

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 44-04 and three new sections to
2 chapter 54-59 of the North Dakota Century Code, relating to the confidentiality of health
3 information under the health information exchange and participation in the health information
4 exchange; to amend and reenact sections 54-59-25 and 54-59-26 of the North Dakota Century
5 Code, relating to health information technology; to provide a penalty; and to provide an effective
6 date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Health information exchange - Confidential records.** Any identified or de-identified
11 information, as defined under the federal Health Insurance Accountability and Portability Act of
12 1996 [Pub. L. 104-191], submitted to, contained in, or transmitted by the health information
13 exchange under chapter 54-59 and any such data or record in the possession of the health
14 information technology office is confidential.

15 **SECTION 2. AMENDMENT.** Section 54-59-25 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **54-59-25. Health information technology advisory committee - Duties.**

18 1. The health information technology advisory committee consists of the state chief
19 information officer or the chief information officer's designee, the state health
20 officer or the state health officer's designee, the governor or the governor's
21 designee, the executive director of the department of human services or the
22 executive director's designee, and individuals appointed by the governor and the
23 state health officer to represent a broad range of public and private health
24 information technology stakeholders.

- 1 2. The health information technology advisory committee shall collaborate with and
2 make recommendations to the health information technology office, as provided
3 under sections 6-09-42, 6-09-43, 54-59-26, and 54-59-27.
- 4 3. As requested by the health information technology advisory committee, the
5 department shall provide or arrange for administrative services to assist the health
6 information technology advisory committee.
- 7 4. The health information technology advisory committee may employ an executive
8 director who serves at the pleasure of and under the direct supervision of the
9 health information technology advisory committee. The executive director may
10 employ personnel as necessary for the administration of this section.
- 11 5. The health information technology advisory committee may accept private
12 contributions, gifts, and grants from any source to carry out the purposes of the
13 committee and the health information technology office.

14 **SECTION 3. AMENDMENT.** Section 54-59-26 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **54-59-26. Health information technology office - Duties - Loan and grant**
17 **programs.**

- 18 1. The health information technology office is created in the department. The health
19 information technology advisory committee shall make recommendations to the
20 health information technology office for implementing a statewide interoperable
21 health information infrastructure that is consistent with emerging national
22 standards; promote the adoption and use of electronic health records and other
23 health information technologies; and promote interoperability of health information
24 systems for the purpose of improving health care quality, patient safety, and the
25 overall efficiency of health care and public health services.
- 26 2. The health information technology office director, in collaboration with the health
27 information technology advisory committee, shall:
 - 28 a. Apply for federal funds that may be available to assist the state and health
29 care providers in implementing and improving health information technology.

- 1 b. Implement and administer a health information exchange that utilizes
2 information infrastructure and systems in a secure and cost-effective manner
3 to facilitate the collection, storage, and transmission of health records.
- 4 c. Establish policies and adopt rules and standards for the use of health
5 information and establish requirements for the use of the health information
6 exchange and participation in the health information exchange.
- 7 d. Establish minimum standards for accessing the health information exchange
8 to ensure appropriate and required privacy and security protections and adopt
9 rules relating to the authority of the director to suspend, eliminate, or
10 terminate the right to participate in the health information exchange.
- 11 e. Establish a health information technology loan program to provide loans to
12 health care providers for the purpose of purchasing and upgrading certified
13 electronic health record technology, training personnel in the use of such
14 technology, and improving the secure electronic exchange of health
15 information, and for any other purpose under section 6-09-42.
- 16 e. f. Establish a health information technology planning loan program to provide
17 low-interest loans to health care entities to assist those entities in improving
18 their health information technology infrastructure under section 6-09-43.
- 19 e. g. Facilitate and expand electronic health information exchange in the state,
20 directly or by awarding grants.
- 21 e. h. Establish an application process and eligibility criteria for and accept and
22 process applications for loans and grants under subdivisions ~~b e~~, ~~e f~~, and ~~d g~~.
23 The eligibility criteria must be consistent with federal requirements associated
24 with federal funds received under subdivision a. The eligibility criteria for
25 loans under subdivision ~~e f~~ must include a requirement that the recipient's
26 approved health information technology be strategically aligned with the
27 state's health information technology plan and the associated federal
28 standards and that the recipient has passed an onsite electronic medical
29 record readiness assessment conducted by an assessment team determined
30 by the health information technology advisory committee and the health
31 information technology office director.

- 1 i. Determine fees and charges for access and participation in the health
2 information exchange. Any moneys collected under this subdivision must be
3 deposited in the electronic health information exchange fund.
- 4 j. Consult and coordinate with the state department of health and the
5 department of human services to facilitate the collection of health information
6 from health care providers for public health purposes, including identifiable
7 health information that may be used by state agencies, departments, or
8 institutions to comply with applicable state or federal laws.

9 **SECTION 4.** A new section to chapter 54-59 of the North Dakota Century Code is
10 created and enacted as follows:

11 **Participation in the health information exchange by executive branch state**
12 **agencies and institutions of higher education.**

- 13 1. Before January 1, 2015, each executive branch state agency and each institution
14 of higher education that implements, acquires, or upgrades health information
15 technology systems shall use health information technology systems and products
16 that meet minimum standards adopted by the health information technology office
17 for accessing the health information exchange. A state agency or institution of
18 higher education that participates in or has health information that supports or
19 develops the health information exchange shall provide access to patient-specific
20 data to complete the patient record within the health information exchange.
21 Notwithstanding any other provision of law, each participating agency and
22 institution shall provide patient-specific data to the health information exchange.
- 23 2. Participation in the health information exchange by a state agency or institution has
24 no effect on the content, use, or disclosure of health information of patient
25 participants which is held in locations other than the exchange. This section does
26 not limit or change the obligation of an agency or institution to exchange health
27 information in accordance with other applicable federal and state laws or rules.

28 **SECTION 5.** A new section to chapter 54-59 of the North Dakota Century Code is
29 created and enacted as follows:

30 **Immunity for reliance on data from the health information exchange.** A health care
31 provider that relies in good faith upon any information provided through the health information

1 exchange in the treatment of a patient is immune from criminal or civil liability arising from any
2 damages caused by that good-faith reliance. The immunity granted under this section does not
3 apply to acts or omissions constituting gross negligence or reckless, wanton, or intentional
4 misconduct.

5 **SECTION 6.** A new section to chapter 54-59 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Certified electronic health records systems.** An executive branch state agency, an
8 institution of higher education, and any health care provider or other person participating in the
9 health information exchange may use only an electronic health record system for use in the
10 exchange which is certified under rules adopted by the office of national coordinator for health
11 information technology.

12 **SECTION 7. EFFECTIVE DATE.** Section 6 of this Act becomes effective on January 1,
13 2015.