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FISCAL IMPACT REPORT

SPONSOR Hickey **ORIGINAL DATE** 02/12/21 **LAST UPDATED** 03/03/21 **HB** _____
SHORT TITLE Release of Certain Medical Records **SB** 282/aSHPAC
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 269

SOURCES OF INFORMATION

LFC Files

Responses Received From

University of New Mexico Health Sciences Center (UNM-HSC)

Office of the Superintendent of Insurance (OSI)

Human Services Department (HSD)

Department of Health (DOH)

Office of the Attorney General (NMAG)

SUMMARY

Synopsis of SHPAC Amendment

The Senate Health and Public Affairs Committee amendment to Senate Bill 282 addresses both of the technical issues noted below. It corrects the U.S. Code reference. It adds a subsection to the bill (subsection H), which defines “health care operation activities” as including the “administrative, financial, legal, and quality improvement activities of a covered entity necessary to business and to support the core functions of treatment and payment” The subsection limits disclosures within those limits and also the lengthy definition of “health care operations” contained within 45 C.F.R. 164.501.

Synopsis of Original Bill

Section 24-14B-6 NMSA 1978, “Use and Disclosure of Electronic Health Care Information,” would be amended by Senate Bill 282 to allow for release of information to providers, healthcare institutions, or healthcare purchasers for treatment, payment, or healthcare operation activities as

long as each release of information conformed to federal Health Insurance Portability and Accountability Act (HIPAA) provisions and law contained in 42 U.S. Code Section 90dd-2, which is entitled “confidentiality of records.” Other provisions of Section 24-14B-6 remain unchanged, both as to allowable release of information and protection of confidential information. The new provision would be added to emergency conditions posing a threat to a patient’s life and provision of information to record locator services or health information exchanges as exceptions wherein individuals’ electronic medical information can be disclosed without reference to any other legal provision.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 282. Agencies have not indicated any costs to its implementation.

SIGNIFICANT ISSUES

HSD states that, in April 2020, it was approved to “receive \$31 million from the Center for Medicare and Medicaid Services (CMS) with Health Information Technology for Economic and Clinical Health (HITECH) and Support Act funding. This funding was awarded with the goal of further streamlining and enhancing the State’s designated Health Information Exchange (HIE). This revision to the Electronic Medical Records Act (EMRA) will support that goal.”

It continues:

The current law allows an individual’s identifiable health information (including Specially Protected Information) to be placed into the HIE, **but not disclosed to healthcare providers using the HIE to view health information for the treatment, payment or operations as allowed by HIPAA, without a patient’s consent, except for life threatening care.** [Emphasis in the original HSD response]

The proposed addition of subsection (3) to 24-14B-6 G would add a third situation in which the prohibitions on disclosure of an individual’s electronic health information (including Specially Protected Information) would be allowed, specifically if the disclosure is made to a provider, health care institution, or health care group purchaser for HIPAA treatment, payment, or operations; thus, aligning the state privacy rules with the federal privacy rules. This would mean one set of privacy criteria for healthcare providers in our state, thereby reducing their administrative burden.

UNM-HSC does not see any effects on its operations because it states that it is already compliant with HIPAA regulations.

DUPLICATION

SB282 duplicates HB269, before and after each was amended in SHPAC and HHHC, respectively.

TECHNICAL ISSUES

Both of these technical issues were addressed by the SHPAC amendment:

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There is no definition of “health care operation activities” contained in the bill or in Section 24-14B-3 NMSA 1978, which is the definitions section of state law on the subject of disclosure of electronic information. Without a definition, this permitted exception appears to be quite elastic.

The U.S. Code designation appears mistaken; the section dealing with confidentiality of records is Section 290dd-2.

LAC/rl/sb/al