

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

**HEALTH INFORMATION EXCHANGE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad M. Daw**

Senate Sponsor: Allen M. Christensen

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

▶ exempts certain persons from civil liability relating to the access or review of certain clinical health information.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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



26 (1) For purposes of this section:

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

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

32 (c) "Electronic exchange":

33 (i) includes:

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

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

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

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

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

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

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

42 (i) affiliated health care providers;

43 (ii) affiliated third party payers; and

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

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

47 (i) is a non-profit organization;

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

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

53 (g) "Third party payer" means:

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

55 (ii) the state Medicaid program.

56 (2) (a) In addition to the duties listed in Section 26-1-30, the department shall, in

57 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

58 (i) define:

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

60 (B) "health system arrangements between providers or organizations" as described in

61 Subsection (1)(e)(iii); and

62 (ii) adopt standards for the electronic exchange of clinical health information between

63 health care providers and third party payers that are for treatment, payment, health care

64 operations, or public health reporting, as provided for in 45 C.F.R. Parts 160, 162, and 164,

65 Health Insurance Reform: Security Standards.

66 (b) The department shall coordinate its rule making authority under the provisions of

67 this section with the rule making authority of the Insurance Department under Section

68 [31A-22-614.5](#).

69 (c) The department shall establish procedures for developing the rules adopted under

70 this section, which ensure that the Insurance Department is given the opportunity to comment

71 on proposed rules.

72 (3) (a) Except as provided in Subsection (3)~~(e)~~(f), a health care provider or third party

73 payer in Utah is required to use the standards adopted by the department under the provisions

74 of Subsection (2) if the health care provider or third party payer elects to engage in an

75 electronic exchange of clinical health information with another health care provider or third

76 party payer.

77 (b) A health care provider or third party payer may disclose information to the

78 department or a local health department, by electronic exchange of clinical health information,

79 as permitted by Subsection 45 C.F.R. 164.512(b).

80 (c) When functioning in its capacity as a health care provider or payer, the department

81 or a local health department may disclose clinical health information by electronic exchange to

82 another health care provider or third party payer.

83 (d) An electronic exchange of clinical health information by a health care provider, a

84 third party payer, the department, or a local health department is a disclosure for treatment,

85 payment, or health care operations if it complies with Subsection (3)(a) or (c) and is for

86 treatment, payment, or health care operations, as those terms are defined in 45 C.F.R. Parts

87 160, 162, and 164.

88           (e) The department, a local health department, a health care provider, or a third party  
89 payer may access or review clinical health information from the electronic exchange if the  
90 access or review is:

91           (i) for treatment, payment, or health care operations as those terms are defined in 45  
92 C.F.R. Sec. 160.103; and

93           (ii) in accordance with 45 C.F.R. Parts 160, 162, and 164.

94           ~~(e)~~ (f) A health care provider or third party payer is not required to use the standards  
95 adopted by the department under the provisions of Subsection (2) if the health care provider or  
96 third party payer engage in the electronic exchange of clinical health information within a  
97 particular health care system.

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

101           (5) 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 ~~a~~ the access, review, or  
103 disclosure of clinical health information if the access, review, or disclosure is in accordance  
104 [both] with:

105           (a) Subsection (3)(a); and [with]

106           (b) Subsection (3)(b), ~~(3)(c), or (3)(d)~~, (c), (d), or (e).

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