Representative **Brad M. Daw** proposes the following substitute bill:

1 # HEALTH INFORMATION EXCHANGE AMENDMENTS

2 ## 2018 GENERAL SESSION

3 ## STATE OF UTAH

4 ### Chief Sponsor: Brad M. Daw

5 Senate Sponsor: _____

6

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

22

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.** |

(1) For purposes of this section:

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

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

(c) "Electronic exchange":

(i) includes:

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

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

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

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

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

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

(e) "Health care system" shall include:

(i) affiliated health care providers;

(ii) affiliated third party payers; and

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

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

(i) is a non-profit organization;

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

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

(g) "Third party payer" means:

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

(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 that with reasonable care relies upon an apparently genuine

103   electronic health record accessed from an electronic exchange described in Subsection (2) to

104   make a decision concerning the provision of health care to a patient is immune from civil

105   liability for the decision if:

106   (a) the electronic health record is inaccurate;

107   (b) the person who relied on the electronic health record did not cause the inaccuracy;

108   (c) the inaccuracy resulted in an inappropriate health care decision; and

109   (d) the health care decision was appropriate based upon the information contained in

110   the inaccurate electronic health record.

111   [(6)] (7) Within a qualified network, information generated or disclosed in the

112   electronic exchange of clinical health information is not subject to discovery, use, or receipt in

113   evidence in any legal proceeding of any kind or character.