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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Sariñana/Anaya/Thomson/Ferrary</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/21/2025</u>
<b>SHORT TITLE</b> <u>Health Data Privacy Act</u>	<b>BILL NUMBER</b> <u>House Bill 430</u>
	<b>ANALYST</b> <u>Esquibel</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
RHCA	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	RHCA Benefits Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Health Care Authority (HCA)  
 New Mexico Retiree Health Care Authority (RHCA)  
 New Mexico Health Insurance Exchange (HIE)

## SUMMARY

### Synopsis of House Bill 430

House Bill 430 (HB430) would enact the Health Data Privacy Act and would enact restrictions on the use of personally identifiable health data. The bill prohibits “regulated entities” or service providers from processing regulated health information without an individual’s consent or for services other than a requested product, service, or feature. The bill defines a “regulated entity” as an entity other than a licensed healthcare provider which controls the processing of regulated health information of New Mexico residents or is located in New Mexico. The bill defines as “an operation performed or set of operations performed on regulated health information.” The bill includes a specific set of operations within this definition, including the analysis, disclosure, share, monetization, sale, or use of health data.

The effective date of the bill is July 1, 2025.

## FISCAL IMPLICATIONS

The Retiree Health Care Authority (RHCA) and the Health Care Authority (HCA) report the agencies already follow the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) laws and other state privacy laws. RHCA reports it may require some IT and other adjustments to comply with the bill but that the fiscal impact would be minimal.

## **SIGNIFICANT ISSUES**

The New Mexico Health Insurance Exchange, currently managed by Synchronys, reports the bill may need to exclude the processing and exchange of health information disclosed in accordance with HIPAA and the New Mexico Electronic Medical Records Act. Besides licensed healthcare providers, the bill may be amended to also exclude hospitals, skilled nursing facilities, labs, imaging, the health information exchange, state agencies, and other entities involved in providing treatment, payment, and operations within the scope of health care.

HCA notes it is unclear if the bill balances between safeguarding privacy versus fostering technological advancements that rely on health data to enhance services and improve health outcomes.

## **ADMINISTRATIVE IMPLICATIONS**

The health information exchange reports the bill would require every individual consent to have their data shared with the state's health information exchange. New Mexico is an "opt out" state for the health information exchange, which means an individual's data is shared with the health information exchange by their healthcare provider. Healthcare providers share data in accordance with HIPAA.

To implement the consent process, if the bill continues to only exclude licensed health care providers, hospitals, skilled nursing facilities, etc., will need to obtain consent from all individuals to process health information. Electronic medical records, billing systems, claims systems, etc., may need upgrades to manage which individuals have provided consent to process their health data.

HCA reports information processed by governmental entities is excluded from the requirements of the act, including HCA. However, HCA contracts with Medicaid managed care organizations, New Mexico health insurance carriers, and other healthcare entities that collect or maintain personal health information. These are HIPAA covered entities but, because HB430 does not exempt HIPAA covered personal health information or HIPAA covered entities, their obligations under the bill may be unclear. Presumably, they would be required to comply with HB340 to the extent they process health information outside of the HIPAA definition of personal health information.

## **OTHER SUBSTANTIVE ISSUES**

HCA reports the bill would extend protections over personal health information beyond the scope of federal HIPAA laws. Currently, disclosures of personal health information are permitted when health data is collected or maintained by an entity not covered by HIPAA. HIPAA only applies to "covered entities" and their "business associates." A covered entity is a healthcare provider, health plan, or healthcare clearinghouse. A business associate is an entity that provides products or services to a covered entity that involves access to personal health information.

Given the limitations of HIPAA, there are many entities that collect health information that are not subject to its provisions, such as health app companies, wearable devices such as fitness trackers, and apps and devices that track heart patterns, menstrual cycles, respiratory conditions,

sleep patterns, etc. These apps and devices collect a considerable amount of health-related information that would be subject to HIPAA rules if collected by a HIPAA covered entity. There have been unsuccessful attempts to address this privacy gap at the federal level by expanding HIPAA to cover all health data regardless of the entity that collects the information. HB340 seeks to address the gap at the state level. At the time of this writing, three states (Washington, Nevada and Connecticut) have passed similar laws, and an act passed by the New York Legislature in 2025 is awaiting the governor's signature.

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