regulations adopted  
6 pursuant to the Health Information Technology for Economic and  
7 Clinical Health Act;

8 ~~[E-]~~ F. "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 the  
11 intent to sign the record;

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

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

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

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

23 ~~[G-]~~ H. "health care group purchaser" means a  
24 person who is licensed, certified or otherwise authorized or  
25 permitted by the New Mexico Insurance Code to pay for or

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1 purchase health care on behalf of an identified individual or  
2 group of individuals, regardless of whether the cost of  
3 coverage or services is paid for by the purchaser or the  
4 persons receiving coverage or services;

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

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

15 [J.] K. "health information exchange" means an  
16 arrangement among persons participating in a defined secure  
17 electronic network service [~~such as a regional health~~  
18 ~~information organization~~] that allows the sharing of health  
19 care information [~~about individual patients~~] among different  
20 health care institutions or unaffiliated providers. The use of  
21 an electronic [~~medical~~] health record system by a [~~health care~~]  
22 provider, by or within a health care institution or by an  
23 organized health care arrangement as defined by the federal  
24 Health Insurance Portability and Accountability Act of 1996  
25 does not constitute a health information exchange;

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1           L. "health information organization" means an  
2 organization that oversees, governs and facilitates the  
3 exchange of health care information among providers that are  
4 not related health care entities to improve coordination of  
5 patient care and efficiency of health care delivery;

6           ~~[K.]~~ M. "information" means data, including text,  
7 images, sounds and codes and computer programs, software and  
8 databases;

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

13           N. "interoperable" means capable of:

14                   (1) exchanging electronic health information  
15 with, and using electronic health information from, other  
16 systems without special effort on the part of the user;

17                   (2) enabling users to send, receive, find and  
18 use electronic health information in a manner that is  
19 appropriate, secure, timely and reliable to support informed  
20 decision-making;

21                   (3) supporting critical public health  
22 functions such as real-time case reporting, disease  
23 surveillance and disaster response; and

24                   (4) supporting data aggregation for research;

25           O. "interoperable qualified electronic health

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1 record" means a qualified electronic health record that:

2 (1) securely exchanges health information with  
3 another electronic health record system;

4 (2) allows authorized users access to the  
5 entirety of a patient's data from any and all qualified  
6 electronic health records without restriction, in one location,  
7 without the need for multiple interfaces; and

8 (3) does not block access to other qualified  
9 electronic health records;

10 P. "laboratory" means a facility accredited  
11 pursuant to the federal clinical laboratory improvement  
12 amendments for the biological, microbiological, serological,  
13 chemical, immunohematological, hematological, biophysical,  
14 cytological, pathological or other examination of materials  
15 derived from the human body for the purpose of providing  
16 information for the diagnosis, prevention or treatment of any  
17 disease or impairment of, or the assessment of the health of,  
18 human beings and includes procedures to determine, measure or  
19 otherwise describe the presence or absence of various  
20 substances or organisms in the body;

21 Q. "provider" means:

22 (1) a health care institution;

23 (2) an individual or group of individuals  
24 licensed, certified or otherwise authorized to deliver health  
25 care in the ordinary course of business; and

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1                   (3) a laboratory;

2                   R. "qualified electronic health record" means an  
3 electronic health record that includes patient demographic and  
4 clinical health information and that has the capacity to:

5                   (1) provide clinical decision support;

6                   (2) support provider order entry;

7                   (3) capture and query information relevant to  
8 health care quality; and

9                   (4) exchange electronic health information  
10 with, and integrate such information from, other sources;

11                  [M-] S. "record" means information that is  
12 inscribed on a tangible medium or that is stored in an  
13 electronic or other medium and is retrievable in perceivable  
14 form

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

24                  [Θ-] T. "treatment" means the provision,  
25 coordination or management of health care and related services

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1 by one or more providers, including the coordination or  
2 management of health care by a provider with a third party;  
3 consultation between providers relating to an individual; or  
4 the referral of an individual for health care from one provider  
5 to another."

6 SECTION 4. Section 24-14B-4 NMSA 1978 (being Laws 2009,  
7 Chapter 69, Section 4) is amended to read:

8 "24-14B-4. ELECTRONIC [~~MEDICAL~~] HEALTH RECORDS--  
9 ELECTRONIC SIGNATURES--LEGAL RECOGNITION.--If a law or rule  
10 requires a [~~medical~~] health record to be in writing, or if a  
11 law or rule requires a signature pertaining to a [~~medical~~]  
12 health record, an electronic [~~medical~~] health record or an  
13 electronic signature satisfies that law or rule, except for a  
14 court rule."

15 SECTION 5. Section 24-14B-5 NMSA 1978 (being Laws 2009,  
16 Chapter 69, Section 5) is amended to read:

17 "24-14B-5. RETENTION OF ELECTRONIC [~~MEDICAL~~] HEALTH  
18 RECORDS.--

19 A. If a law or rule requires that a [~~medical~~]  
20 health record be retained, the requirement is satisfied by  
21 retaining an electronic record that:

22 (1) accurately reflects the [~~medical~~] health  
23 record; and

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

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1           B. If a law or rule requires a ~~[medical]~~ health  
2 record to be presented or retained in its original form or  
3 provides consequences if the ~~[medical]~~ health record is not  
4 presented or retained in its original form, that law or rule is  
5 satisfied by an electronic ~~[medical]~~ health record retained in  
6 accordance with Subsection A of this section.

7           C. A ~~[medical]~~ health record retained as an  
8 electronic ~~[medical]~~ health record in accordance with  
9 Subsection A of this section satisfies a law or rule requiring  
10 a person to retain a ~~[medical]~~ health record for evidentiary,  
11 audit or other purposes."

12           **SECTION 6.** Section 24-14B-6 NMSA 1978 (being Laws 2009,  
13 Chapter 69, Section 6) is repealed and a new Section 24-14B-6  
14 NMSA 1978 is enacted to read:

15           "24-14B-6. [NEW MATERIAL] USE AND DISCLOSURE OF  
16 ELECTRONIC HEALTH CARE INFORMATION AND ELECTRONIC HEALTH  
17 RECORDS.--

18           A. A provider, health information organization,  
19 health information exchange or group health purchaser shall not  
20 use or disclose health care information in an individual's  
21 electronic health record to another person without the consent  
22 of the individual, except as allowed by state or federal law.

23           B. With respect to electronic health records under  
24 its care, custody and control, a health information  
25 organization operating a health information exchange shall:

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1 (1) authenticate and audit access to such  
2 records; and

3 (2) maintain an audit log of persons obtaining  
4 access to such records, which audit log shall contain at a  
5 minimum:

6 (a) the identity of the person obtaining  
7 access to such records;

8 (b) the identity of the individual whose  
9 records were accessed;

10 (c) the specific records accessed; and

11 (d) the date and time that each record  
12 was accessed.

13 C. A health information organization operating a  
14 health information exchange shall make the audit log required  
15 in Subsection B of this section available to the individual  
16 whose electronic health record has been disclosed or to such  
17 individual's authorized representative; provided that the audit  
18 log shall only contain information related to the electronic  
19 health record of such individual. The audit log shall be made  
20 available annually to the requester for a fee not to exceed  
21 twenty-five cents (\$.25) per page as established by the  
22 department of health.

23 D. A health information organization operating a  
24 health information exchange shall provide a mechanism for an  
25 individual or the individual's authorized representative to

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1 request the health information organization in writing to deny  
2 access to the entirety of the individual's current or past  
3 electronic health records under any circumstances, including an  
4 emergency. A health information organization or a health  
5 information exchange shall comply with the written request to  
6 deny access within thirty days of its receipt.

7 E. A person requesting an individual's electronic  
8 health record from a health information organization or a  
9 health information exchange shall warrant that the request is  
10 for the treatment of the individual, is allowed pursuant to  
11 written authorization from the individual or is otherwise  
12 allowed by state or federal law. The person disclosing such  
13 record may rely upon the warranty of the person making the  
14 request.

15 F. Notwithstanding any other provision of law, an  
16 individual's electronic health record may be disclosed:

17 (1) except as provided by Subsection D of this  
18 section, to a provider that has a need for an individual's  
19 health care information to treat a condition that poses an  
20 immediate threat to the life of any individual and that  
21 requires immediate medical attention; and

22 (2) except as provided in the Electronic  
23 Health Records Act, to a health information organization or a  
24 health information exchange for the development and operation  
25 of the health information exchange or a statewide interoperable

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1 integrated health information exchange."

2 SECTION 7. Section 24-14B-7 NMSA 1978 (being Laws 2009,  
3 Chapter 69, Section 7) is repealed and a new Section 24-14B-7  
4 NMSA 1978 is enacted to read:

5 "24-14B-7. [NEW MATERIAL] LIMITATION OF LIABILITY--  
6 PENALTIES.--

7 A. A health information organization or a health  
8 information exchange shall not be liable for any harm caused by  
9 denying access to an individual's electronic health record as  
10 requested by the individual or the individual's authorized  
11 representative pursuant to Subsection D of Section 24-14B-6  
12 NMSA 1978.

13 B. A provider that participates in a health  
14 information exchange in accordance with the provisions of the  
15 Electronic Health Records Act shall not be liable for damages  
16 arising from the transfer of an interoperable qualified  
17 electronic health record to or from a health information  
18 organization or a health information exchange.

19 C. A provider shall not be liable for damages  
20 arising from the disclosure of health care information by:

21 (1) a health information organization or a  
22 health information exchange to which the provider has  
23 transferred an interoperable qualified electronic health  
24 record; or

25 (2) another provider participating in a health

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1 information exchange.

2 D. Nothing in this section shall limit or expand  
3 confidentiality rights afforded to a patient by other state or  
4 federal law.

5 E. Whoever intentionally discloses or makes use of  
6 health care information in violation of the Electronic Health  
7 Records Act is guilty of a petty misdemeanor and, upon  
8 conviction, shall be sentenced pursuant to the provisions of  
9 Subsection B of Section 31-19-1 NMSA 1978."

10 SECTION 8. A new section of the Electronic Health Records  
11 Act is enacted to read:

12 "[NEW MATERIAL] DUTY OF HEALTH INFORMATION ORGANIZATION OR  
13 HEALTH INFORMATION EXCHANGE--DATA SECURITY.--A health  
14 information organization or a health information exchange that  
15 collects, transmits, disseminates, accesses or reports health  
16 care information pursuant to the Electronic Health Records Act  
17 shall comply with all applicable state and federal law,  
18 including secure electronic data submission requirements."

19 SECTION 9. Section 24-14B-8 NMSA 1978 (being Laws 2009,  
20 Chapter 69, Section 8) is amended to read:

21 "24-14B-8. OUT-OF-STATE DISCLOSURES.--A disclosure  
22 otherwise permissible under the Electronic [~~Medical~~] Health  
23 Records Act may be made to providers, health care group  
24 purchasers, health [~~care institutions~~] information  
25 organizations or health information exchanges [~~or record~~

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1 ~~locator services~~] located or operating outside of the state."

2 SECTION 10. A new section of the Electronic Health  
3 Records Act is enacted to read:

4 "[NEW MATERIAL] STATEWIDE INTEROPERABLE INTEGRATED HEALTH  
5 INFORMATION EXCHANGE PLAN--REPORTING.--

6 A. No later than June 30, 2018, the secretary of  
7 health shall develop a plan for implementing a statewide  
8 interoperable integrated health information exchange in  
9 accordance with federal guidelines for shared data sets and  
10 interoperability.

11 B. No later than September 1, 2018, the secretary  
12 of health shall make a written report and, upon request, an  
13 oral report, regarding the details of the plan and provide the  
14 report to the governor, the legislative health and human  
15 services committee and the legislative finance committee. The  
16 report shall include recommendations for:

17 (1) achieving maximum cooperation among  
18 providers in supplying data to the statewide interoperable  
19 integrated health information exchange and accessing the system  
20 when providing health care. These recommendations shall  
21 include a recommendation as to the most effective incentives or  
22 penalties to ensure participation;

23 (2) information technology system and system  
24 operator capabilities;

25 (3) funding for the full establishment,

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1 integration and operation of the statewide interoperable  
2 integrated health information exchange;

3 (4) provisions for sustainability and  
4 oversight to ensure the ongoing viability of the statewide  
5 interoperable integrated health information exchange;

6 (5) removing financial and telecommunications  
7 access barriers to ensure that providers that are single- or  
8 small-group proprietors or that are located in rural and  
9 frontier areas are able to participate fully;

10 (6) increasing statewide interoperable  
11 integrated health information exchange efficiency and quality  
12 of outcomes;

13 (7) improving providers' ability to avoid  
14 adverse events; and

15 (8) timely access to information from all of a  
16 patient's providers.

17 C. At a minimum, the secretary of health shall  
18 invite representatives from the following entities to  
19 participate in the development of the plan for a statewide  
20 interoperable integrated health information exchange:

21 (1) the human services department;  
22 (2) the office of superintendent of insurance;  
23 (3) the interagency benefits advisory  
24 committee;

25 (4) the corrections department;

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- 1 (5) an entity with expertise in health  
2 information exchanges;
- 3 (6) the New Mexico association of  
4 radiologists;
- 5 (7) the New Mexico medical society;
- 6 (8) laboratories whose principal places of  
7 business are located in the state;
- 8 (9) health insurers operating in the state;
- 9 (10) the New Mexico primary care association;
- 10 (11) the behavioral health providers  
11 association of New Mexico;
- 12 (12) the New Mexico hospital association;
- 13 (13) the New Mexico pharmacists association;
- 14 and
- 15 (14) the New Mexico dental association.

16 D. No later than September 1, 2018, the secretary  
17 of health shall designate one or more health information  
18 organizations or health information exchanges to implement a  
19 statewide interoperable integrated health information  
20 exchange."

21 SECTION 11. A new section of the Electronic Health  
22 Records Act is enacted to read:

23 "[NEW MATERIAL] LEVERAGING FEDERAL MATCHING FUNDS--  
24 REPORTING.--

25 A. Beginning in 2017 and no later than each

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1 September 1, the secretary of human services shall make an  
2 annual written report to the legislative finance committee and  
3 the legislative health and human services committee on the  
4 status of:

5 (1) efforts to apply for all available federal  
6 matching funds to promote, establish, develop, administer and  
7 sustain a statewide interoperable integrated health information  
8 exchange; and

9 (2) efforts to obtain allowable bona fide  
10 donations to the state to be used for the state's portion of  
11 the matched funds.

12 B. The secretary of human services shall make the  
13 annual written report required by Subsection A of this section  
14 for as long as federal matching funds are available for such  
15 purpose. A copy of each annual report shall be transmitted to  
16 the legislative council service library."

17 SECTION 12. Section 24-14B-9 NMSA 1978 (being Laws 2009,  
18 Chapter 69, Section 9) is amended to read:

19 "24-14B-9. EXCLUSION OF CERTAIN INSURERS.--Nothing in the  
20 Electronic [~~Medical~~] Health Records Act shall be construed to  
21 apply to a person operating as a property and casualty insurer,  
22 workers' compensation insurer, life insurer, long-term care  
23 insurer or disability income insurer."

24 SECTION 13. Section 24-14B-10 NMSA 1978 (being Laws 2009,  
25 Chapter 69, Section 10) is amended to read:

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1           "24-14B-10. STATE AGENCY--ELECTRONIC ~~[MEDICAL]~~ HEALTH  
2 RECORDS.--If a state agency requires the use of electronic  
3 ~~[medical]~~ health records for any type of health care or health  
4 coverage program, the agency shall allow a provider, health  
5 care group purchaser, ~~[health care institution]~~ health  
6 information exchange ~~[provider, record locator service]~~ or any  
7 other person to use any public, proprietary or open source  
8 hardware or software; provided that the hardware or software  
9 complies with federal interoperability-certified laws or  
10 rules."

11           **SECTION 14.** A new section of the Health Care Purchasing  
12 Act is enacted to read:

13           "[NEW MATERIAL] PARTICIPATION IN STATEWIDE INTEROPERABLE  
14 INTEGRATED HEALTH INFORMATION EXCHANGE.--The publicly funded  
15 health care agencies, political subdivisions and other persons  
16 providing health care benefits through the consolidated  
17 purchasing single process shall require each entity providing  
18 group health coverage, including any form of self-insurance  
19 offered, issued or renewed under the Health Care Purchasing Act  
20 on or after January 1, 2019, to participate in a statewide  
21 interoperable integrated health information exchange as  
22 determined by the secretary of health pursuant to the  
23 Electronic Health Records Act."

24           **SECTION 15.** A new section of the Medicaid Provider Act is  
25 enacted to read:

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1 " ~~[NEW MATERIAL]~~ PARTICIPATION IN STATEWIDE INTEROPERABLE  
2 INTEGRATED HEALTH INFORMATION EXCHANGE.--For medicaid-related  
3 services to be rendered on or after January 1, 2019, the  
4 department shall require each managed care organization  
5 operating under contract with the department to participate in  
6 a statewide interoperable integrated health information  
7 exchange as determined by the secretary of health pursuant to  
8 the Electronic Health Records Act."

9 SECTION 16. A new section of Chapter 59A, Article 2 NMSA  
10 1978 is enacted to read:

11 " ~~[NEW MATERIAL]~~ PARTICIPATION IN STATEWIDE INTEROPERABLE  
12 INTEGRATED HEALTH INFORMATION EXCHANGE.--The superintendent  
13 shall promulgate rules to be effective no later than January 1,  
14 2019 to require each group health plan, health insurer, health  
15 maintenance organization and nonprofit health care plan to  
16 participate in a statewide interoperable integrated health  
17 information exchange as determined by the secretary of health  
18 pursuant to the Electronic Health Records Act."