

LFC Requestor: CHENIER, Eric

2025 LEGISLATIVE SESSION  
AGENCY BILL ANALYSIS

Section I: General

Chamber: House

Category: Bill

Number: 430

Type: Introduced

Date (of THIS analysis): 2/20/2025

Sponsor(s): Debra M. Sariñana, Marianna Anaya, Elizabeth “Liz” Thompson, Joanne J. Ferrary

Short Title: Health Data Privacy Act

Reviewing Agency: Agency 665 - Department of Health

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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: HB389, and possibly other bills relating to health data

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act: N/A

### **Section IV: Narrative**

#### **1. BILL SUMMARY**

##### a) Synopsis

House Bill 430 (HB430) proposes to enact the Health Data Privacy Act. The Act would require that any entity (not including a licensed health care provider) in New Mexico that holds, uses, or shares information that relates to a person's health status comply with various data management and confidentiality requirements.

HB430 focuses on health data outside of the HIPAA regulatory structure, which is currently unregulated and unprotected.

Entities as defined by "regulated entities", would be prohibited from "processing" (defined to include collecting, using, accessing, sharing, selling, storing, creating, destroying, disposing, deleting, modifying, etc.) regulated health information of an individual without the consent of the individual, and would require that such processing be limited to what is "strictly necessary" for the regulated entity to provide a product, service, or feature requested.

Regulated entities would be required to process regulated health information "only for the limited time" that the collection of the information is "strictly necessary to provide the product, service or feature", or "as is strictly necessary to provide a communication" by the regulated entity to an individual that "reasonably anticipates the communication".

The bill would impose restrictions on the use of geolocation information, targeted advertising, and other uses of regulated health information.

HB430 contains requirements regarding the ability of individuals to request the deletion of their regulated health information, and to access information concerning the collecting, processing, and use of that information by a regulated entity.

HB430 would create both a private right of action for unspecified/unlimited monetary damages, and the ability for the Attorney General and District Attorneys to sue for injunctive relief and civil monetary penalties of up to \$2,500 per affected individual for each negligent violation, and up to \$7,500 per affected individual for each intentional violation.

Is this an amendment or substitution?  Yes  No

Is there an emergency clause?  Yes  No

b) Significant Issues

HB430 would have consequences for businesses and organizations in New Mexico. HB430 aims to safeguard private health information by assuring that individuals have more control over their data before it is collected, stored, shared or sold to others. The bill would require that any business or other entity that holds, uses, or shares information that relates to a person's health status issue an annual notice to the affected individuals. If an individual rescinds their consent, the entity must delete the data despite previous consent to services. The bill would impose substantial financial penalties for its violation and would create a private right of action to sue for damages, with no specific limit on damages.

HB430 appears to address the multitude of complex, modern privacy concerns related to programs and applications that track and collect personal health information. Companies like Amazon, Meta, and Google collect and sell enormous amounts of user health data, which is not currently subject to HIPAA and is therefore stored and sold to third parties without the knowledge or consent of users. Health data in the non-HIPAA protected category involve organizations that rely on health data as an element of a commercial activity, including data brokers, advertisers, websites, marketers, genetic testing companies, and others. The size of the unregulated world of health data is hard to estimate, but in 2020, there were more than 87,000 health and wellness apps available through the Apple App Store alone. Those apps represent a small fraction of the unregulated health data sphere.

Many of these applications track personal health information and intimate details related to things like a person's health rate, menstruation and ovulation, caloric intake, sleep habits and monitoring, and behavioral health information. These applications can monitor the movements of the user through GPS and currently track vast amounts of information with little-to-no consent required for collection, sharing/ disclosing, or even selling gathered data to other private entities. There is currently no federal or NM law regulating the use, sale, or disclosure of users' personal health data.

"Regulated health information" is defined to include any information that can be linked to an individual or a device that relates to past or present health. Information is deemed to "relate" to health status if "any inference" can be drawn about a person's health status from the information.

"Processing" is defined to include the retention or storage of regulated data. If a regulated entity possesses regulated health data, the regulated entity "processes" that data. "Processing" is also defined to include deletion and destruction, meaning regulated entities would have to obtain consent to either retain or destroy regulated health data.

“Regulated entity” is defined to encompass an entity (that is not a licensed health care provider), that “controls the processing of regulated health information”, meaning entities that collect, retain, create, use, or share data that relates to the health status of a person in New Mexico is bound by the terms of this bill. Regulated entities could include any retailer who sells medical products, attorneys, banks, credit card companies, and smartphone applications, but would exempt “licensed health care providers”. Health care companies that do not fall within the category of “licensed health care providers” would not be exempted and would be required to apply the standards of this statute, in addition to ordinary HIPAA confidentiality requirements.

“Regulated entities” would be allowed to possess regulated health information “for the limited time that the collection of data is strictly necessary to provide the product, service or feature”, which would prevent healthcare providers that are not licensed health care facilities from maintaining a record of services rendered. A regulated entity wanting to retain records for legitimate reasons like the identification of services provided or maintaining a medical history to ensure continuity of care could receive consent by the patient.

## 2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

Yes  No

See “Significant Issues”, above.

- 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

HB430 could impact contracts and agreements entered into by NMDOH.

## **5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP**

This bill may conflict with HB389, which creates a data sharing utility that would gather and share “regulated health information”.

This bill may also conflict with the Health Care Privacy protections of SB404, which proposes to change and update the existing Electronic Medical Records Act.

## **6. TECHNICAL ISSUES**

Are there technical issues with the bill?  Yes  No

There is some concern that the definitions of “process’ or ‘processing’” includes creation, and deletion and destruction. Including deletion and destruction within this definition may cause some confusion if regulated entities would be required (under Section 5 of the bill) to provide affected persons the right to access information that is "processed" by the regulated entity; but it would be impossible to provide access to health information, if the “processing” that the entity engaged in was deletion or destruction of the information.

## **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)**

HB430 could have various impacts on public health. The restrictions on the retention, use, and sharing of regulated health information could serve to protect the privacy of patient health information that should be guaranteed to patients in NM.

HB430 focuses on health data outside of the HIPAA regulatory structure, which is currently unregulated and unprotected.

Unregulated private health data can negatively impact public health by hindering the ability of health departments to accurately monitor disease trends, identify outbreaks, conduct necessary research, and implement effective interventions, as individuals may be hesitant to share sensitive health information due to privacy concerns, potentially leading to incomplete data and hindering public health efforts. Additionally, it can create opportunities for discrimination based on health status if data is improperly accessed or used by third parties.

## **10. ALTERNATIVES**

None noted.

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

If HB430 is not enacted, the Health Data Privacy Act will not be enacted, and the restrictions on the use, retention, and sharing of health information that would be adopted in that statute will not be enacted.

## **12. AMENDMENTS**

None.