

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 375
Health Care Committee Substitute Adopted 3/31/11
House Committee Substitute Favorable 6/14/11

Short Title: Facilitate Statewide Health Info. Exchange.

(Public)

Sponsors:

Referred to:

March 21, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO FACILITATE AND REGULATE THE DISCLOSURE OF PROTECTED
3 HEALTH INFORMATION THROUGH A VOLUNTARY, STATEWIDE HEALTH
4 INFORMATION EXCHANGE NETWORK.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 29A.

9 "North Carolina Health Information Exchange Act.

10 **"§ 90-413.1. Title.**

11 This act shall be known and may be cited as the "North Carolina Health Information
12 Exchange Act."

13 **"§ 90-413.2. Purpose.**

14 This Article is intended to improve the quality of health care delivery within this State by
15 facilitating and regulating the use of a voluntary, statewide health information exchange
16 network for the secure electronic transmission of individually identifiable health information
17 among health care providers, health plans, and health care clearinghouses in a manner that is
18 consistent with the Health Insurance Portability and Accountability Act, Privacy Rule and
19 Security Rule, 45 C.F.R. §§ 160, 164.

20 **"§ 90-413.3. Definitions.**

21 The following definitions apply in this Article:

- 22 (1) "Business associate" is as defined in 45 C.F.R. § 160.103.
23 (2) "Business associate contract" means the documentation required by 45
24 C.F.R. § 164.502(e)(2) that meets the applicable requirements of 45 C.F.R. §
25 164.504(e).
26 (3) "Covered entity" means any entity described in 45 C.F.R. § 160.103 or any
27 other facility or practitioner licensed by the State to provide health care
28 services.
29 (4) "Disclose" or "disclosure" means the release, transfer, provision of access to,
30 or divulging in any other manner an individual's protected health information
31 through the HIE Network.
32 (5) "Emergency medical condition" means a medical condition manifesting
33 itself by acute symptoms of sufficient severity, including severe pain, such
34 that the absence of immediate medical attention could reasonably be
35 expected to result in (i) placing an individual's health in serious jeopardy, (ii)



1 serious impairment to an individual's bodily functions, or (iii) serious
2 dysfunction of any bodily organ or part of an individual.

3 (6) "HIE Network" means the voluntary, statewide health information exchange
4 network overseen and administered by the NC HIE.

5 (7) "HIPAA" means the Health Insurance Portability and Accountability Act of
6 1996, P.L. 104-191, as amended.

7 (8) "Individual" is as defined in 45 C.F.R. § 160.103.

8 (9) "North Carolina Health Information Exchange" or "NC HIE" means the
9 nonprofit corporation selected by the Governor to serve as the subrecipient
10 of grant funds from or as the State-designated entity named by the State
11 pursuant to section 3013 of the federal Health Information Technology for
12 Economic and Clinical Health Act, P.L. 111-5, Div. A, Title XIII, section
13 13001, as amended.

14 (10) "Opt out" means an individual's affirmative decision to disallow his or her
15 protected health information maintained by or on behalf of one or more
16 specific covered entities from being disclosed to other covered entities
17 through the HIE Network.

18 (11) "Protected health information" is as defined in 45 C.F.R. § 160.103.

19 (12) "Public health purposes" means the public health activities and purposes
20 described in 45 C.F.R. § 164.512(b).

21 (13) "Qualified organization" means an entity designated by the NC HIE to
22 contract with covered entities on the NC HIE's behalf to facilitate the
23 participation of such covered entities in the HIE Network.

24 (14) "Research purposes" means research that meets the standard described in 45
25 C.F.R. § 164.512(i).

26 **§ 90-413.4. North Carolina Health Information Exchange; requirements.**

27 (a) The NC HIE shall satisfy all of the following requirements:

28 (1) Oversee and administer the HIE Network in a manner that ensures all of the
29 following:

30 a. Compliance with this Article.

31 b. Compliance with HIPAA and any rules adopted under HIPAA,
32 including the Privacy Rule and Security Rule.

33 c. Compliance with the terms of any business associate contract the NC
34 HIE or qualified organization enters into with a covered entity
35 participating in the HIE Network.

36 d. Notice to the patient by the provider on the initial visit about the HIE
37 Network, including information and education about the right of
38 individuals on a continuing basis to opt out or rescind a decision to
39 opt out.

40 e. Opportunity for all individuals to exercise on a continuing basis the
41 right to opt out or rescind a decision to opt out.

42 f. Nondiscriminatory treatment by covered entities of individuals who
43 exercise the right to opt out.

44 (2) Develop and enter into written participation agreements with covered
45 entities that utilize the HIE Network. The participation agreements shall
46 specify the terms and conditions governing participation in the HIE
47 Network. The agreement shall also require compliance with policies
48 developed by the NC HIE pursuant to this Article, or pursuant to applicable
49 laws of the state of residence for entities located outside of North Carolina.
50 In lieu of entering into a participation agreement directly with covered
51 entities, the NC HIE may enter into participation agreements with qualified

1 organizations, which in turn, enter into participation agreements with
2 covered entities.

3 (3) Add, remove, disclose, and access protected health information through the
4 HIE Network in accordance with this Article.

5 (4) Enter into a business associate contract with each of the covered entities
6 participating in the HIE Network. In lieu of entering into a business
7 associates contract directly with covered entities, the NC HIE may enter into
8 business associates contracts with qualified organizations, which in turn,
9 enter into business associates contracts with covered entities.

10 (5) Grant user rights to the HIE Network to business associates of covered
11 entities participating in the HIE Network (i) at the request of the covered
12 entities and (ii) at the discretion of the NC HIE upon consideration of the
13 business associates' legitimate need for utilizing the HIE Network and
14 privacy and security concerns.

15 (6) Facilitate and promote use of the HIE Network by covered entities.

16 (7) Periodically monitor compliance with this Article by covered entities
17 participating in the HIE Network.

18 (b) Nothing in this section shall be construed to restrict the NC HIE from exercising any
19 of its corporate powers in a manner that is not inconsistent with this Article.

20 **"§ 90-413.5. Participation by covered entities.**

21 (a) Each covered entity that elects to participate in the HIE Network shall enter into a
22 business associate contract and a written participation agreement with the NC HIE or qualified
23 organization prior to disclosing or accessing any protected health information through the HIE
24 Network.

25 (b) Each covered entity that elects to participate in the HIE Network may authorize its
26 business associates to disclose or access protected health information on behalf of the covered
27 entity through the HIE Network in accordance with this Article and at the discretion of the NC
28 HIE, as provided in G.S. 90-413.4(5).

29 (c) Notwithstanding any State law or regulation to the contrary, each covered entity that
30 elects to participate in the HIE Network may disclose an individual's protected health
31 information through the HIE Network (i) to other covered entities for any purpose permitted by
32 HIPAA, unless the individual has exercised the right to opt out and (ii) in order to facilitate the
33 provision of emergency medical treatment to the individual, subject to the requirements set
34 forth in G.S. 90-413.6(e).

35 (d) Any health care provider who relies in good faith upon any information provided
36 through the NC HIE or through a qualified organization in the health care provider's treatment
37 of a patient shall not incur criminal or civil liability for damages caused by the inaccurate or
38 incomplete nature of this information.

39 **"§ 90-413.6. Continuing right to opt out; effect of opt out; exception for emergency**
40 **medical treatment.**

41 (a) Each individual has the right on a continuing basis to opt out or rescind a decision to
42 opt out.

43 (b) The NC HIE or its designee shall enforce an individual's decision to opt out or
44 rescind an opt out prospectively from the date the NC HIE or its designee receives notice of the
45 individual's decision to opt out or rescind an opt out in the manner prescribed by the NC HIE.
46 An individual's decision to opt out or rescind an opt out does not affect any disclosures made
47 by the NC HIE or covered entities through the HIE Network prior to receipt by the NC HIE or
48 its designee of the individual's notice to opt out or rescind an opt out.

49 (c) A covered entity may not deny treatment or benefits to an individual because of the
50 individual's decision to opt out. However, nothing in this Article is intended to restrict a

1 treating physician from otherwise appropriately terminating a relationship with a patient in
2 accordance with applicable law and professional ethical standards.

3 (d) Except as otherwise permitted in subsection (e) of this section and
4 G.S. 90-413.7(a)(3), the protected health information of an individual who has exercised the
5 right to opt out may not be disclosed to covered entities through the HIE Network for any
6 purpose.

7 (e) The protected health information of an individual who has exercised the right to opt
8 out may be disclosed through the HIE Network in order to facilitate the provision of emergency
9 medical treatment to the individual if all of the following criteria are met:

10 (1) The reasonably apparent circumstances indicate to the treating health care
11 provider that (i) the individual has an emergency medical condition, (ii) a
12 meaningful discussion with the individual about whether to rescind a
13 previous decision to opt out is impractical due to the nature of the
14 individual's emergency medical condition, and (iii) information available
15 through the HIE Network could assist in the diagnosis or treatment of the
16 individual's emergency medical condition.

17 (2) The disclosure through the HIE Network is limited to the covered entities
18 providing diagnosis and treatment of the individual's emergency medical
19 condition.

20 (3) The circumstances and extent of the disclosure through the HIE Network is
21 recorded electronically in a manner that permits the NC HIE or its designee
22 to periodically audit compliance with this subsection.

23 **"§ 90-413.7. Construction and applicability.**

24 (a) Nothing in this Article shall be construed to do any of the following:

25 (1) Impair any rights conferred upon an individual under HIPAA, including all
26 of the following rights related to an individual's protected health
27 information:

28 a. The right to receive a notice of privacy practices.

29 b. The right to request restriction of use and disclosure.

30 c. The right of access to inspect and obtain copies.

31 d. The right to request amendment.

32 e. The right to request confidential forms of communication.

33 f. The right to receive an accounting of disclosures.

34 (2) Authorize the disclosure of protected health information through the HIE
35 Network to the extent that the disclosure is restricted by federal laws or
36 regulations, including the federal drug and alcohol confidentiality
37 regulations set forth in 42 C.F.R. Part 2.

38 (3) Restrict the disclosure of protected health information through the HIE
39 Network for public health purposes or research purposes, so long as
40 disclosure is permitted by both HIPAA and State law.

41 (4) Prohibit the NC HIE or any covered entity participating in the HIE Network
42 from maintaining in the NC HIE or qualified organization's computer system
43 a copy of the protected health information of an individual who has
44 exercised the right to opt out, as long as the NC HIE or the qualified
45 organization does not access, use, or disclose the individual's protected
46 health information for any purpose other than for necessary system
47 maintenance or as required by federal or State law.

48 (b) This Article applies only to disclosures of protected health information made
49 through the HIE Network, including disclosures made within qualified organizations. It does
50 not apply to the use or disclosure of protected health information in any context outside of the

1 HIE Network, including the redisclosure of protected health information obtained through the
2 HIE Network.

3 **"§ 90-413.8. Penalties and remedies.**

4 A covered entity that discloses protected health information in violation of this Article is
5 subject to the following:

6 (1) Any civil penalty or criminal penalty, or both, that may be imposed on the
7 covered entity pursuant to the Health Information Technology for Economic
8 and Clinical Health (HITECH) Act, P.L. 111-5, Div. A, Title XIII, section
9 13001, as amended, and any regulations adopted under the HITECH Act.

10 (2) Any civil remedy under the HITECH Act or any regulations adopted under
11 the HITECH Act that is available to the Attorney General or to an individual
12 who has been harmed by a violation of this Article, including damages,
13 penalties, attorneys' fees, and costs.

14 (3) Disciplinary action by the respective licensing board or regulatory agency
15 with jurisdiction over the covered entity.

16 (4) Any penalty authorized under Article 2A of Chapter 75 of the General
17 Statutes if the violation of this Article is also a violation of Article 2A of
18 Chapter 75 of the General Statutes.

19 (5) Any other civil or administrative remedy available to a plaintiff by State or
20 federal law or equity."

21 **SECTION 2.** This act becomes effective October 1, 2011.