

1                   **HEALTH INFORMATION EXCHANGE AMENDMENTS**

2                                   2018 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Brad M. Daw**

5                           Senate Sponsor: \_\_\_\_\_

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7   **LONG TITLE**

8   **General Description:**

9           This bill amends provisions relating to the electronic exchange of clinical information.

10 **Highlighted Provisions:**

11       This bill:

12           ▶ exempts certain persons from civil liability if an action or decision is in response to  
13 erroneous information from a health information exchange approved by the  
14 Department of Health.

15 **Money Appropriated in this Bill:**

16       None

17 **Other Special Clauses:**

18       None

19 **Utah Code Sections Affected:**

20 AMENDS:

21       **26-1-37**, as last amended by Laws of Utah 2013, Chapter 167

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23 *Be it enacted by the Legislature of the state of Utah:*

24       Section 1. Section **26-1-37** is amended to read:

25       **26-1-37. Duty to establish standards for the electronic exchange of clinical health**  
26 **information -- Immunity.**

27       (1) For purposes of this section:



28 (a) "Affiliate" means an organization that directly or indirectly through one or more  
29 intermediaries controls, is controlled by, or is under common control with another  
30 organization.

31 (b) "Clinical health information" shall be defined by the department by administrative  
32 rule adopted in accordance with Subsection (2).

33 (c) "Electronic exchange":

34 (i) includes:

35 (A) the electronic transmission of clinical health data via Internet or extranet; and

36 (B) physically moving clinical health information from one location to another using  
37 magnetic tape, disk, or compact disc media; and

38 (ii) does not include exchange of information by telephone or fax.

39 (d) "Health care provider" means a licensing classification that is either:

40 (i) licensed under Title 58, Occupations and Professions, to provide health care; or

41 (ii) licensed under Chapter 21, Health Care Facility Licensing and Inspection Act.

42 (e) "Health care system" shall include:

43 (i) affiliated health care providers;

44 (ii) affiliated third party payers; and

45 (iii) other arrangement between organizations or providers as described by the  
46 department by administrative rule.

47 (f) "Qualified network" means an entity that:

48 (i) is a non-profit organization;

49 (ii) is accredited by the Electronic Healthcare Network Accreditation Commission, or  
50 another national accrediting organization recognized by the department; and

51 (iii) performs the electronic exchange of clinical health information among multiple  
52 health care providers not under common control, multiple third party payers not under common  
53 control, the department, and local health departments.

54 (g) "Third party payer" means:

55 (i) all insurers offering health insurance who are subject to Section [31A-22-614.5](#); and

56 (ii) the state Medicaid program.

57 (2) (a) In addition to the duties listed in Section [26-1-30](#), the department shall, in  
58 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

59 (i) define:

60 (A) "clinical health information" subject to this section; and

61 (B) "health system arrangements between providers or organizations" as described in  
62 Subsection (1)(e)(iii); and

63 (ii) adopt standards for the electronic exchange of clinical health information between  
64 health care providers and third party payers that are for treatment, payment, health care  
65 operations, or public health reporting, as provided for in 45 C.F.R. Parts 160, 162, and 164,  
66 Health Insurance Reform: Security Standards.

67 (b) The department shall coordinate its rule making authority under the provisions of  
68 this section with the rule making authority of the Insurance Department under Section  
69 [31A-22-614.5](#).

70 (c) The department shall establish procedures for developing the rules adopted under  
71 this section, which ensure that the Insurance Department is given the opportunity to comment  
72 on proposed rules.

73 (3) (a) Except as provided in Subsection (3)(e), a health care provider or third party  
74 payer in Utah is required to use the standards adopted by the department under the provisions  
75 of Subsection (2) if the health care provider or third party payer elects to engage in an  
76 electronic exchange of clinical health information with another health care provider or third  
77 party payer.

78 (b) A health care provider or third party payer may disclose information to the  
79 department or a local health department, by electronic exchange of clinical health information,  
80 as permitted by Subsection 45 C.F.R. 164.512(b).

81 (c) When functioning in its capacity as a health care provider or payer, the department  
82 or a local health department may disclose clinical health information by electronic exchange to  
83 another health care provider or third party payer.

84 (d) An electronic exchange of clinical health information by a health care provider, a  
85 third party payer, the department, or a local health department is a disclosure for treatment,  
86 payment, or health care operations if it complies with Subsection (3)(a) or (c) and is for  
87 treatment, payment, or health care operations, as those terms are defined in 45 C.F.R. Parts  
88 160, 162, and 164.

89 (e) A health care provider or third party payer is not required to use the standards

90 adopted by the department under the provisions of Subsection (2) if the health care provider or  
91 third party payer engage in the electronic exchange of clinical health information within a  
92 particular health care system.

93 (4) Nothing in this section shall limit the number of networks eligible to engage in the  
94 electronic data interchange of clinical health information using the standards adopted by the  
95 department under Subsection (2)(a)(ii).

96 (5) The department, a local health department, a health care provider, a third party  
97 payer, or a qualified network is not subject to civil liability for a disclosure of clinical health  
98 information if the disclosure is in accordance [~~both~~] with:

99 (a) Subsection (3)(a); and [~~with~~]

100 (b) Subsection (3)(b), (3)(c), or (3)(d).

101 (6) The department, a local health department, a health care provider, a third party  
102 payer, or a qualified network is not subject to civil liability for an action taken or a decision  
103 made in good faith reliance on erroneous clinical health information acquired via an electronic  
104 exchange described in Subsection (2), if:

105 (a) the person acquired the information in accordance with this section; and

106 (b) the action or decision would not constitute negligence or misconduct if the  
107 erroneous information had been true.

108 [~~(6)~~] (7) Within a qualified network, information generated or disclosed in the  
109 electronic exchange of clinical health information is not subject to discovery, use, or receipt in  
110 evidence in any legal proceeding of any kind or character.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**