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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/07/17  
 SPONSOR SJC LAST UPDATED 3/06/17 HB \_\_\_\_\_  
 SHORT TITLE Health Info Exchange Liability and Planning SB 189/SJCS  
 ANALYST Chilton

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$63.4		\$63.4	Non-recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public School Insurance Authority (PSIA)  
 Department of Information technology (DoIT)  
 Department of Health (DOH)  
 Office of the Superintendent of Insurance (OSI)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of the SJC Substitute

The Senate Judiciary Committee substitute for Senate Bill 189 requires the Secretary of the Department of Health to make plans by June 30, 2018 for instituting a comprehensive electronic health record by September 1, 2018, hiring a contractor by that time to make available information gathered from the health records of providers throughout the state on individual patients and making them available to any provider treating a given patient in an “interoperable” manner.

The bill amends the Electronic Medical Records Act, Section 24-14B NMSA 1978 in a number of ways, renaming it the “Electronic Health Records Act” and changing and adding definitions as follows:

- It eliminates Section 24-14B-2, which specified a purpose for the act,
- It defines “electronic health record (EHR) system” as a system complying with all state and federal regulations, including the 2009 federal Health Information Technology for

Economic and Clinical Health Act,”

- Removes the term “regional health information organization” from the definition of “health information exchange,”
- Adds a definition of “health information organization,” as one that facilitates the exchange of patient information from one unrelated health care provider to another,
- Adds the concept and definition of “interoperability,” including capability of exchanging information from one user to another without the intervention of either user, allowing users to inform themselves of previous care to enable current care, supporting public health applications such as disaster response, and supporting medical and public health research,
- Defines “interoperative qualified electronic health system” as allowing access to all of a patient’s health records securely and without restriction, and “qualified electronic health record” as providing clinical decision support (i.e., suggesting types of diagnostic and therapeutic maneuvers suggested by patient characteristics), supporting order entry (e.g., writing prescriptions, ordering lab work or immunizations) and exchanging and integrating electronic health information from other sources,
- Defines “laboratory” and “provider” in usually accepted ways, and
- Removes the definition of “record locator service”.

Senate Bill 189 would repeal Section 24-14B-6 NMSA 1978 on the “Use and disclosure of electronic health care information” with largely similar material. Requirements for following state and federal law in disclosure of health record information would be retained, as would keeping and making available information in an audit log as to what entities had accessed the information. Patients or their authorized representatives would be able to obtain copies of the audit log at a nominal charge if on paper and without charge if obtained electronically.

It would replace the patient’s right to exclude his/her protected health information from the exchange with an ability to “deny access” to that information. Providers accessing information would continue to need to ascertain that the access was for the treatment of the patient. Emergency access could be provided if lack of the information might threaten a patient’s life.

Other state and federal laws would apply with respect to confidentiality and data security. Disclosures of patient information could be made across state lines to treating providers.

The DOH secretary would need to report to the governor and the legislative health and human services committee by June 30, 2018 on means of achieving “maximum cooperation” of providers with the exchange, including incentives and penalties, especially for small and rural providers. The report would also have to specify the funding needed for the exchange’s establishment and continuation, and its ability to help providers avoid patient adverse events.

Those involved in the development of the plan must include at least the human services department (HSD), the office of the superintendent of insurance, the interagency benefits advisory committee, the corrections department, an entity expert in health information exchanges, provider groups (radiologists, physicians, behavioral health providers, dentists, and pharmacists are specified), medical laboratories, the New Mexico primary care association and hospital association.

HSD would be required to report annually on its efforts to maximize federal matching funds and

donations for the purpose of establishing and maintaining the exchange.

All insurers and entities providing health care coverage, including Medicaid coverage, would be required to participate in the exchange, but providers of other types of insurance (e.g., auto, property, workers' compensation) would not.

Medicaid managed care organizations (MCOs) would be required to offer each Medicaid applicant the opportunity, with informed consent, to make access to his/her medical record available to HSD and to the recipient's Medicaid MCO, including to such sensitive areas as behavioral health treatment, human immunodeficiency virus infection, and alcohol and drug treatment.

The term "electronic medical record" would be replaced by "electronic health record" throughout the Act.

### **FISCAL IMPLICATIONS**

No appropriation is made in the bill.

DOH indicates that staff time would be required to develop the plan, and suggests that an information technology project manager would be best suited for collating the necessary information; his/her salary for six months is estimated to be \$63,394.

DOH continues that "Staff time will be needed to research and draft an implementation plan. The project manager would need access to an office, phone, and computer. There may also be a need for travel; both in-state (to speak with NMHIC) and out-of-state (to speak with subject matter experts in the field of health information exchange)."

DoIT indicates no costs for the planning phase, but states that its staff time required later in the process might impose additional costs.

### **SIGNIFICANT ISSUES**

The committee substitute replaces a single word, "and" (page 6, line 1) with "or" in the definition of "interoperable qualified electronic health record (EHR)", appearing to allow an EHR to qualify if it merely failed to block access to other qualified EHRs without having also to securely exchange health information or allow unfettered access to qualified users.

OSI states that "the law permits the exchange of health information that will assist providers and health insurers in evaluating and limiting the rise of health care costs."

A start at the health information exchange envisioned under Senate Bill 189 was made in 2010, when Lovelace Clinic Foundation Research was awarded a federal grant to develop a health information exchange. At present, that system has not yet become either state-wide or interoperable. DOH states that it uses the Lovelace exchange in collecting data on notifiable diseases to transmit to the Centers for Disease and Prevention.

HSD expresses concern about privacy requirements as they may impact this bill:

The federal Health Information Technology for Economic and Clinical Health (HITECH)

Act expanded the current federal protections for the privacy and security of protected health information (PHI) under the federal Health Insurance Portability and Accountability Act (HIPAA). The HITECH Act requires business associates comply with HIPAA, an obligation that originally was restricted to covered entities. The HITECH Act also extends business associate status to HIEs (or HIOs as defined in SB189) and authorizes state attorneys general to enforce HIPAA by initiating lawsuits on behalf of victims of security breaches.

The new Section 7 proposed by SB189 may conflict with the federal HITECH Act and the federal HIPAA Act. According to the United States Department of Health and Human Services,

## **OTHER SUBSTANTIVE ISSUES**

DoIT raises the following issues:

- This bill lacks clarity regarding which data or records would be stored centrally versus which would be passed through an exchange without storage.
- It is unclear why this bill removes references to record locator services as some form of this type of service would be necessary to facilitate accurate exchange and association of electronic health records.
- Depending upon the telecommunication requirements needed to support timely exchange of electronic health records with providers across the State, including the most remote reaches of New Mexico, there may be additional costs and/or technical issues that DoIT would have to help address to ensure communication availability.
- This bill does not address data quality and addresses data security only briefly. Given the importance of these topics, additional language expanding on them is recommended.
- It is recommended that Section 10 (C) be amended to include representatives from DoIT in the development of the plan for the health information exchange. DoIT is required by NMSA 9-27-6 to “develop and implement procedures to standardize data elements, determine data ownership and ensure data sharing among executive agencies”; to this end DoIT has significant experience in sharing information across remote parts of the state, strategic thought and planning among multiple agencies, enterprise view of any implemented solutions and security concerns.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Lovelace Clinic Foundation Research would continue to operate its health exchange (NM Health Information Collaborative) which would provide some, but not all, of the functions envisioned by this legislation.

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