

FIRST REGULAR SESSION

# SENATE BILL NO. 548

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2264S.011

## AN ACT

To amend chapter 191, RSMo, by adding thereto five new sections relating to health record banks.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 191, RSMo, is amended by adding thereto five new sections, to be known as sections 191.1060, 191.1061, 191.1062, 191.1063, and 191.1064, to read as follows:

**191.1060. As used in sections 191.1060 to 191.1064, the following terms shall mean:**

(1) "Access", with respect to an electronic health record, entering information into such account as well as retrieving information from such account;

(2) "Account", an electronic health record of an individual contained in an independent health record trust;

(3) "Affirmative consent", with respect to an electronic health record of an individual contained in a health bank, express consent given by the individual or an authorized care coordinator for the use of such record in response to a clear and conspicuous request for such consent or at the individual's own initiative;

(4) "Authorized electronic health record data user", with respect to an electronic health record of a health bank participant contained as part of a health bank, any entity, other than the participant, authorized in the form of affirmative consent by the participant to access the electronic health record;

(5) "Chronic condition", any regularly recurring, potentially life-threatening medical condition that requires regular supervision by a primary care physician or medical specialist;

21           (6) "Confidentiality", with respect to individually identifiable  
22 health information of an individual, the obligation of those who receive  
23 such information to respect the health information privacy of the  
24 individual;

25           (7) "Department", the department of social services;

26           (8) "Disease state management programs", delivery of services for  
27 patients with chronic illness, including education, health management  
28 support, and coordination of health care services;

29           (9) "Electronic health record", a subset of a health care delivery  
30 organization's electronic medical record that contains patient input  
31 and provides access spanning episodes of care across multiple health  
32 care delivery organizations within a community, region, or state and is  
33 stored electronically within an independent health record trust. Such  
34 record may also include:

35           (a) Summaries, such as the American Society for Testing and  
36 Materials' Continuity of Care Record and Health Level Seven, Inc.'s  
37 care record summary; and

38           (b) Information from pharmacy benefit management firms,  
39 reference laboratories, and other organizations about the health status  
40 of patients in the community;

41           (10) "Electronic medical record" or "EMR", a patient's medical  
42 history that is stored in real-time using information technology and  
43 which can be amended, updated, or supplemented by the patient or  
44 physician using the electronic medical record;

45           (11) "Health bank operator", the organization that is responsible  
46 for the administration and operation of the health bank in accordance  
47 with sections 191.1060 to 191.1064;

48           (12) "Health bank participant", an individual who has a  
49 participation agreement in effect with respect to the maintenance of  
50 the individual's electronic health record by the health bank;

51           (13) "Health care provider", any corporation organized for the  
52 primary purpose of maintaining medical information for the treatment  
53 or diagnosis or to allow an individual to manage his or her information,  
54 including, but not limited to physician, hospital, health maintenance  
55 organization, ambulatory surgical center, long-term care facility,  
56 including those licensed under chapter 198, RSMo, dentist, registered  
57 or licensed practical nurse, optometrist, podiatrist, pharmacist,

58 chiropractor, professional physical therapist, psychologist, physician  
59 in training, or any other person or entity that provides health care  
60 services under the authority of a license or certificate;

61 (14) "Health information privacy", with respect to individually  
62 identifiable health information of an individual, the right of such  
63 individual to control the acquisition, uses, or disclosures of such  
64 information;

65 (15) "Health plan", a group health plan as defined in section  
66 2208(1) of the Public Health Service Act, 42 U.S.C. 300bb-8(1), as well as  
67 a plan that offers health insurance coverage in the individual market;

68 (16) "Health record bank", a legal arrangement under the  
69 administration of a health bank operator that meets the requirements  
70 of sections 191.1060 to 191.1064 with respect to electronic health  
71 records of individuals participating in the bank;

72 (17) "HIPAA privacy regulations", the regulations promulgated  
73 under section 264(c) of the Health Insurance Portability and  
74 Accountability Act of 1996 42 U.S.C. 1320d-2;

75 (18) "Individually identifiable health information", as such term  
76 is defined in section 1171(6) of the Social Security Act, 42 U.S.C.  
77 1320d(6);

78 (19) "Longitudinal health record", a record of all health services  
79 and information prescribed and collected on an individual during the  
80 course of an individual's lifetime;

81 (20) "Personal health information", any identifiable information,  
82 in electronic or physical form, regarding an individual's health, medical  
83 history, medical treatment, or diagnosis by a health care provider that  
84 is:

85 (a) Created or stored by the health care provider or health  
86 carrier in the normal course of its business operations; and

87 (b) Not otherwise publicly available or in the public domain;

88 (21) "Security", with respect to individually identifiable health  
89 information of an individual, the physical, technological, or  
90 administrative safeguards or tools used to protect such information  
91 from unwarranted access or disclosure;

191.1061. 1. It is the intent of the general assembly to enact  
2 sections 191.1060 to 191.1064 to enable the department of social services  
3 to select and engage non-profit organizations in the Kansas City and St.

4 Louis Metropolitan areas who have governance boards that include  
5 representatives from employer and provider groups to deploy and  
6 manage a regional health bank.

7       2. The regional health bank as deployed by each non-profit  
8 organization shall:

9       (1) Enable a secure, web based health information infrastructure  
10 for the sharing of electronic health information among health care  
11 facilities, health care professionals, public and private payers, and  
12 patients. The health bank shall comply with all state and federal  
13 privacy requirements and links all components of the health care  
14 delivery system through secure and appropriate exchanges of health  
15 information for the purpose of enhancing health care quality, patient  
16 safety, communication of patient information, chronic condition  
17 management capabilities, patient and provider satisfaction, clinical and  
18 administrative cost reductions, and public health emergency  
19 preparedness;

20       (2) Enable individuals in the region by which the health record  
21 bank shall serve to create a secure, electronic health record bank  
22 account so that they may be able to consolidate their respective health  
23 information into a longitudinal electronic personal health record;

24       (3) Enable the study of defined benefits to the consumer and  
25 provider with the health bank.

26       3. To encourage the adoption and to receive the return on  
27 investment of health record banking, the state shall sponsor the  
28 following accounts in an opt-out fashion for the regional health banks:

29       (1) MO HealthNet recipients;

30       (2) State health care for uninsured children recipients;

31       (3) Missouri residents receiving Medicare benefits;

32       (4) Foster care children; and

33       (5) State employees.

34       4. The state shall authorize the regional health banks to  
35 electronically report quality measures to the state as required by  
36 current regulations on behalf of health care providers who have  
37 appropriate number of patients enrolled in said health banks to enable  
38 such quality reporting.

191.1062. 1. Each non-profit organization as selected by the  
2 department to be a state-designated entity shall be authorized to

3 submit and request funds in fiscal year 2010 to enable the creation of  
4 the health bank from the federal secretary of the Department of Health  
5 and Human Services as defined in the American Recovery and  
6 Reinvestment Act of 2009.

7       2. Each non-profit organization as selected by the department  
8 shall be required to create and present a health banking business  
9 model that includes the following:

10       (1) Required funding to be requested from the secretary of the  
11 federal Department of Health and Human Services to establish and  
12 deploy the health bank;

13       (2) The Proposed Consumer, Employer, Payer, and Provider  
14 adoption model to ensure a successful implementation;

15       (3) The path by which the non-profit sponsored health bank  
16 would be self-sustainable after a period of four years.

17       3. Each non-profit organization as selected by the department  
18 shall be required to propose what state appropriations should be  
19 requested in fiscal years 2011, 2012, and 2013 to qualify for the federal  
20 matching funds as specified in the American Recovery and  
21 Reinvestment Act of 2009.

191.1063. 1. In the case of a record of a covered entity, as  
2 defined for purposes of HIPAA privacy regulations, and with respect to  
3 an individual, if such individual is a participant in a regional health  
4 bank and such covered entity is an authorized electronic health record  
5 data user, the requirement under the HIPAA privacy regulations for  
6 such entity to provide the record to the participant shall be deemed  
7 met if such entity, without charge to the health record bank or the  
8 participant:

9       (1) Forwards to the health record bank an appropriately  
10 formatted electronic copy of the record, and updates to such records,  
11 for inclusion in the electronic health record of the participant  
12 maintained by the health record bank within forty-eight hours of the  
13 conclusion of the visit;

14       (2) Enters such record into the electronic health record of the  
15 participant so maintained within forty-eight hours of the conclusion of  
16 the visit; or

17       (3) Otherwise makes such record available for electronic access  
18 by the health record bank of the individual in a manner that permits

19 such record to be included in the account contained in the health  
20 record bank within forty-eight hours of the conclusion of the visit;

21 2. If the covered entity does not have an electronic medical  
22 record system, the existing portability provisions under HIPAA privacy  
23 regulations apply.

191.1064. 1. This section shall be known and may be cited as the  
2 "Missouri Patient Privacy Act".

3 2. No personal health information of a patient which can be  
4 identified as specific to such patient shall be disclosed to any employer,  
5 public or private payor, or employee or agent of a state department or  
6 agency without the written consent of the patient and health care  
7 provider; except that, such information may be disclosed to a health  
8 insurer, employer, state employee or agent in connection with the  
9 performance of such employee's official duties. Such official duties  
10 shall be for purposes allowed under 45 C.F.R. 164.512, as amended,  
11 including but not limited to:

12 (1) Oversight of state health programs, including disease state  
13 management programs;

14 (2) Tracking of infectious diseases throughout the state;

15 (3) State wellness initiatives and programs; and

16 (4) Research state medical trends.

17 3. Nothing in this section shall be construed as prohibiting  
18 disclosure of personal health information of a patient consistent with  
19 federal law, including HIPAA privacy regulations and the privacy rules  
20 set forth in this section.

21 4. No health care provider shall be required to redact  
22 information when disclosing personal health information under this  
23 section.

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