

1 HOUSE BILL 389

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH; AMENDING AND ENACTING SECTIONS OF THE  
12 ELECTRONIC MEDICAL RECORDS ACT TO REQUIRE THAT THE ENTITY  
13 DESIGNATED AS THE STATE'S HEALTH INFORMATION EXCHANGE SHALL  
14 ALSO FUNCTION AS THE STATE'S HEALTH DATA UTILITY.

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

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

19 "24-14B-1. SHORT TITLE.--~~[This act]~~ Chapter 24, Article  
20 14B NMSA 1978 may be cited as the "Electronic Medical Records  
21 Act"."

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

24 "24-14B-3. DEFINITIONS.--As used in the Electronic  
25 Medical Records Act:

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

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

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

14           D. "electronic medical record" means an electronic  
15 record of an individual patient's health care information that  
16 may contain demographic information;

17           E. "electronic signature" means an electronic  
18 sound, symbol or process attached to or logically associated  
19 with a record and executed or adopted by an individual with the  
20 intent to sign the record;

21           F. "health care" means care, services or supplies  
22 related to the health of an individual and includes:

23                   (1) preventive, diagnostic, therapeutic,  
24 rehabilitative, maintenance or palliative care and counseling;

25                   (2) services, assessments or procedures that

1 are concerned with the physical or mental condition or  
2 functional status of an individual or that affect the structure  
3 or function of the body of an individual; and

4 (3) the sale or dispensing of a drug, a  
5 device, a piece of equipment or other item in accordance with a  
6 prescription;

7 G. "health care group purchaser" means a person who  
8 is licensed, certified or otherwise authorized or permitted by  
9 the New Mexico Insurance Code to pay for or purchase health  
10 care on behalf of an identified individual or group of  
11 individuals, regardless of whether the cost of coverage or  
12 services is paid for by the purchaser or the persons receiving  
13 coverage or services;

14 H. "health care information" means any information,  
15 whether oral or recorded in any form or medium, related to the  
16 past, present or future physical or mental health or condition  
17 of an individual; the provision of health care to an  
18 individual; or the past, present or future payment for the  
19 provision of health care to an individual;

20 I. "health care institution" means an institution,  
21 facility or agency licensed, certified or otherwise authorized  
22 or permitted by law to provide health care in the ordinary  
23 course of business;

24 J. "health data utility" means an entity that  
25 combines and shares disparate electronic health care

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1 information sets for purposes that include treatment, care  
2 coordination, quality improvement, population health, managing  
3 public health emergencies or other public and community health  
4 services;

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

18 [K.] L. "information" means data, including text,  
19 images, sounds and codes and computer programs, software and  
20 databases;

21 [L.] M. "provider" means an individual who is  
22 licensed, certified or otherwise authorized or permitted by law  
23 to provide health care in the ordinary course of business or  
24 practice of a profession;

25 [M.] N. "record" means information that is

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1 inscribed on a tangible medium or that is stored in an  
2 electronic or other medium and is retrievable in perceivable  
3 form;

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

13 [O-] P. "treatment" means the provision,  
14 coordination or management of health care and related services  
15 by one or more providers, including the coordination or  
16 management of health care by a provider with a third party;  
17 consultation between providers relating to an individual; or  
18 the referral of an individual for health care from one provider  
19 to another."

20 SECTION 3. Section 24-14B-6 NMSA 1978 (being Laws 2009,  
21 Chapter 69, Section 6, as amended) is amended to read:

22 "24-14B-6. USE AND DISCLOSURE OF ELECTRONIC HEALTH CARE  
23 INFORMATION.--

24 A. A provider, health care institution, health  
25 information exchange, health data utility or health care group

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1 purchaser shall not use or disclose health care information in  
2 an individual's electronic medical record to another person  
3 without the consent of the individual except as allowed by  
4 state or federal law.

5 B. A provider, health care institution or health  
6 care group purchaser may disclose demographic information and  
7 information about the location of an individual's electronic  
8 medical records to a record locator service in accordance with  
9 state or federal law. A provider or health care institution  
10 participating in a health information exchange or a health data  
11 utility using a record locator service shall not have access to  
12 demographic information, information about the location of the  
13 individual's electronic medical records or information in an  
14 individual's electronic medical record except in connection  
15 with the treatment of the individual or as permitted by the  
16 consent of the individual or as otherwise permitted by state or  
17 federal law.

18 C. A record locator service shall maintain an audit  
19 log of persons obtaining access to information in the record  
20 locator service, which audit log shall contain, at a minimum,  
21 information on:

22 (1) the identity of the person obtaining  
23 access to the information;

24 (2) the identity of the individual whose  
25 information was obtained;

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1 (3) the location from which the information  
2 was obtained;

3 (4) the specific information obtained; and

4 (5) the date that the information was  
5 obtained.

6 D. The audit log shall be made available by a  
7 health information exchange or a health data utility on the  
8 request of an individual whose health care information is the  
9 subject of the audit log; provided, however, that the audit log  
10 made available to the individual shall include only information  
11 related to that individual. The audit log shall be made  
12 available to the requesting individual annually for a fee not  
13 to exceed twenty-five cents (\$.25) per page as established by  
14 the department of health.

15 E. A record locator service shall provide a  
16 mechanism under which individuals may exclude their demographic  
17 information and information about the location of their  
18 electronic medical records from the record locator service. A  
19 person operating a record locator service, a health data  
20 utility or a health information exchange that receives an  
21 individual's request to exclude all of the individual's  
22 information from the record locator service is responsible for  
23 removing that information from the record locator service  
24 within thirty days. An individual's request for exclusion of  
25 information shall be in writing and shall include a waiver of

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1 liability for any harm caused by the exclusion of the  
2 individual's information.

3 F. When information in an individual's electronic  
4 medical record is requested using a record locator service, a  
5 health data utility or a health information exchange:

6 (1) the requesting provider or health care  
7 institution shall warrant that the request is for the treatment  
8 of the individual, is permitted by the individual's written  
9 authorization or is otherwise permitted by state or federal  
10 law; and

11 (2) the person disclosing the information may  
12 rely upon the warranty of the person making the request that  
13 the request is for the treatment of the individual, is  
14 permitted with the consent of the individual or is otherwise  
15 permitted by state or federal law.

16 G. Notwithstanding any other provision of law,  
17 information in an individual's electronic medical record may be  
18 disclosed:

19 (1) to a provider that has a need for  
20 information about the individual to treat a condition that  
21 poses an immediate threat to the life of any individual and  
22 that requires immediate medical attention;

23 (2) except as provided in the Electronic  
24 Medical Records Act, to a record locator service, a health data  
25 utility or a health information exchange for the development



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1 and operation of the record locator service, ~~[and]~~ the health  
2 data utility or the health information exchange; ~~[and]~~ or

3 (3) to a provider, health care institution or  
4 health care group purchaser for treatment, payment or health  
5 care operation activities, in compliance with the federal  
6 Health Insurance Portability and Accountability Act of 1996 and  
7 the regulations promulgated pursuant to that act, and if  
8 applicable, in compliance with 42 U.S.C. Section 290dd-2 and  
9 the regulations promulgated pursuant to that section.

10 H. For the purposes of this section, "health care  
11 operation activities" includes administrative, financial, legal  
12 and quality improvement activities of a covered entity that are  
13 necessary to conduct business and to support the core functions  
14 of treatment and payment and are limited to the activities  
15 listed in the definition of "health care operations" at 45  
16 C.F.R. 164.501."

17 SECTION 4. Section 24-14B-7 NMSA 1978 (being Laws 2009,  
18 Chapter 69, Section 7) is amended to read:

19 "24-14B-7. LIABILITY.--If an individual requests to  
20 exclude all of the individual's information from the record  
21 locator service pursuant to Subsection E of Section ~~[6 of the~~  
22 ~~Electronic Medical Records Act]~~ 24-14B-6 NMSA 1978, the record  
23 locator service, health data utility, health information  
24 exchange, health care institution or provider shall not be  
25 liable for any harm to the individual caused by the exclusion

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1 of the individual's information."

2 SECTION 5. Section 24-14B-8 NMSA 1978 (being Laws 2009,  
3 Chapter 69, Section 8) is amended to read:

4 "24-14B-8. OUT-OF-STATE DISCLOSURES.--A disclosure  
5 otherwise permissible under the Electronic Medical Records Act  
6 may be made to providers, health care group purchasers, health  
7 care institutions, health data utilities, health information  
8 exchanges or record locator services located or operating  
9 outside of the state."

10 SECTION 6. Section 24-14B-10 NMSA 1978 (being Laws 2009,  
11 Chapter 69, Section 10) is amended to read:

12 "24-14B-10. STATE AGENCY--ELECTRONIC MEDICAL RECORDS.--If  
13 a state agency requires the use of electronic medical records  
14 for any type of health care or health coverage program, the  
15 agency shall allow a health care group purchaser, health care  
16 institution, health data utility, health information exchange,  
17 provider, record locator service or any other person to use any  
18 public, proprietary or open source hardware or software;  
19 provided that the hardware or software complies with federal  
20 interoperability-certified laws or rules."

21 SECTION 7. A new section of the Electronic Medical  
22 Records Act is enacted to read:

23 "[NEW MATERIAL] SELECTION OF STATE HEALTH DATA UTILITY.--  
24 The entity designated as the state's health information  
25 exchange shall also function as the state's health data

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