

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 189

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

AN ACT

RELATING TO HEALTH CARE INFORMATION; REQUIRING THE DEVELOPMENT  
OF A PLAN FOR THE INTEROPERABILITY OF ELECTRONIC HEALTH RECORDS  
ACROSS HEALTH CARE PROVIDERS STATEWIDE; REQUIRING PARTICIPATION  
IN A STATEWIDE INTEROPERABLE INTEGRATED HEALTH INFORMATION  
EXCHANGE; REPEALING A SECTION OF THE ELECTRONIC HEALTH RECORDS  
ACT.

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

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

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

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

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underscoring material = new  
[bracketed material] = delete

1 "24-14B-3. DEFINITIONS.--As used in the Electronic  
2 [~~Medical~~] Health Records Act:

3 A. "demographic information" means information that  
4 identifies the individual who is the subject of the health care  
5 information, including the individual's name, date of birth and  
6 address and other information necessary to identify the  
7 individual, that may be used to identify the individual or that  
8 associates the individual with the individual's electronic  
9 [~~medical~~] health record;

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

13 C. "electronic" means relating to technology having  
14 electrical, digital, magnetic, wireless, optical,  
15 electromagnetic or similar capabilities;

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

19 E. "electronic health record system" means a system  
20 that meets requirements specified in Section 8 of this 2017  
21 act, national requirements for certification pursuant to the  
22 federal Health Information Technology for Economic and Clinical  
23 Health Act, enacted as part of the federal American Recovery  
24 and Reinvestment Act of 2009, and federal regulations adopted  
25 pursuant to the Health Information Technology for Economic and

1 Clinical Health Act;

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

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

8                   (1) preventive, diagnostic, therapeutic,  
9 rehabilitative, maintenance or palliative care and counseling;

10                   (2) services, assessments or procedures that  
11 are concerned with the physical or mental condition or  
12 functional status of an individual or that affect the structure  
13 or function of the body of an individual; and

14                   (3) the sale or dispensing of a drug, a  
15 device, a piece of equipment or other item in accordance with a  
16 prescription;

17           ~~[G.]~~ H. "health care group purchaser" means a  
18 person who is licensed, certified or otherwise authorized or  
19 permitted by the New Mexico Insurance Code to pay for or  
20 purchase health care on behalf of an identified individual or  
21 group of individuals, regardless of whether the cost of  
22 coverage or services is paid for by the purchaser or the  
23 persons receiving coverage or services;

24           ~~[H.]~~ I. "health care information" means any  
25 information ~~[whether oral or]~~ recorded in any form or medium,

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1 related to the past, present or future physical or mental  
2 health or condition of an individual; the provision of health  
3 care to an individual; or the past, present or future payment  
4 for the provision of health care to an individual;

5 ~~[F.]~~ J. "health care institution" means an  
6 institution, facility or agency licensed, certified or  
7 otherwise authorized or permitted by law to provide health care  
8 in the ordinary course of business;

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

20 L. "health information organization" means an  
21 organization that oversees, governs and facilitates the  
22 exchange of health care information among providers that are  
23 not related health care entities to improve coordination of  
24 patient care and efficiency of health care delivery;

25 ~~[K.]~~ M. "information" means data, including text,

1 images, sounds and codes and computer programs, software and  
2 databases;

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

7 N. "interoperable" means capable of:

8 (1) exchanging electronic health information  
9 with, and using electronic health information from, other  
10 systems without special effort on the part of the user;

11 (2) enabling users to send, receive, find and  
12 use electronic health information in a manner that is  
13 appropriate, secure, timely and reliable to support informed  
14 decision-making;

15 (3) supporting critical public health  
16 functions such as real-time case reporting, disease  
17 surveillance and disaster response; and

18 (4) supporting data aggregation for research;

19 O. "interoperable qualified electronic health  
20 record" means a qualified electronic health record that:

21 (1) securely exchanges health information with  
22 another electronic health record system;

23 (2) allows authorized users access to the  
24 entirety of a patient's data from any and all qualified  
25 electronic health records without restriction, in one location,

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1 without the need for multiple interfaces; or

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

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

15 Q. "provider" means:

16 (1) a health care institution;  
17 (2) an individual or group of individuals  
18 licensed, certified or otherwise authorized to deliver health  
19 care in the ordinary course of business; or

20 (3) a laboratory;

21 R. "qualified electronic health record" means an  
22 electronic health record that includes patient demographic and  
23 clinical health information and that has the capacity to:

24 (1) provide clinical decision support;

25 (2) support provider order entry;

1                   (3) capture and query information relevant to  
 2 health care quality; and

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

5                   [M.] S. "record" means information that is  
 6 inscribed on a tangible medium or that is stored in an  
 7 electronic or other medium and is retrievable in perceivable  
 8 form

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

18                   [O.] T. "treatment" means the provision,  
 19 coordination or management of health care and related services  
 20 by one or more providers, including the coordination or  
 21 management of health care by a provider with a third party;  
 22 consultation between providers relating to an individual; or  
 23 the referral of an individual for health care from one provider  
 24 to another."

25                   **SECTION 3.** Section 24-14B-4 NMSA 1978 (being Laws 2009,

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1 Chapter 69, Section 4) is amended to read:

2 "24-14B-4. ELECTRONIC ~~[MEDICAL]~~ HEALTH RECORDS--  
3 ELECTRONIC SIGNATURES--LEGAL RECOGNITION.--If a law or rule  
4 requires a ~~[medical]~~ health record to be in writing, or if a  
5 law or rule requires a signature pertaining to a ~~[medical]~~  
6 health record, an electronic ~~[medical]~~ health record or an  
7 electronic signature satisfies that law or rule, except for a  
8 court rule."

9 SECTION 4. Section 24-14B-5 NMSA 1978 (being Laws 2009,  
10 Chapter 69, Section 5) is amended to read:

11 "24-14B-5. RETENTION OF ELECTRONIC ~~[MEDICAL]~~ HEALTH  
12 RECORDS.--

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

16 (1) accurately reflects the ~~[medical]~~ health  
17 record; and

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

20 B. If a law or rule requires a ~~[medical]~~ health  
21 record to be presented or retained in its original form or  
22 provides consequences if the ~~[medical]~~ health record is not  
23 presented or retained in its original form, that law or rule is  
24 satisfied by an electronic ~~[medical]~~ health record retained in  
25 accordance with Subsection A of this section.



1           C. A ~~[medical]~~ health record retained as an  
2 electronic ~~[medical]~~ health record in accordance with  
3 Subsection A of this section satisfies a law or rule requiring  
4 a person to retain a ~~[medical]~~ health record for evidentiary,  
5 audit or other purposes."

6           SECTION 5. Section 24-14B-6 NMSA 1978 (being Laws 2009,  
7 Chapter 69, Section 6) is repealed and a new Section 24-14B-6  
8 NMSA 1978 is enacted to read:

9           "24-14B-6. [NEW MATERIAL] USE AND DISCLOSURE OF  
10 ELECTRONIC HEALTH CARE INFORMATION AND ELECTRONIC HEALTH  
11 RECORDS.--

12           A. A provider, health information organization,  
13 health information exchange or group health purchaser shall not  
14 use or disclose health care information in an individual's  
15 electronic health record to another person without the consent  
16 of the individual, except as allowed by state or federal law.

17           B. With respect to electronic health records under  
18 its care, custody and control, a health information  
19 organization operating a health information exchange shall:

20                   (1) authenticate and audit access to such  
21 records; and

22                   (2) maintain an audit log of persons obtaining  
23 access to such records, which audit log shall contain at a  
24 minimum:

25                           (a) the identity of the person obtaining

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1 access to such records;

2 (b) the identity of the individual whose  
3 records were accessed;

4 (c) the specific records accessed; and

5 (d) the date and time that each record  
6 was accessed.

7 C. A health information organization operating a  
8 health information exchange shall make the audit log required  
9 in Subsection B of this section available to the individual  
10 whose electronic health record has been disclosed or to such  
11 individual's authorized representative; provided that the audit  
12 log shall only contain information related to the electronic  
13 health record of such individual. The audit log shall be made  
14 available annually to the requester for a fee not to exceed  
15 twenty-five cents (\$.25) per page as established by the  
16 department of health, or for no fee if transmitted  
17 electronically.

18 D. A health information organization operating a  
19 health information exchange shall provide a mechanism for an  
20 individual or the individual's authorized representative to  
21 request the health information organization in writing to deny  
22 access to the entirety of the individual's current or past  
23 electronic health records under any circumstances, including an  
24 emergency. A health information organization or a health  
25 information exchange shall comply with the written request to

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1 deny access within thirty days of its receipt.

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

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

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

17 (2) except as provided in the Electronic  
18 Health Records Act, to a health information organization or a  
19 health information exchange for the development and operation  
20 of the health information exchange or a statewide interoperable  
21 integrated health information exchange."

22 SECTION 6. A new section of the Electronic Health Records  
23 Act is enacted to read:

24 "[NEW MATERIAL] DUTY OF HEALTH INFORMATION ORGANIZATION OR  
25 HEALTH INFORMATION EXCHANGE--DATA SECURITY.--A health

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1 information organization or a health information exchange that  
2 collects, transmits, disseminates, accesses or reports health  
3 care information pursuant to the Electronic Health Records Act  
4 shall comply with all applicable state and federal law,  
5 including secure electronic data submission requirements."

6 SECTION 7. Section 24-14B-8 NMSA 1978 (being Laws 2009,  
7 Chapter 69, Section 8) is amended to read:

8 "24-14B-8. OUT-OF-STATE DISCLOSURES.--A disclosure  
9 otherwise permissible under the Electronic ~~[Medical]~~ Health  
10 Records Act may be made to providers, health care group  
11 purchasers, health ~~[care institutions]~~ information  
12 organizations or health information exchanges ~~[or record~~  
13 ~~locator services]~~ located or operating outside of the state."

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

16 "[NEW MATERIAL] STATEWIDE INTEROPERABLE INTEGRATED HEALTH  
17 INFORMATION EXCHANGE PLAN--REPORTING.--

18 A. No later than June 30, 2018, the secretary of  
19 health shall develop a plan for implementing a statewide  
20 interoperable integrated health information exchange in  
21 accordance with federal guidelines for shared data sets and  
22 interoperability.

23 B. No later than September 1, 2018, the secretary  
24 of health shall make a written report and, upon request, an  
25 oral report, regarding the details of the plan and provide the

1 report to the governor, the legislative health and human  
2 services committee and the legislative finance committee. The  
3 report shall include recommendations for:

4 (1) achieving maximum cooperation among  
5 providers in supplying data to the statewide interoperable  
6 integrated health information exchange and accessing the system  
7 when providing health care. These recommendations shall  
8 include a recommendation as to the most effective incentives or  
9 penalties to ensure participation;

10 (2) information technology system and system  
11 operator capabilities;

12 (3) funding for the full establishment,  
13 integration and operation of the statewide interoperable  
14 integrated health information exchange;

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

18 (5) removing financial and telecommunications  
19 access barriers to ensure that providers that are single- or  
20 small-group proprietors or that are located in rural and  
21 frontier areas are able to participate fully;

22 (6) increasing statewide interoperable  
23 integrated health information exchange efficiency and quality  
24 of outcomes;

25 (7) improving providers' ability to avoid

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1 adverse events; and

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

4 C. At a minimum, the secretary of health shall  
5 invite representatives from the following entities to  
6 participate in the development of the plan for a statewide  
7 interoperable integrated health information exchange:

8 (1) the human services department;  
9 (2) the office of superintendent of insurance;  
10 (3) the interagency benefits advisory  
11 committee;

12 (4) the corrections department;  
13 (5) an entity with expertise in health  
14 information exchanges;

15 (6) the New Mexico association of  
16 radiologists;

17 (7) the New Mexico medical society;  
18 (8) laboratories whose principal places of  
19 business are located in the state;

20 (9) health insurers operating in the state;  
21 (10) the New Mexico primary care association;  
22 (11) the behavioral health providers  
23 association of New Mexico;

24 (12) the New Mexico hospital association;  
25 (13) the New Mexico pharmacists association;

1 and

2 (14) the New Mexico dental association.

3 D. No later than September 1, 2018, the secretary  
4 of health shall designate one or more health information  
5 organizations or health information exchanges to implement a  
6 statewide interoperable integrated health information  
7 exchange."

8 SECTION 9. A new section of the Electronic Health Records  
9 Act is enacted to read:

10 "[NEW MATERIAL] LEVERAGING FEDERAL MATCHING FUNDS--  
11 REPORTING.--

12 A. Beginning in 2017 and no later than each  
13 September 1, the secretary of human services shall make an  
14 annual written report to the legislative finance committee and  
15 the legislative health and human services committee on the  
16 status of:

17 (1) efforts to apply for all available federal  
18 matching funds to promote, establish, develop, administer and  
19 sustain a statewide interoperable integrated health information  
20 exchange; and

21 (2) efforts to obtain allowable bona fide  
22 donations to the state to be used for the state's portion of  
23 the matched funds.

24 B. The secretary of human services shall make the  
25 annual written report required by Subsection A of this section

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1 for as long as federal matching funds are available for such  
2 purpose. A copy of each annual report shall be transmitted to  
3 the legislative council service library."

4 SECTION 10. Section 24-14B-9 NMSA 1978 (being Laws 2009,  
5 Chapter 69, Section 9) is amended to read:

6 "24-14B-9. EXCLUSION OF CERTAIN INSURERS.--Nothing in the  
7 Electronic [~~Medical~~] Health Records Act shall be construed to  
8 apply to a person operating as a property and casualty insurer,  
9 workers' compensation insurer, life insurer, long-term care  
10 insurer or disability income insurer."

11 SECTION 11. Section 24-14B-10 NMSA 1978 (being Laws 2009,  
12 Chapter 69, Section 10) is amended to read:

13 "24-14B-10. STATE AGENCY--ELECTRONIC [~~MEDICAL~~] HEALTH  
14 RECORDS.--If a state agency requires the use of electronic  
15 [~~medical~~] health records for any type of health care or health  
16 coverage program, the agency shall allow a provider, health  
17 care group purchaser, [~~health care institution~~] health  
18 information exchange [~~provider, record locator service~~] or any  
19 other person to use any public, proprietary or open source  
20 hardware or software; provided that the hardware or software  
21 complies with federal interoperability-certified laws or  
22 rules."

23 SECTION 12. A new section of the Health Care Purchasing  
24 Act is enacted to read:

25 "[NEW MATERIAL] PARTICIPATION IN STATEWIDE INTEROPERABLE



1 INTEGRATED HEALTH INFORMATION EXCHANGE.--The publicly funded  
2 health care agencies, political subdivisions and other persons  
3 providing health care benefits through the consolidated  
4 purchasing single process shall require each entity providing  
5 group health coverage, including any form of self-insurance  
6 offered, issued or renewed under the Health Care Purchasing Act  
7 on or after January 1, 2019, to participate in a statewide  
8 interoperable integrated health information exchange as  
9 determined by the secretary of health pursuant to the  
10 Electronic Health Records Act."

11 SECTION 13. A new section of the Medicaid Provider Act is  
12 enacted to read:

13 "[NEW MATERIAL] PARTICIPATION IN STATEWIDE INTEROPERABLE  
14 INTEGRATED HEALTH INFORMATION EXCHANGE--OPPORTUNITY TO PROVIDE  
15 INFORMED CONSENT.--

16 A. For medicaid-related services to be rendered on  
17 or after January 1, 2019, the department shall require each  
18 managed care organization operating under contract with the  
19 department to participate in a statewide interoperable  
20 integrated health information exchange as determined by the  
21 secretary of health pursuant to the Electronic Health Records  
22 Act.

23 B. The secretary shall adopt and promulgate rules  
24 to modify the medicaid enrollment process to require each  
25 managed care organization operation under contract with the

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1 department for medicaid services to offer to each medicaid  
2 applicant and recipient the opportunity to give informed  
3 consent to the department and to the managed care organization  
4 in which the recipient is enrolled to access the recipient's  
5 medical record. The recipient's medical record may include  
6 information relating to human immunodeficiency virus, genetic  
7 information, sexually transmitted infections, alcohol and drug  
8 treatment and behavioral health treatment."

9 SECTION 14. 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."

19 SECTION 15. REPEAL.--Section 24-14B-2 NMSA 1978 (being  
20 Laws 2009, Chapter 69, Section 2) is repealed.