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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE; AMENDING SECTIONS OF THE HEALTH INFORMATION SYSTEM ACT TO TRANSFER DATA MANAGEMENT DUTIES FROM THE NEW MEXICO HEALTH POLICY COMMISSION TO THE DEPARTMENT OF HEALTH; ENACTING A TEMPORARY PROVISION TO TRANSFER ALL PROPERTY, RECORDS AND CONTRACTS DIRECTLY RELATING TO DATA MANAGEMENT DUTIES UNDER THE HEALTH INFORMATION SYSTEM ACT TO THE DEPARTMENT OF HEALTH; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

**SECTION 1.** Section 24-14A-2 NMSA 1978 (being Laws 1989, Chapter 29, Section 2, as amended) is amended to read:

"24-14A-2. DEFINITIONS.--As used in the Health Information System Act:

A. "aggregate data" means data that are obtained by

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1 combining like data elements in a manner that precludes  
2 specific identification of a single client or provider;

3 ~~[B.] "commission" means the New Mexico health policy~~  
4 ~~commission;~~

5 ~~G.]~~ B. "data source" or "data provider" means a  
6 person that possesses health information, including any public  
7 or private sector licensed health care practitioner, primary  
8 care clinic, ambulatory surgery center, ambulatory urgent care  
9 center, ambulatory dialysis unit, home health agency, long-term  
10 care facility, hospital, pharmacy, third-party payer and any  
11 public entity that has health information;

12 ~~[D.]~~ C. "department" means the department of  
13 health;

14 ~~[E.]~~ D. "health information" or "health data" means  
15 any data relating to health care; health status, including  
16 environmental, social and economic factors; the health system;  
17 or health costs and financing;

18 ~~[F.]~~ E. "hospital" means any general or special  
19 hospital licensed by the department, whether publicly or  
20 privately owned;

21 ~~[G.]~~ F. "long-term care facility" means any skilled  
22 nursing facility or nursing facility licensed by the  
23 department, whether publicly or privately owned;

24 ~~[H.]~~ G. "record-level data" means a medical record  
25 that contains unique and nonaggregated data elements that

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1 relate to a single identifiable individual, provider or  
2 hospital; and

3 ~~[F.]~~ H. "third-party payer" means any public or  
4 private payer of health care services and includes health  
5 maintenance organizations and health insurers."

6 **SECTION 2.** Section 24-14A-3 NMSA 1978 (being Laws 1989,  
7 Chapter 29, Section 3, as amended by Laws 2005, Chapter 321,  
8 Section 12 and by Laws 2005, Chapter 322, Section 1) is amended  
9 to read:

10 "24-14A-3. HEALTH INFORMATION SYSTEM--CREATION--DUTIES OF  
11 ~~[COMMISSION]~~ DEPARTMENT.--

12 A. The "health information system" is created for  
13 the purpose of assisting the ~~[commission]~~ department,  
14 legislature and other agencies and organizations in the state's  
15 efforts in collecting, analyzing and disseminating health  
16 information to assist:

17 (1) in the performance of health planning and  
18 policymaking functions, including identifying personnel,  
19 facility, education and other resource needs and allocating  
20 financial, personnel and other resources where appropriate;

21 (2) consumers in making informed decisions  
22 regarding health care; and

23 (3) in administering, monitoring and  
24 evaluating a statewide health plan.

25 B. In carrying out its powers and duties pursuant

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1 to the Health Information System Act, the [~~commission~~]  
2 department shall not duplicate databases that exist in the  
3 public sector or databases in the private sector to which it  
4 has electronic access. Every governmental entity shall provide  
5 the [~~commission~~] department with access to its health-related  
6 data as needed by the [~~commission~~] department. The  
7 [~~commission~~] department shall collect data from data sources in  
8 the most cost-effective and efficient manner.

9 C. The [~~commission~~] department shall establish,  
10 operate and maintain the health information system.

11 D. In establishing, operating and maintaining the  
12 health information system, the [~~commission~~] department shall:

13 (1) obtain information on the following health  
14 factors:

15 (a) mortality and natality, including  
16 accidental causes of death;

17 (b) morbidity;

18 (c) health behavior;

19 (d) disability;

20 (e) health system costs, availability,  
21 utilization and revenues;

22 (f) environmental factors;

23 (g) health personnel;

24 (h) demographic factors;

25 (i) social, cultural and economic

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1 conditions affecting health, including language preference;

2 (j) family status;

3 (k) medical and practice outcomes as  
4 measured by nationally accepted standards and quality of care;  
5 and

6 (1) participation in clinical research  
7 trials;

8 (2) give the highest priority in data  
9 gathering to information needed to implement and monitor  
10 progress toward achievement of the state health policy,  
11 including determining where additional health resources such as  
12 personnel, programs and facilities are most needed, what those  
13 additional resources should be and how existing resources  
14 should be reallocated;

15 (3) standardize collection and specific  
16 methods of measurement across databases and use scientific  
17 sampling or complete enumeration for collecting and reporting  
18 health information;

19 (4) take adequate measures to provide health  
20 information system security for all health data acquired under  
21 the Health Information System Act and protect individual  
22 patient and provider confidentiality. The right to privacy for  
23 the individual shall be a major consideration in the collection  
24 and analysis of health data and shall be protected in the  
25 reporting of results;

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1 (5) adopt and promulgate rules necessary to  
2 establish and administer the provisions of the Health  
3 Information System Act, including an appeals process for data  
4 sources and procedures to protect data source proprietary  
5 information from public disclosure;

6 (6) establish definitions, formats and other  
7 common information standards for core health data elements of  
8 the health information system in order to provide an integrated  
9 financial, statistical and clinical health information system,  
10 including a geographic information system, that allows data  
11 sharing and linking across databases maintained by data sources  
12 and federal, state and local public agencies;

13 (7) develop and maintain health and health-  
14 related data inventories and technical documentation on data  
15 holdings in the public and private sectors;

16 (8) collect, analyze and make available health  
17 data to support preventive health care practices and to  
18 facilitate the establishment of appropriate benchmark data to  
19 measure performance improvements over time;

20 (9) establish and maintain a systematic  
21 approach to the collection and storage of health data for  
22 longitudinal, demographic and policy impact studies;

23 (10) use expert system-based protocols to  
24 identify individual and population health risk profiles and to  
25 assist in the delivery of primary and preventive health care

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1 services;

2 (11) collect health data sufficient for  
3 consumers to be able to evaluate health care services, plans,  
4 providers and payers and to make informed decisions regarding  
5 quality, cost and outcome of care across the spectrum of health  
6 care services, providers and payers;

7 (12) collect comprehensive information on  
8 major capital expenditures for facilities, equipment by type  
9 and by data source and significant facility capacity  
10 reductions; provided that for the purposes of this paragraph  
11 and Section 24-14A-5 NMSA 1978, "major capital expenditure"  
12 means purchases of at least one million dollars (\$1,000,000)  
13 for construction or renovation of facilities and at least five  
14 hundred thousand dollars (\$500,000) for purchase or lease of  
15 equipment, and "significant facility capacity reductions" means  
16 those reductions in facility capacities as defined by the  
17 [~~commission~~] department;

18 (13) serve as a health information  
19 clearinghouse, including facilitating private and public  
20 collaborative, coordinated data collection and sharing and  
21 access to appropriate data and information, maintaining patient  
22 and client confidentiality in accordance with state and federal  
23 requirements;

24 (14) collect data in the most cost-efficient  
25 and effective method feasible and adopt [~~regulations~~] rules

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1 that place a limit on the maximum amount of unreimbursed costs  
2 that a data source can incur in any year for the purposes of  
3 complying with the data requirements of the Health Information  
4 System Act; and

5 (15) identify disparities in health care  
6 access and quality by aggregating the information collected  
7 pursuant to Paragraph (1) of this subsection [~~of this~~  
8 ~~section~~] by population subgroups to include race, ethnicity,  
9 gender and age."

10 SECTION 3. Section 24-14A-4 NMSA 1978 (being Laws 1989,  
11 Chapter 29, Section 4, as amended) is amended to read:

12 "24-14A-4. HEALTH INFORMATION SYSTEM--APPLICABILITY.--

13 A. All data sources shall participate in the health  
14 information system. Requests for health data under the Health  
15 Information System Act from a member of a data source category  
16 shall, where reasonable and equitable, be made to all members  
17 of that data source category.

18 B. Upon making any request for health data pursuant  
19 to the Health Information System Act, the [~~commission~~]  
20 department shall provide reasonable deadlines for compliance  
21 and shall give notice that noncompliance may subject the person  
22 to a civil penalty pursuant to Section 24-14A-10 NMSA 1978.

23 C. To the extent possible, the health information  
24 system shall be established in a manner to facilitate the  
25 exchange of information with other databases, including those

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1 maintained by the Indian health service and various agencies of  
2 the federal government."

3 SECTION 4. Section 24-14A-4.1 NMSA 1978 (being Laws 1994,  
4 Chapter 59, Section 11, as amended) is amended to read:

5 "24-14A-4.1. ANNUAL REVIEW OF DATA NEEDS.--At least once  
6 each year, the [~~commission~~] department shall review its data  
7 collection requirements to determine the relevancy of the data  
8 elements on which it collects data and review its regulations  
9 and procedures for collecting, analyzing and reporting data for  
10 efficiency, effectiveness and appropriateness. The review  
11 shall consider the cost incurred by data sources to collect and  
12 submit data."

13 SECTION 5. Section 24-14A-4.2 NMSA 1978 (being Laws 1994,  
14 Chapter 59, Section 12) is amended to read:

15 "24-14A-4.2. INVESTIGATORY POWERS.--The [~~commission~~]  
16 department has the right to verify the accuracy of data  
17 provided by any data source. The verification may include  
18 requiring the data source to submit documentation sufficient to  
19 verify the accuracy of the data in question or to provide  
20 direct inspection during normal business hours of only the  
21 records and documents that pertain directly to the data in  
22 question; provided that no data source shall be required to  
23 expend more than twenty-five thousand dollars (\$25,000) each  
24 year to comply with the provisions of this section."

25 SECTION 6. Section 24-14A-4.3 NMSA 1978 (being Laws 1994,

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1 Chapter 59, Section 15) is amended to read:

2 "24-14A-4.3. AGENCY COOPERATION.--All state agencies and  
3 political subdivisions shall cooperate with and assist the  
4 [~~commission~~] department in carrying out the provisions of the  
5 Health Information System Act, including sharing information  
6 and joining in any appropriate health information system."

7 SECTION 7. Section 24-14A-6 NMSA 1978 (being Laws 1989,  
8 Chapter 29, Section 6, as amended) is amended to read:

9 "24-14A-6. HEALTH INFORMATION SYSTEM--ACCESS.--

10 A. Access to data in the health information system  
11 shall be provided in accordance with regulations adopted by the  
12 [~~commission~~] department pursuant to the Health Information  
13 System Act.

14 B. A data provider may obtain data it has submitted  
15 to the system, as well as aggregate data, but, except as  
16 provided in [~~Subsections D and E~~] Subsection D of this section,  
17 it shall not have access to data submitted by another provider  
18 that is limited only to that provider. Except as provided in  
19 [~~Subsections D and E~~] Subsection D of this section, in no event  
20 may a data provider obtain data regarding an individual patient  
21 except in instances where the data were originally submitted by  
22 the requesting provider. Prior to the release of any data, in  
23 any form, data sources shall be permitted the opportunity to  
24 verify the accuracy of the data pertaining to that data source.  
25 Data identified in writing as inaccurate shall be corrected

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1 prior to the data's release. Time limits shall be set for the  
2 submission and review of data by data sources, and penalties  
3 shall be established for failure to submit and review the data  
4 within the established time.

5 C. Any person may obtain any aggregate data.

6 ~~[D. Through a secure delivery or transmission~~  
7 ~~process, the commission may share with the department record-~~  
8 ~~level data that contain identifiable individual, provider or~~  
9 ~~hospital information.~~

10 E.] D. Through a secure delivery or transmission  
11 process, the [~~commission~~] department may share record-level  
12 data with a federal agency that is authorized to collect,  
13 analyze or disseminate health information. The [~~commission~~]  
14 department shall remove identifiable individual or provider  
15 information from the record-level data prior to its disclosure  
16 to the federal agency. In providing hospital information under  
17 an agreement or arrangement with a federal agency, the  
18 [~~commission~~] department shall ensure that any identifiable  
19 hospital information disclosed is necessary for the agency's  
20 authorized use and that its disclosure meets with state and  
21 federal privacy and confidentiality laws, rules and  
22 regulations."

23 **SECTION 8.** Section 24-14A-7 NMSA 1978 (being Laws 1989,  
24 Chapter 29, Section 7, as amended) is amended to read:

25 "24-14A-7. HEALTH INFORMATION SYSTEM--REPORTS.--

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1           A. A report in printed format that provides  
2 information of use to the general public shall be produced  
3 annually. The report shall be made available upon request.  
4 The [~~commission~~] department may make the report available on  
5 tape or other electronic format.

6           B. The [~~commission~~] department shall provide an  
7 annual report of its activities, including health care system  
8 statistics, to the legislature. The report shall be submitted  
9 by November 15 each year."

10           **SECTION 9.** Section 24-14A-8 NMSA 1978 (being Laws 1989,  
11 Chapter 29, Section 8, as amended) is amended to read:

12           "24-14A-8. HEALTH INFORMATION SYSTEM--CONFIDENTIALITY.--

13           A. Health information collected and disseminated  
14 pursuant to the Health Information System Act is strictly  
15 confidential and shall not be a matter of public record or  
16 accessible to the public except as provided in Sections  
17 24-14A-6 and 24-14A-7 NMSA 1978. No data source shall be  
18 liable for damages to any person for having furnished the  
19 information to the [~~commission~~] department.

20           B. Record-level data provided to the department  
21 pursuant to Section 24-14A-6 NMSA 1978 are confidential. The  
22 [~~department~~] agency that receives record-level data shall not  
23 disclose the data except to the extent that they are included  
24 in a compilation of aggregate data.

25           C. The individual forms, electronic information or

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1 other forms of data collected by and furnished for the health  
2 information system shall not be public records subject to  
3 inspection pursuant to Section 14-2-1 NMSA 1978. Compilations  
4 of aggregate data prepared for release or dissemination from  
5 the data collected, except for a report prepared for an  
6 individual data provider or the provider's designee containing  
7 information concerning only its transactions, shall be public  
8 records."

9 SECTION 10. Section 24-14A-9 NMSA 1978 (being Laws 1989,  
10 Chapter 29, Section 9, as amended) is amended to read:

11 "24-14A-9. HEALTH INFORMATION SYSTEM--FEES.--Except for  
12 the annual reports required pursuant to the Health Information  
13 System Act, the [~~commission~~] department may collect a fee of up  
14 to one hundred dollars (\$100) per hour to offset partially the  
15 costs of producing public-use data aggregations or data for  
16 single use special studies. Entities contributing data to the  
17 system shall be charged reduced rates. Rates shall be  
18 established by regulation and shall be reviewed annually. Fees  
19 collected pursuant to this section are appropriated to the  
20 [~~commission~~] department to carry out the provisions of the  
21 Health Information System Act."

22 SECTION 11. TEMPORARY PROVISION--TRANSFER OF PROPERTY,  
23 RECORDS AND CONTRACTS DIRECTLY RELATED TO DATA COLLECTION,  
24 ANALYSIS AND DISSEMINATION DUTIES UNDER THE HEALTH INFORMATION  
25 SYSTEM ACT FROM THE NEW MEXICO HEALTH POLICY COMMISSION TO THE

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1 DEPARTMENT OF HEALTH.--On July 1, 2012:

2 A. all appropriations, money, records, equipment,  
3 supplies and other property directly related to the collection,  
4 analysis and dissemination of health information data pursuant  
5 to the Health Information System Act shall be transferred from  
6 the New Mexico health policy commission to the department of  
7 health; and

8 B. all contracts directly related to the  
9 collection, analysis and dissemination of health information  
10 data pursuant to the Health Information System Act shall be  
11 binding and effective on the department of health.