

LFC Requestor: KLUNDT, Kelly

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: Senate

Category: Bill

Number: 463

Type: Introduced

Date (of THIS analysis): 2/24/2025

Sponsor(s): Martin Hickey

Short Title: DEFINITION & ACCESS TO HEALTH DATA

Reviewing Agency: Agency 665 - Department of Health

Analysis Contact Person: Arya Lamb

Phone Number: 505-470-4141

e-Mail: Arya.Lamb@doh.nm.gov

Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

Senate Bill 463 (SB463) would make changes to the Health Information Systems Act. The bill would change the definition of "record-level data" from "a medical record that contains unique and nonaggregated data elements that relate to a single identifiable individual" to "a medical record that contains unique identifying data, including a name, personal address, personal phone number, social security number, patient record or other unique identifying data that could be used to identify a specific person".

The second change adds two new provisions to the access and confidentiality sections of the Health Information Systems Act (HIS Act).

In the access section is the new material:

- Health care claims information and data that are related to payer sources shall be provided to the staff of the legislative finance committee if the information or data does not reveal the personal information of any patient that is included in the information or the data.

In the confidentiality section of the HIS Act, a new provision would be added:

- Health care claims information and data that are related to payer sources that are provided to the staff of the legislative finance committee shall have all confidential record-level data removed, including identifiable patient information, and the department shall replace the confidential record-level data with a unique code to identify each unique patient.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

SB463 would modify the record level data definition from a more general type of identifying information to more specifically define types of identifier data elements, more akin to how HIPAA rules define protected health information. There does not appear to be a significant substantive difference between these two versions.

SB463 provides that, “health care claims information and data that are related to payer sources shall be provided to the staff of the legislative finance committee, as long as the information or data does not reveal the personal information of any patient that is included in the information or the data”. This change would allow any legislative finance committee staff access to the Department’s All Payer Claims Database (APCD) and Hospital Inpatient Discharge Data (HIDD), which contains record level information about every patient that has stayed a minimum of 24 hours in a non-federal hospital in New Mexico. This proposition is concerning for several reasons.

State health data agencies and public health authorities routinely manage sensitive health care data and protect the privacy and confidentiality of personal health data as a key feature of their work. The public counts on the legislature to provide protections controlling data access and release provisions, but health departments have proven that they can balance privacy concerns with the public good that health care data provide. Agencies like DOH and HCA (both named exclusively in the HIS Act) recognize the importance of protecting individual privacy and maintaining the quality and integrity of health data. The CDC has played a consistent role in supporting strong federal and state public health information privacy practices and legal protections. State health departments access, analyze, and pull reports for the public, including the legislature to carefully secure the private health information of New Mexicans, while also providing aggregated data for research and policy development. The HIS Act is clear in designating only DOH and the Health Care Authority with direct access to record level data.

SB463 attempts to get around the privacy concerns inherent to providing record level access to legislative staff by ensuring health care claims information excludes all confidential record-level data, including identifiable patient information, and the department shall replace the confidential record-level data with a unique code to identify each unique patient. Utilizing a unique code to identify each patient may itself violate federal HIPAA rule 45 CFR Section 164.514(C), which effectively prohibits the disclosure of unique identifying codes for the potential use of that information. HIPAA only allows DOH to release HIS Act data with unique identifying codes for the purpose of allowing the Department, and no other entities, to re-identify such patients’ information.

To provide ongoing access to the APCD data, additional vendor support would be required to develop a specialized portal which would comply with the law, along with dedicated staff time to manage and update the data set as new information becomes available. Additionally, the LFC would need specialized training to interpret and analyze the payer data effectively. The cost for these changes are currently not known, but likely significant.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?
 Yes No

The definition of "access" in this context is crucial in determining how to address this request. If "access" implies that NMDOH must create a specific dataset for the Legislative Finance Committee (LFC) to use, then an infrastructure would need to be established to support this request. This would include developing a system for updating

and refreshing the data as new information becomes available. Additionally, the LFC would require training on how to use and interpret the data effectively.

Is this proposal related to the NMDOH Strategic Plan? Yes No

- Goal 1:** We expand equitable access to services for all New Mexicans
- Goal 2:** We ensure safety in New Mexico healthcare environments
- Goal 3:** We improve health status for all New Mexicans
- Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?
 Yes No N/A
- If there is an appropriation, is it included in the LFC Budget Request?
 Yes No N/A
- Does this bill have a fiscal impact on NMDOH? Yes No

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

2D: "Personal information" is not defined. "Personal information" should not be the same definition as "record level data" found throughout the document.

In 1G the definition for "record level data" does not cover detailed dates information and five-digit zip codes, which are indirect identifiers under HIPPA. Other identifiers that are included in the data are not listed in the definition of "record level data" such as provider, payer, and employer data.

Medicare fee for services is not a sharable data set with non-state agencies under the terms of the CMS data user agreement. This does not allow the State Legislative Finance Committee to have access to it.

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?

Yes No

- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No

8. DISPARITIES ISSUES

None

9. HEALTH IMPACT(S)

None

10. ALTERNATIVES

A potential alternative could be to submit a data request to NMDOH, similar to what most other states with an APCD currently do.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If SB463 is not enacted, then changes to the Health Information Systems Act will not be made.

12. AMENDMENTS

None