



Tennessee Senate

PUBLIC CHAPTER NO. 931

SENATE BILL NO. 2012

By Reeves

Substituted for: House Bill No. 2011

By Vaughan, Moody, Hazlewood, Gary Hicks, Burkhart, Towns

AN ACT to amend Tennessee Code Annotated, Title 8; Title 47; Title 56; Title 63 and Title 68, relative to health records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 2, Part 1, is amended by adding the following as a new section:

(a) A healthcare professional subject to this title who is considered a business associate, as that term is defined in 45 CFR § 160.103, shall comply with:

(1) The Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) and standards for privacy of individually identifiable health information required by 45 CFR Parts 160 and 164; and

(2) Federal laws regulating information blocking, as that term is defined in 45 CFR § 171.103.

(b) Notwithstanding another law to the contrary, except as provided in subsection (c), a healthcare provider requesting a medical laboratory test for a patient shall not engage in information blocking as described in 42 U.S.C. § 300jj-52.

(c) The following reports, test results, and any other related results must not be disclosed by a designated entity, as defined under § 68-29-103, to a patient as part of the patient's electronic health record until seventy-two (72) hours after the results are finalized, unless the healthcare provider directs the release of the results before the end of that seventy-two-hour period:

(1) Pathology reports or radiology reports that have a reasonable likelihood of showing a finding of new or recurring malignancy;

(2) Tests that could reveal genetic markers;

(3) A positive HIV test, except that this section does not prevent the disclosure of HIV test results, including viral load and CD4 count test results, to a patient living with HIV by secure internet website or other electronic means if the patient has previously been informed about the results of a positive HIV test pursuant to the requirements of this section; or

(4) Presence of antigens indicating a hepatitis infection.

(d) This section does not apply to a person or entity that is licensed under this title or title 68.

SECTION 2. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

(a) A business associate, as that term is defined in 45 CFR § 160.103, shall comply with:

(1) The Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) and standards for privacy of individually identifiable health information required by 45 CFR Parts 160 and 164; and

(2) Federal laws regulating information blocking, as that term is defined in 45 CFR § 171.103.

(b) The attorney general and reporter may institute an action for injunctive relief to restrain a violation of subsection (a).

(c)(1) In addition to the injunctive relief provided in subsection (b), the attorney general and reporter may institute an action for civil penalties against a business associate for a violation of subsection (a). A civil penalty assessed under this section must not exceed:

(A) Five thousand dollars (\$5,000) for each violation committed negligently that occurs in one (1) year, regardless of how long the violation continues during that year;

(B) Twenty-five thousand dollars (\$25,000) for each violation committed knowingly or intentionally that occurs in one (1) year, regardless of how long the violation continues during that year; or

(C) Two hundred fifty thousand dollars (\$250,000) for each violation in which the covered entity knowingly or intentionally committed the violation for financial gain.

(2) If the court in a pending action under this subsection (c) finds that the violations occurred with a frequency as to constitute a pattern or practice, then the court may assess additional civil penalties for each violation.

(d) In determining the amount of a penalty imposed under subsection (c), the court shall consider:

(1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure or blocking of information;

(2) The business associate's compliance history;

(3) Whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) The amount necessary to deter a future violation;

(5) The business associate's efforts to correct the violation;

(6) The size and geographic location of the business associate; and

(7) The financial impact the penalty would have on the business associate's financial viability and ability to adequately serve an underserved community or population.

(e) This section does not apply to:

(1) Persons or entities licensed under title 63 or this title; or

(2) A body, authority, board, bureau, commission, district, or agency of this state or a political subdivision of this state.

(f) This section does not apply to a person or entity that is licensed under this title or title 63.

SECTION 3. Tennessee Code Annotated, Title 47, Chapter 25, Part 1, is amended by adding the following as a new section:

(a) A business associate shall not enter into a contract with a person or entity that includes terms that restrict a patient or the patient's representative from accessing the patient's electronic health records. Any contract clause or provision that restricts a patient's access to the patient's electronic health records is void and unenforceable.

(b) It is an unlawful restraint of trade or commerce for a person to intentionally violate federal laws regulating information blocking, as that term is defined in 45 CFR § 171.103, and such violations are subject to the same civil and criminal penalties as a violation of § 47-25-101.

SECTION 4. Tennessee Code Annotated, Title 56, Chapter 7, Part 1, is amended by adding the following as a new section:

(a) As used in this section, "health insurance entity" has the same meaning as defined in § 56-7-109.

(b) To facilitate patient and provider access to health information, a health insurance entity shall establish and maintain the following application programming interfaces (API) for the benefit of all insureds and contracted providers, as applicable:

- (1) Patient access API, as described in 42 CFR § 422.119(a)-(e);
- (2) Provider directory API, as described in 42 CFR § 422.120; and
- (3) Payer-to-payer exchange API, as described in 42 CFR § 422.119(f).

(c) In addition to the API described in subsection (b), the department may require a health insurance entity to establish and maintain the following APIs if and when final rules are published by the federal government:

- (1) Provider access API; and
- (2) Prior authorization support API.

(d) An API described in subdivision (b)(3) must be established in accordance with standards published in a final rule issued by the federal centers for medicare and medicaid services and published in the Federal Register, and must align with federal effective dates, including enforcement delays and suspensions, issued by the federal centers for medicare and medicaid services.

(e) This section does not limit existing requirements under this chapter.

(f) The commissioner of commerce and insurance may promulgate rules to effectuate this section. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 6. Sections 1 and 5 take effect upon becoming a law, the public welfare requiring it, and apply to prohibited conduct that occurs on or after that date. All remaining sections of this act take effect July 1, 2024, the public welfare requiring it, and apply to prohibited conduct that occurs on or after that date, and contracts entered into, amended, or renewed on or after that date.

SENATE BILL NO. 2012

PASSED: April 22, 2024



RANDY McNALLY
SPEAKER OF THE SENATE



CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 6th day of May 2024



BILL LEE, GOVERNOR