

FIRST REGULAR SESSION

SENATE BILL NO. 537

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

2560S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 191.237, RSMo, and to enact in lieu thereof one new section relating to health information networks.

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

Section A. Section 191.237, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 191.237,
3 to read as follows:

191.237. 1. No law or rule promulgated by an agency
2 of the state of Missouri may impose a fine or penalty
3 against a health care provider, hospital, or health care
4 system for failing to participate in any particular health
5 information [organization] **exchange**.

6 2. A health information [organization] **exchange** shall
7 not restrict the exchange of state agency data or standards-
8 based clinical summaries for patients for [federal Health
9 Insurance Portability and Accountability Act (HIPAA)] **HIPAA**
10 allowable uses. Charges for such service shall not exceed
11 the cost of the actual technology connection or recurring
12 maintenance thereof.

13 3. (1) **Notwithstanding any other provision of law to**
14 **the contrary, any participant may disclose, access, or use**
15 **individually identifiable information through a health**
16 **information network under this section and in accordance**
17 **with applicable federal laws, including but not limited to**

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 the HIPAA laws, related to individual consent or
19 authorization requirements.

20 (2) A health information network shall follow state or
21 federal law related to providing an individual the right to
22 opt out of having his or her identifiable information
23 accessible or delivered through a health information network
24 under this section.

25 (3) A health information exchange or health
26 information network shall implement policies that meet the
27 requirements under the HIPAA laws governing the privacy and
28 security of individually identifiable information that is
29 accessible or delivered through the health information
30 exchange or health information network.

31 (4) All participants in a health information network
32 under this section shall comply with the HIPAA laws, if such
33 participant is subject to the HIPAA laws, and all policies
34 and procedures of the health information network with
35 respect to the health information exchange activities.

36 (5) To the extent any provision of state law, rule, or
37 regulation regarding the confidentiality of any individually
38 identifiable information conflicts with, is contrary to, or
39 is more stringent than the provisions of this section, the
40 provisions of this section shall control with respect to a
41 participant's disclosure, access, or use of that
42 individually identifiable information through a health
43 information network under this section. More stringent
44 provisions would include requiring a participant to obtain
45 individual written consent or authorization before
46 disclosing, accessing, or using individually identifiable
47 information through a health information network under this
48 section that is not in accordance with applicable federal
49 laws including, but not limited to, the HIPAA laws.

50 4. (1) Participants shall maintain a written notice
51 of privacy practices for the health information network that
52 describes all of the following:

53 (a) The categories of individually identifiable
54 information that are accessible or disclosed through the
55 health information network;

56 (b) The purposes for which access to individually
57 identifiable information is provided through the health
58 information network or for which individually identifiable
59 information is disclosed through the health information
60 network; and

61 (c) An explanation as to when and how an individual
62 may opt out of having his or her individually identifiable
63 information accessible or disclosed through the health
64 information network consistent with state and federal law.

65 (2) The notice of privacy practices maintained by
66 participants may reference a publicly accessible website or
67 websites that contain some or all of the information
68 described in subdivision (1) of this subsection, such as a
69 current list of participants and the permitted purposes for
70 accessing or disclosing individually identifiable
71 information through the health information network.

72 (3) Participants shall post their current notice of
73 privacy practices on their website in a conspicuous manner.

74 5. (1) A health information network shall not be
75 considered a health care provider, as that term is defined
76 in section 538.205, based on its health information exchange
77 activities and shall not be subject to liability for damages
78 or costs of any nature, in law or in equity, arising out of
79 chapter 538 and the common law of Missouri related to
80 rendering of or failure to render health care services when

81 carrying out health information exchange activities pursuant
82 to this section.

83 (2) Participants under this section shall not be
84 liable in any action for damages or costs of any nature, in
85 law or equity, including a breach of a duty of
86 confidentiality, which result solely from the participant's
87 use or failure to use the health information exchange or the
88 participant's disclosure of individually identifiable
89 information through the health information exchange in
90 accordance with the requirements of this section. Nothing
91 in this section may be construed to limit the liability of a
92 health care provider, as that term is defined in section
93 538.205, for damages or costs of any nature, in law or in
94 equity, arising out of chapter 538 or the common law of
95 Missouri for the health care provider's rendering of or
96 failure to render health care services, as that term is
97 defined in section 538.205.

98 (3) No person shall be subject to antitrust or unfair
99 competition liability based solely on participation in a
100 health information exchange operated by a health information
101 network under this section.

102 (4) All staff, officers, and members of the board of
103 directors of a health information network under this section
104 that perform health information exchange activities under
105 this section, whether temporary or permanent, shall not be
106 subject to and shall be immune from any claim, suit,
107 liability, damages, or any other recourse, civil or
108 criminal, arising from any act or proceeding, decision, or
109 determination undertaken, performed, or reached in good
110 faith and without malice by any such member or members
111 acting individually or jointly in carrying out the
112 responsibilities, authority, duties, powers, and privileges

of the offices conferred by law upon them under this section, or any other law, or policies and procedures of the health information network, good faith being presumed until proven otherwise, with malice required to be shown by a complainant.

(5) Individually identifiable information received from a participant and accessible through a health information network under this section shall not be subject to discovery, subpoena, or other means of legal compulsion for the release of such individually identifiable information received from other participants or the health information network to any person or entity. Health information networks and participants shall not be compelled by a request for production, subpoena, court order, or otherwise, to disclose individually identifiable information received from another participant.

6. As used in this section, the following terms shall mean:

(1) "Fine or penalty", any civil or criminal penalty or fine, tax, salary or wage withholding, or surcharge established by law or by rule promulgated by a state agency pursuant to chapter 536;

(2) "Health care system", any public or private entity whose function or purpose is the management of, processing of, or enrollment of individuals for or payment for, in full or in part, health care services or health care data or health care information for its participants;

(3) "Health information [organization] **exchange**" or "**health information network**", an organization that oversees and governs [the exchange of health-related information among organizations according to nationally recognized standards.] **health information exchange activities**;

(4) "Health information exchange activities", the electronic exchange, including permitting access to or the delivery, of individually identifiable information among more than two unaffiliated organizations, not including the health information exchange itself, according to nationally recognized standards. The following activities are not considered "health information exchange activities":

(a) Electronic exchange of individually identifiable information among unaffiliated organizations solely for the purposes of an organized health care arrangement as defined under the HIPAA laws; and

(b) Electronic exchange of individually identifiable information among unaffiliated organizations solely for research purposes;

(5) "HIPAA", the Health Insurance Portability and Accountability Act of 1996, as amended, the Health Information Technology for Economic and Clinical Health Act, as amended, and implementing regulations;

(6) "Individual", the person who is the subject of the individually identifiable information;

(7) "Individually identifiable information", any information that identifies an individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, and includes, without limitation, information created or generated by health care providers, health benefit plans, organizations providing social services or assessing social determinants of health, and organizations that provide services to or on

177 behalf of any of the foregoing and health care
178 clearinghouses;

179 (8) "Participant", an individual or entity who
180 accesses, uses, or discloses individually identifiable
181 information through a health information network, and
182 includes, without limitation, health care providers, health
183 benefit plans, organizations providing social services or
184 assessing social determinants of health, and organizations
185 that provide services to or on behalf of any of the
186 foregoing.

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