A BILL TO BE ENTITLED

ELECTRONIC HEALTH RECORDS MODERNIZATION ACT

relating to a patient's access to health records; authorizing a civil penalty; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

SECTION 1. Business & Commerce Code, is amended by adding Subsection (a) to read as follows:

(a) It is unlawful for a person to place a restraint on trade or commerce by intentionally violating federal laws regulating information blocking, as that term is defined by 45 C.F.R. Section 171.103.

[Commentary: This section enhances state level antirust laws to make clear that intentional violations of federal information blocking rule is per se unlawful restraint of trade under state law.]

(b) A covered entity may not enter into a contract with a person or entity that includes terms that could result in restricting a patient or the patient's representative from accessing the patient's health records. Any contract clause or provision that restricts a patient's access to the patient's health records is unenforceable.

[Commentary: This section prohibits clauses that could result in reduced patient access to patient health records.]

SECTION 2 Health and Safety Code, is amended to read as follows:

(a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with:

(1) the Health Insurance Portability and Accountability Act and Privacy Standards as those terms are used and in existence on the effective dates in Section 9, of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.; and

(2) federal laws regulating Information Blocking, as that term is defined by 45 C.F.R. Section 171.103.

[Commentary: This section incorporates into state law by reference federal protections of HIPAA, Privacy Standards, and Information Blocking.]

SECTION 3: Health and Safety Code, is amended to read as follows:

(a) Notwithstanding any other provision of law to the contrary, except as provided by subsection (b) of this section, a health care provider requesting that a medical laboratory test for a patient is performed shall not engage in information blocking as described in 42 U.S.C. 300jj-52.

(b) The following reports or test results and any other related results shall not be disclosed to a patient as part of the patient's electronic health record until seventy-two (72) hours after the

results are finalized, unless the health care provider directs the release of the results before the end of that seventy-two (72) 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.

(c) Whereas the federal law requiring the immediate release of electronic health information is already in effect and it is vitally important that health care providers have an opportunity to review certain ordered medical test results prior to their release as part of a patient's electronic health record, this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

[Commentary: This section creates an exception for federal information blocking to ensure providers have sufficient time to review and provide sensitive test results to patients, with proper context, offers for counseling, etc., prior to the patient receiving such test results electronically without consultation with their provider.]

SECTION 4: Health and Safety Code, is amended by adding subsections (a)-(b) to read as follows:

(a) Except as provided in subsection (b) of this section, consent for medical treatment of minors is required from a parent or legal guardian until that minor reaches the age of majority, which in this state, is eighteen years of age. A parent or legal guardian may obtain medical records of their minor child as a legally authorized personal representative so long as the parent or guardian is legally authorized to give consent to the goods or services that are the subject of such medical records and so long as it is consistent with federal rules and statutes.

(b) Notwithstanding the powers and access granted to parents or legal guardians under subsection (a) of this section, a minor may consent for medical care or procures under the following circumstances:

    a. They are an emancipated minor *[options might include married minor, pregnant minor, minor parent]*

    b. They meet an exception under the federal HIPAA privacy rule *[federal rules would include that the child independently consented to a health care service, no other consent is required by law, and the child has not requested that the parent be treated as the personal representative; the state allows minors to obtain a health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the child, a court, or another authorized person has consented*

to that treatment; or the parent voluntarily agreed that the child's information would be kept confidential from the parent.]

c. They are XX years of age, and the services are for

   i. *[Insert specific services, which could include services such as Immunizations, Dental Care, Sexual Assault Evaluations, STI Testing and Treatment, Contraceptive Care, Prenatal Care, Substance Abuse Treatment and Mental Health Care]*

[Commentary: This section allows the state to establish a minimum age for consent to certain medical procedures and/or parental access to health information. Service specific consent is addressed in this model bill because federal laws for parental access to health records is tied to the state law for consent for a service or procedure.]

SECTION 5. Health and Safety Code, is amended by adding subsection (a) – (d) to read as follows:

INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter, Section 2, subsection (a)(1). A civil penalty assessed under this section may not exceed:

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

(2) $25,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed knowingly or intentionally; or

(3) $250,000 for each violation in which the covered entity knowingly or intentionally used protected health information for financial gain.

(c) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of Section 2, subchapter (a)(2). A civil penalty assessed under this subsection may not exceed:

(1) $10,000 for each negligent violation, regardless of the length of time the violation continues during any year; or

(2) $250,000 for each intentional violation, if done for purposes of financial gain, regardless of the length of time the violation continues during any year.

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

(d) In determining the amount of a penalty imposed under Subsections (b) and (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 covered entity'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) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation;

(6) the covered entity's efforts to correct the violation;

(7) the size and geographic location of the covered entity; and

(8) the financial impact the penalty would have on the covered entity ’s financial viability and ability to adequately serve an underserved community or population.

[Commentary: This section creates enforcement authority for the state attorney general for violations of HIPAA or Information Blocking.]

SECTION 6. Insurance Code, is amended by adding subsection (a) – (d) to read as follows:

(a) Commencing XXXX XX, 2024, to facilitate patient and provider access to health information, a health insurer 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 Section 422.119 (a) to (e), inclusive, of Title 42 of the Code of Federal Regulations.

(2) Provider directory API, as described in Section 422.120 of the Code of Federal Regulations.

(3) Payer-to-payer exchange API, as described in Section 422.119(f) of the Code of Federal Regulations.

(b) In addition to the API described in subdivision (a), the department may require a health insurer to establish and maintain the following APIs if and when final rules[1] are published by the federal government:

(1) Provider access API.

(2) Prior authorization support API.

(c) API described in subdivision (b) shall be 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 shall align with federal effective dates, including enforcement delays and suspensions, issued by the federal Centers for Medicare and Medicaid Services.

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

[Commentary: This section incorporates the federal patient access rule into state regulated insurance markets, extending the application of the rule outside of the current CMS regulated plans.]

SECTION 7. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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[1] The subject components of the rule were promulgated in December 2022 but a final rule has not yet been released. When it is, we may need to update this language to reflect that (likely Jan 2026 implementation).

https://www.cms.gov/about-cms/obrhi/interoperability/policies-and-regulations/cms-advancing-interoperability-and-improving-prior-authorization-proposed-rule-cms-0057-p

SECTION 8. The changes in law made by this Act apply only to a violation of law that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose. For purposes of this section, a violation of law occurred before the effective date of this Act if any element of the violation occurred before that date.

SECTION 9. This Act takes effect XXXX XX, 2024, unless otherwise noted.