

SECOND REGULAR SESSION

SENATE BILL NO. 1049

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Read 1st time February 26, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4863S.011

AN ACT

To repeal section 191.237, RSMo, and to enact in lieu thereof three new sections relating to health information exchanges.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 191.237, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 191.236, 191.237, and 191.238, to read as follows:

191.236. As used in sections 191.236 to 191.238, the following terms shall mean:

(1) "Fine" or "penalty", any civil or criminal penalty or fine, tax, salary or wage withholding, or surcharge established by law or by rule promulgated by a state agency pursuant to chapter 536;

(2) "Health benefit plan", the same meaning as in section 376.1350;

(3) "Health care system", any public or private entity whose function or purpose is the management of, processing of, or enrollment of individuals for or payment for, in full or in part, health care services or health care data or health care information for its participants;

(4) "Health care provider", the same meaning as in section 376.1350;

(5) "Health information organization", any organization that oversees and governs the electronic exchange of individually identifiable information among unaffiliated organizations according to nationally recognized standards. Health information organization does not include:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 **(a) An organized health care arrangement, as defined under the**
20 **Health Insurance Portability and Accountability Act (HIPAA), as**
21 **amended, and its implementing regulations; or**

22 **(b) A research institution that oversees and governs the**
23 **electronic exchange of individually identifiable information among**
24 **unaffiliated organizations for research purposes only;**

25 **(6) "Hospital", the same meaning as in section 197.020;**

26 **(7) "Individual", the person who is the subject of the individually**
27 **identifiable information, not including an inmate, as defined under**
28 **HIPAA, as amended, and its implementing regulations;**

29 **(8) "Individually identifiable information", any information that**
30 **identifies an individual or with respect to which there is a reasonable**
31 **basis to believe the information can be used to identify the individual,**
32 **and includes, without limitation, information created or generated by**
33 **health care providers, health benefit plans, organizations providing**
34 **social services or assessing social determinants of health, and**
35 **organizations that provide services to or on behalf of any of the**
36 **foregoing;**

37 **(9) "Participant", an individual or entity who accesses, uses, or**
38 **discloses individually identifiable information through a health**
39 **information exchange operated by a health information organization,**
40 **and includes, without limitation, health care providers, health benefit**
41 **plans, organizations providing social services or assessing social**
42 **determinants of health, and organizations that provide services to or**
43 **on behalf of any of the foregoing.**

191.237. 1. No law or rule promulgated by an agency of the state of
2 Missouri may impose a fine or penalty against a health care provider, hospital,
3 or health care system for failing to participate in any particular health
4 information organization.

5 2. A health information organization shall not restrict the exchange of
6 state agency data or standards-based clinical summaries for patients for federal
7 Health Insurance Portability and Accountability Act (HIPAA) allowable
8 uses. Charges for such service shall not exceed the cost of the actual technology
9 connection or recurring maintenance thereof.

10 [3. As used in this section, the following terms shall mean:

11 (1) "Fine or penalty", any civil or criminal penalty or fine, tax, salary or
12 wage withholding, or surcharge established by law or by rule promulgated by a

13 state agency pursuant to chapter 536;

14 (2) "Health care system", any public or private entity whose function or
15 purpose is the management of, processing of, or enrollment of individuals for or
16 payment for, in full or in part, health care services or health care data or health
17 care information for its participants;

18 (3) "Health information organization", an organization that oversees and
19 governs the exchange of health-related information among organizations
20 according to nationally recognized standards.]

**191.238. 1. (1) Notwithstanding any other provision of law to the
2 contrary, any participant may disclose, access, or use individually
3 identifiable information through a health information exchange
4 operated by a health information organization under this section and
5 in accordance with applicable federal law, including the Health
6 Insurance Portability and Accountability Act (HIPAA), as amended, and
7 its implementing regulations, without obtaining individual consent or
8 authorization.**

9 **(2) Except as otherwise provided in state or federal law, an
10 individual shall have the right to opt out of having his or her
11 identifiable information accessible through a health information
12 exchange operated by a health information organization under this
13 section.**

14 **(3) A health information organization shall implement policies
15 governing the privacy and security of individually identifiable
16 information that is accessible through the health information exchange.**

17 **(4) All participants in a health information exchange operated
18 by a health information organization under this section shall comply
19 with all policies and procedures of the health information organization
20 with respect to the health information exchange.**

21 **(5) To the extent any provision of state law regarding the
22 confidentiality of any individually identifiable information conflicts
23 with, is contrary to, or is more stringent than the provisions of this
24 section, the provisions of this section shall control with respect to a
25 participant's disclosure, access, or use of that individually identifiable
26 information through a health information exchange operated by a
27 health information organization under this section.**

28 **(6) This section shall not limit, change, or otherwise affect the
29 use or disclosure of individually identifiable information outside of a**

30 health information exchange operated by a health information
31 organization under this section.

32 2. (1) A health information organization shall maintain a written
33 notice of privacy practices for the health information exchange that
34 describes all of the following:

35 (a) The categories of individually identifiable information that
36 are accessible through the health information exchange;

37 (b) The categories of participants who have access to
38 individually identifiable information through the health information
39 exchange;

40 (c) The purposes for which access to individually identifiable
41 information is provided through the health information exchange;

42 (d) Except as otherwise provided in state or federal law, an
43 individual's right to opt out of having his or her individually
44 identifiable information accessible through the health information
45 exchange; and

46 (e) An explanation as to how an individual may opt out of having
47 his or her individually identifiable information accessible through the
48 health information exchange.

49 (2) The notice of privacy practices may reference a publicly
50 accessible website or websites that contain some or all of the
51 information described in subdivision (1) of this subsection, such as a
52 current list of participants and the permitted purposes for accessing
53 individually identifiable information through the health information
54 exchange.

55 (3) A health information organization shall post its current
56 notice of privacy practices on its website in a conspicuous manner.

57 3. (1) A health information organization shall not be considered
58 a health care provider and shall not be subject to liability for damages
59 or costs of any nature, in law or in equity, arising out of chapter 538
60 and the common law of Missouri.

61 (2) Participants in a health information exchange operated by a
62 health information organization under this section shall not be liable
63 in any action for damages or costs of any nature, in law or equity,
64 which result solely from the participant's use or failure to use the
65 health information exchange or the participant's disclosure of
66 individually identifiable information through the health information

67 exchange in accordance with the requirements of this section.

68 (3) No person shall be subject to antitrust or unfair competition
69 liability based solely on participation in a health information exchange
70 operated by a health information organization under this section.

71 (4) All staff, officers, and members of the board of directors of a
72 health information organization that operates a health information
73 exchange under this section, whether temporary or permanent, shall
74 not be subject to and shall be immune from any claim, suit, liability,
75 damages, or any other recourse, civil or criminal, arising from any act
76 or proceeding, decision, or determination undertaken, performed, or
77 reached in good faith and without malice by any such member or
78 members acting individually or jointly in carrying out the
79 responsibilities, authority, duties, powers, and privileges of the offices
80 conferred by law upon them under this section, or any other law, or
81 policies and procedures of the health information exchange, good faith
82 being presumed until proven otherwise, with malice required to be
83 shown by a complainant.

84 (5) Individually identifiable information accessible through a
85 health information exchange operated by a health information
86 organization under this section shall not be subject to discovery,
87 subpoena, or other means of legal compulsion for the release of such
88 individually identifiable information to any person or entity. Such a
89 health information organization shall not be compelled by a request for
90 production, subpoena, court order, or otherwise, to disclose
91 individually identifiable health information.

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