

1 SENATE BILL 404

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PRIVACY; STRENGTHENING PRIVACY PROTECTIONS FOR
12 PATIENT RECORDS BY REQUIRING SEGREGATION OF CERTAIN HEALTH CARE
13 INFORMATION; PROHIBITING DISCLOSURE OF CERTAIN HEALTH CARE
14 INFORMATION; REPEALING SECTION 24-14-18 NMSA 1978 (BEING LAWS
15 1977, CHAPTER 206, SECTION 2, AS AMENDED) THAT REQUIRES THE
16 REPORTING OF INDUCED ABORTION.

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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]~~ Patient
23 Records Privacy 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~~] Patient Records Privacy Act is to provide for the
3 secure use, disclosure and protection of an individual's
4 electronic [~~medical~~] patient 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~~] Patient Records Privacy 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~~] patient 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~~] patient record" means an
23 electronic record of an individual patient's health care
24 information that may contain demographic information;

25 E. "electronic patient record system" means a

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1 system used to process, store and maintain the patient records
2 of individuals, including an individual's health care
3 information;

4 ~~[E.]~~ F. "electronic signature" means an electronic
5 sound, symbol or process attached to or logically associated
6 with a record and executed or adopted by an individual with the
7 intent to sign the record;

8 G. "gender-affirming health care" means
9 psychological, behavioral, surgical, pharmaceutical or medical
10 health care, services, procedures or supplies provided to an
11 individual in support of the individual's gender identity;

12 ~~[F.]~~ H. "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, tests, assessments or procedures
17 that 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.]~~ I. "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 and includes contractors
5 or employees of the health care group purchaser;

6 [H.] J. "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 or 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] and includes
12 the individual's patient records, health care claims and
13 records of payments for health care or other administrative
14 data from a provider, health care service plan or
15 pharmaceutical company;

16 [I.] K. "health care institution" means an
17 institution, a facility or an agency licensed, certified or
18 otherwise authorized or permitted by law to provide health care
19 in the ordinary course of business and includes a contractor or
20 an employee of a health care institution;

21 L. "health care service plan" means a plan that
22 arranges for the provision of health care services to
23 subscribers or enrollees, or to pay for or to reimburse any
24 part of the cost for those services, in return for a prepaid or
25 periodic charge paid by or on behalf of the subscribers or

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1 enrollees and includes a contractor or an employee of the
2 health care service plan;

3 [J.] M. "health information exchange" means an
4 arrangement among persons participating in a defined secure
5 electronic network service, such as a regional health
6 information organization, that allows the sharing of health
7 care information about individual patients among different
8 health care institutions or unaffiliated providers, and
9 includes a contractor or an employee of a health information
10 exchange. The use of an electronic ~~[medical]~~ patient record
11 system by a health care provider, by or within a health care
12 institution or by an organized health care arrangement as
13 defined by the federal Health Insurance Portability and
14 Accountability Act of 1996 does not constitute a health
15 information exchange;

16 [K.] N. "information" means data, including text,
17 images, sounds and codes and computer programs, software and
18 databases;

19 [L.] O. "provider" means an individual ~~[who]~~ or
20 entity that is licensed, certified or otherwise authorized or
21 permitted by law in this state to provide health care,
22 including reproductive health care and gender-affirming health
23 care, and to access health care information in the ordinary
24 course of business or practice of a profession;

25 [M.] P. "record" means information that is

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1 inscribed on a tangible medium or that is stored in an
2 electronic or other medium and is retrievable in perceivable
3 form;

4 [N.] Q. "record locator service" means an
5 information service that contains demographic information and
6 the location of health care information of a specified
7 individual across different health care institutions or
8 unaffiliated providers that participate in the service, and
9 includes a contractor or an employee of a record locator
10 service. The use of an electronic ~~[medical]~~ patient record
11 system by a health care provider or by an organized health care
12 arrangement as defined by the federal Health Insurance
13 Portability and Accountability Act of 1996 does not constitute
14 a record locator service; ~~[and]~~

15 R. "reproductive health care" means psychological,
16 behavioral, surgical, pharmaceutical or medical care, services
17 or supplies that relate to the human reproductive system,
18 including services related to:

- 19 (1) preventing a pregnancy;
- 20 (2) abortion;
- 21 (3) managing a pregnancy loss;
- 22 (4) prenatal, birth, perinatal and postpartum
23 health;
- 24 (5) managing perimenopause and menopause;
- 25 (6) managing infertility;

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1 (7) treating cancers of the reproductive
2 system; or

3 (8) preventing or treating sexually
4 transmitted infections or diseases; and

5 [~~0-~~] S. "treatment" means the provision,
6 coordination or management of health care and related services
7 by one or more providers, including the coordination or
8 management of health care by a provider with a third party;
9 consultation between providers relating to an individual; or
10 the referral of an individual for health care from one provider
11 to another."

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

14 "24-14B-6. USE AND DISCLOSURE OF ELECTRONIC HEALTH CARE
15 INFORMATION--SEGREGATED HEALTH CARE INFORMATION--
16 REQUIREMENTS.--

17 A. A provider, health care institution, health
18 information exchange, health care service plan or health care
19 group purchaser shall not use or disclose health care
20 information in an individual's electronic [~~medical~~] patient
21 record to another person without the consent of the individual
22 except as [~~allowed~~] required by state or federal law.

23 B. A health information exchange or electronic
24 patient record system operating in the state that
25 electronically stores or maintains medical information,

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1 electronic patient records, personal health records, health
2 care claims, payments or other administrative data on behalf of
3 a provider, health care service plan, pharmaceutical company,
4 contractor or employer shall:

5 (1) segregate an individual's health care
6 information related to reproductive health care, gender-
7 affirming health care, mental health care, alcohol or substance
8 use treatment and any other similar health care or health care
9 service as deemed appropriate for record segregation by the
10 health care authority;

11 (2) limit user access privileges to an
12 individual's segregated health care information to persons or
13 entities to whom the individual has provided written
14 authorization for access;

15 (3) provide a process for an individual to
16 provide written authorization to disable access to the
17 individual's segregated health care information by persons or
18 entities in another state; and

19 (4) notify an individual whose segregated
20 health care information is the subject of a civil, criminal or
21 regulatory inquiry, investigation, subpoena or summons for the
22 release of the individual's segregated health care information
23 and notify each provider that rendered health care as
24 documented in the individual's segregated health care
25 information at least thirty days prior to complying with the

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1 civil, criminal or regulatory inquiry, investigation, subpoena
2 or summons for release of the individual's segregated health
3 care information.

4 [B.] C. A provider, health care institution,
5 health care service plan or health care group purchaser may
6 disclose demographic information and information about the
7 location of an individual's electronic ~~[medical]~~ patient
8 records to a record locator service in accordance with state or
9 federal law. A provider or health care institution
10 participating in a health information exchange using a record
11 locator service shall not have access to demographic
12 information, information about the location of the individual's
13 electronic ~~[medical]~~ patient records or information in an
14 individual's electronic ~~[medical]~~ patient record except in
15 connection with the treatment of the individual or as permitted
16 by the consent of the individual or as otherwise permitted by
17 state or federal law.

18 [C.] D. A record locator service shall maintain an
19 audit log of persons obtaining access to information in the
20 record locator service, which audit log shall contain, at a
21 minimum, information on:

22 (1) the identity of the person obtaining
23 access to the information;

24 (2) the identity of the individual whose
25 information was obtained;

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1 (3) the location from which the information
2 was obtained;

3 (4) the specific information obtained; and

4 (5) the date that the information was
5 obtained.

6 ~~[D.]~~ E. The audit log shall be made available by a
7 health information exchange on the request of an individual
8 whose health care information is the subject of the audit log;
9 provided, however, that the audit log made available to the
10 individual shall include only information related to that
11 individual. The audit log shall be made available to the
12 requesting individual annually for a fee not to exceed twenty-
13 five cents (\$.25) per page as established by the ~~[department~~
14 ~~of]~~ health care authority.

15 ~~[E.]~~ F. A record locator service shall provide a
16 mechanism under which individuals may exclude their demographic
17 information and information about the location of their
18 electronic ~~[medical]~~ patient records from the record locator
19 service. A person operating a record locator service or a
20 health information exchange that receives an individual's
21 request to exclude all of the individual's information from the
22 record locator service is responsible for removing that
23 information from the record locator service within thirty days.
24 An individual's request for exclusion of information shall be
25 in writing and shall include a waiver of liability for any harm

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1 caused by the exclusion of the individual's information.

2 [F.] G. When information in an individual's
3 electronic ~~[medical]~~ patient record is requested using a record
4 locator service or a health information exchange:

5 (1) the requesting provider or health care
6 institution shall warrant that the request is for the treatment
7 of the individual, is permitted by the individual's written
8 authorization or is otherwise permitted by state or federal
9 law; and

10 (2) the person disclosing the information may
11 rely upon the warranty of the person making the request that
12 the request is for the treatment of the individual, is
13 permitted with the consent of the individual or is otherwise
14 permitted by state or federal law.

15 H. Notwithstanding the provisions of Subsection B
16 of this section or any other provision of law, a provider, a
17 contractor or an employee of the provider or a health care
18 service plan shall not release patient records containing an
19 individual's health care information related to that individual
20 seeking or obtaining an abortion in response to a subpoena or
21 request if that subpoena or request is based on another state's
22 laws that interfere with a person's rights under the
23 Reproductive and Gender-Affirming Health Care Freedom Act or
24 the Reproductive and Gender-Affirming Health Care Protection
25 Act.

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1 ~~[G.]~~ I. Notwithstanding any other provision of law,
2 information in an individual's electronic ~~[medical]~~ patient
3 record may be disclosed:

4 (1) to a provider that has a need for
5 information about the individual to treat a condition that
6 poses an immediate threat to the life of any individual and
7 that requires immediate medical attention;

8 (2) except as provided in the ~~[Electronic~~
9 ~~Medical]~~ Patient Records Privacy Act, to a record locator
10 service or a health information exchange for the development
11 and operation of the record locator service and the health
12 information exchange; and

13 (3) to a provider, health care institution or
14 health care group purchaser for treatment, payment or health
15 care operation activities, in compliance with the federal
16 Health Insurance Portability and Accountability Act of 1996 and
17 the regulations promulgated pursuant to that act, and if
18 applicable, in compliance with 42 U.S.C. Section 290dd-2 and
19 the regulations promulgated pursuant to that section.

20 ~~[H.]~~ J. For the purposes of this section, "health
21 care operation activities" includes administrative, financial,
22 legal and quality improvement activities of a covered entity
23 that are necessary to conduct business and to support the core
24 functions of treatment and payment and are limited to the
25 activities listed in the definition of "health care operations"

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1 at 45 C.F.R. 164.501."

2 SECTION 5. Section 24-14B-7 NMSA 1978 (being Laws 2009,
3 Chapter 69, Section 7) is amended to read:

4 "24-14B-7. LIABILITY.--If an individual requests to
5 exclude all of the individual's information from the record
6 locator service pursuant to Subsection [E] F of Section [~~6 of~~
7 ~~the Electronic Medical Records Act~~] 24-14B-6 NMSA 1978, the
8 record locator service, health information exchange, health
9 care institution or provider shall not be liable for any harm
10 to the individual caused by the exclusion of the individual's
11 information."

12 SECTION 6. Section 24-14B-8 NMSA 1978 (being Laws 2009,
13 Chapter 69, Section 8) is amended to read:

14 "24-14B-8. OUT-OF-STATE DISCLOSURES.--A disclosure
15 otherwise permissible under the [~~Electronic Medical~~] Patient
16 Records Privacy Act may be made to providers, health care group
17 purchasers, health care institutions, health information
18 exchanges or record locator services located or operating
19 outside of the state."

20 SECTION 7. Section 24-14B-9 NMSA 1978 (being Laws 2009,
21 Chapter 69, Section 9) is amended to read:

22 "24-14B-9. EXCLUSION OF CERTAIN INSURERS.--Nothing in the
23 [~~Electronic Medical~~] Patient Records Privacy Act shall be
24 construed to apply to a person operating as a property and
25 casualty insurer, workers' compensation insurer, life insurer,

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1 long-term care insurer or disability income insurer."

2 SECTION 8. A new section of the Patient Records Privacy
3 Act, Section 24-14B-11 NMSA 1978, is enacted to read:

4 "24-14B-11. [NEW MATERIAL] ENFORCEMENT.--

5 A. A health information exchange or electronic
6 patient record system determined to be in violation of the
7 Patient Records Privacy Act shall be:

8 (1) subject to injunctive relief to cease or
9 correct the violation;

10 (2) liable for a civil penalty of not more
11 than two thousand five hundred dollars (\$2,500) for each
12 negligent violation; or

13 (3) liable for a civil penalty of not more
14 than seven thousand five hundred dollars (\$7,500) for each
15 intentional violation.

16 B. An individual who claims to have suffered a
17 deprivation of a right under the Patient Records Privacy Act
18 may maintain an action to establish liability and recover
19 damages and equitable or injunctive relief in any New Mexico
20 district court.

21 C. The attorney general or a district attorney may
22 institute a civil action in district court if the attorney
23 general or district attorney has reasonable cause to believe
24 that a violation of the Patient Records Privacy Act has
25 occurred or to prevent a violation of that act."

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SECTION 9. REPEAL.--Section 24-14-18 NMSA 1978 (being
Laws 1977, Chapter 206, Section 2, as amended) is repealed.

SECTION 10. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2025.