

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 8

Session of 2012

INTRODUCED BY FOLMER, SCARNATI, PILEGGI, FARNESE, M. WHITE, GORDNER, BOSCOLA, D. WHITE, VANCE, ERICKSON, TARTAGLIONE, BLAKE, STACK, BRUBAKER AND PIPPY, FEBRUARY 13, 2012

AS AMENDED ON THIRD CONSIDERATION, JUNE 11, 2012

AN ACT

1 Establishing the Pennsylvania eHealth Partnership Authority and
2 the Pennsylvania eHealth Partnership Fund; providing for
3 consent and confidentiality of health information; and
4 establishing civil immunity under certain circumstances.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 CHAPTER 1

8 PRELIMINARY PROVISIONS

9 Section 101. Short title.

10 This act shall be known and may be cited as the Pennsylvania
11 eHealth Information Technology Act.

12 Section 102. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Authority." The Pennsylvania eHealth Partnership Authority.

17 "Board." The board of directors of the Pennsylvania eHealth
18 Partnership Authority.

1 "Electronic health record." An electronic record of health-
2 related information relating to an individual that is created,
3 gathered, managed and consulted by health care providers OR ←
4 PAYERS.

5 "Fund." The Pennsylvania eHealth Partnership Fund.

6 "Health care provider." A person licensed by the
7 Commonwealth to provide health care or professional clinical
8 services. The term includes:

9 (1) A "health care practitioner," as defined in section
10 103 of the act of July 19, 1979 (P.L.130, No.48), known as
11 the Health Care Facilities Act.

12 (2) A "health care provider," as defined in section 103
13 of the Health Care Facilities Act.

14 ~~(3) A life or health insurer or other payer.~~ ←

15 ~~(4)~~ (3) A public health authority. ←

16 ~~(5)~~ (4) A pharmacy. ←

17 ~~(6)~~ (5) A laboratory. ←

18 ~~(7)~~ (6) A person that provides items or services ←
19 described in section 1861(s) of the Social Security Act (49
20 Stat. 620, 42 U.S.C. § 1395x(s)).

21 ~~(8)~~ (7) A "provider of services," as defined in section ←
22 1861(u) of the Social Security Act (42 U.S.C. § 1395x(u)).

23 "Health information." Information, whether oral or recorded,
24 in any form or medium, that is created or received by a health
25 care provider relating to the following:

26 (1) The past, present or future physical or mental
27 health or medical condition of an individual.

28 (2) The past, present or future payment for the
29 provision of health care to an individual.

30 "Health information exchange." A Statewide interoperable

1 system established under this act that electronically moves and
2 exchanges health information between approved participating
3 health care providers or health information organizations in a
4 manner that ensures the secure exchange of health information to
5 provide care to patients.

6 "Health information organization." An information technology
7 infrastructure with an interoperable system that is established
8 by a health care provider OR PAYER or that connects ←
9 participating health care providers OR PAYERS to ensure the ←
10 secure digital exchange of health information among participants
11 engaged in the care of the patient.

12 "Health information technology." Hardware, software,
13 integrated technologies or related licenses, intellectual
14 property, upgrades or packaged solutions sold as services that
15 are designed for or support the use by health care entities or
16 patients for the electronic creation, maintenance, access or
17 exchange of health information.

18 "Interoperability." The ability of different operating and
19 software systems to employ federally recognized standards to
20 exchange data securely, accurately, effectively and in a manner
21 that maintains and preserves the clinical purpose of the data.

22 "Participant." A person or entity which has been approved by
23 the Pennsylvania eHealth Partnership Authority to send and
24 receive health information using the health information
25 exchange.

26 "Payer." An entity that contracts or offers to contract to
27 provide, deliver, pay or reimburse any of the costs of health
28 care services, including an employer, a health care plan, the
29 Federal Government, the Commonwealth, a municipality, a labor
30 union or an entity licensed under any of the following:

1 (1) The act of May 17, 1921 (P.L.682, No.284), known as
2 The Insurance Company Law of 1921.

3 (2) The act of December 29, 1972 (P.L.1701, No.364),
4 known as the Health Maintenance Organization Act.

5 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
6 corporations).

7 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
8 services plan corporations).

9 CHAPTER 3

10 PENNSYLVANIA EHEALTH

11 PARTNERSHIP AUTHORITY

12 Section 301. Scope of chapter.

13 This chapter relates to the Pennsylvania eHealth Partnership
14 Authority.

15 Section 302. Pennsylvania eHealth Partnership Authority.

16 (a) Establishment.--There is hereby established a body
17 corporate and politic to be known as the Pennsylvania eHealth
18 Partnership Authority, which shall be an independent agency of
19 the Commonwealth. The powers and duties of the authority shall
20 be vested in and exercised by a board of directors.

21 (b) Composition.--The board shall consist of 15 members, who
22 must be residents of this Commonwealth, with two additional, ex
23 officio nonvoting members selected by members of the advisory
24 council, composed and appointed as follows:

25 (1) The Secretary of Health or a designee, who shall be
26 an employee of the Department of Health designated in writing
27 prior to service.

28 (2) The Secretary of Public Welfare or a designee, who
29 shall be an employee of the Department of Public Welfare
30 designated in writing prior to service.

1 (3) One representative of the health care community
2 focused on an unserved or underserved rural or urban patient
3 population, who shall be appointed by the Governor from a
4 list of individuals submitted for consideration by both the
5 Pennsylvania Area Health Education Center and the Association
6 of Community Health Centers.

7 (4) One physician or nurse appointed by the Governor
8 from lists of individuals submitted by the Pennsylvania
9 Medical Society, the Pennsylvania Osteopathic Medical
10 Association, the Pennsylvania Academy of Family Physicians
11 and the Pennsylvania State Nurses Association. At least one
12 name on each list shall include an individual residing in an
13 unserved or underserved rural patient population area and an
14 individual in an unserved or underserved urban patient
15 population area.

16 (5) One hospital representative appointed by the
17 Governor from a list of individuals submitted by the Hospital
18 and Healthsystem Association of Pennsylvania. At least one
19 name on this list shall include an individual residing in an
20 unserved or underserved rural or urban patient population
21 area.

22 (6) One insurance representative appointed by the
23 Governor from lists of individuals submitted by the Blue
24 Cross and Blue Shield plans and the Insurance Federation of
25 Pennsylvania.

26 (7) One representative of an assisted living residence,
27 personal care home, long-term care nursing facility,
28 continuing care facility or behavioral or mental health
29 facility who shall be appointed by the Governor.

30 (8) Two consumer representatives appointed by the

1 Governor who are not primarily involved in providing health
2 care or health care insurance. At least one of these
3 individuals shall have expertise in health care or health
4 care information technology or the laboratory industry.

5 (9) Three representatives from established health
6 information organizations appointed by the President pro
7 tempore of the Senate, in consultation with the Majority
8 Leader and the Minority Leader of the Senate, each of whom
9 shall recommend one person. At least one of these
10 representatives shall be from the private information
11 technology sector with knowledge about security issues.

12 (10) Three representatives from established health
13 information organizations appointed by the Speaker of the
14 House of Representatives, in consultation with the Majority
15 Leader and the Minority Leader of the House of
16 Representatives, each of whom shall recommend one person. At
17 least one of these representatives shall be from the private
18 information technology sector with knowledge about security
19 issues.

20 (c) Terms.--Except a member as specified in subsection (b)
21 (1) or (2), a member of the board shall serve for a term of
22 three years after completion of the initial terms designated in
23 subsection (g) and may not be eligible to serve more than two
24 full consecutive three-year terms. A member shall remain on the
25 board until the member's replacement is appointed and,
26 notwithstanding any other provision of this act, all terms end
27 at the expiration of the authority.

28 (d) Quorum.--A majority of the appointed members of the
29 board shall constitute a quorum. Action may be taken by the
30 board at a meeting upon a vote of a quorum of its members

1 present in person or through electronic means if authorized by
2 the bylaws of the board.

3 (e) Meetings.--The board shall meet at the call of the
4 chairperson or as may be provided in the bylaws of the board.
5 The board shall hold meetings at least quarterly, which shall be
6 subject to the requirements of 65 Pa.C.S. Ch. 7 (relating to
7 open meetings). Meetings of the board may be held anywhere
8 within this Commonwealth.

9 (f) Chairperson.--The Governor shall appoint a chairperson
10 from among the authority members.

11 (g) Initial appointment and vacancy.--

12 (1) A member appointed under subsection (b) (3), (4) or
13 (5) shall be appointed to an initial term of two years with
14 the option for reappointment to two additional three-year
15 terms.

16 (2) A member appointed under subsection (b) (6) or (7)
17 shall be appointed to an initial term of one year with the
18 option for reappointment to two additional three-year terms.

19 (3) A member appointed under subsection (b) (8) shall be
20 appointed to an initial term of three years with the option
21 for reappointment to one additional three-year term.

22 (4) A member appointed under subsection (b) (9) or (10)
23 shall be appointed to an initial term that coincides with the
24 appointing members' terms with the option for reappointment
25 to two additional three-year terms.

26 (h) Formation.--The board shall be formed within 90 days of
27 the effective date of this act.

28 Section 303. Powers and duties.

29 (a) General rule.--The board shall:

30 (1) Adopt bylaws necessary to establish the authority

1 and carry out the provisions of this act.

2 (2) Develop, establish and maintain a health information
3 exchange that complies with Federal and State law and that:

4 (i) Promotes efficient and effective communication
5 among multiple health care providers, PAYERS AND
6 PARTICIPANTS. ←

7 (ii) Creates efficiencies and promotes accuracy in
8 the delivery of health care.

9 (iii) Supports the ability to improve community
10 health status.

11 (3) Employ individuals as necessary to carry out the
12 purposes of this act. Individuals employed by the authority
13 shall be considered employees of the Commonwealth for the
14 purposes of 71 Pa.C.S. Pt. XXV (relating to retirement for
15 State employees and officers).

16 (4) Adopt all of the following:

17 (i) Policies and procedures to govern the electronic
18 exchange of health information in accordance with this
19 act.

20 (ii) Rules, responsibilities and obligations for
21 organizations and individuals to become and remain
22 participants in the health information exchange.

23 (iii) Policies and procedures for organizations and
24 individuals to be suspended and disengaged as
25 participants in the health information exchange.

26 (5) Make, execute and deliver contracts, grants and
27 other instruments.

28 (6) Apply for, solicit, receive, establish priorities
29 for, allocate, disburse, contract for, administer and expend
30 funds consistent with the purposes of this act.

1 (7) Apply for, accept and administer grants and loans to
2 carry out the purpose of the authority.

3 (8) Accept funds from both public and private sources,
4 consistent with Federal and State law.

5 (9) Develop and maintain a directory of health care
6 provider's contact information to enable participants to
7 share health information electronically.

8 (10) Develop criteria for the approval of participants
9 in the health information exchange.

10 (11) Develop and maintain standards to ensure
11 interoperability.

12 (12) Establish and collect fees adopted by the
13 authority. Fees may include transaction fees, subscription
14 fees or other fees or donations, to cover costs of
15 implementation and operation of the exchange or for other
16 services provided by the authority. Receipt of services
17 provided by or through the authority may be conditioned on
18 payment of fees. Participation in the exchange by any health
19 care provider, payer, consumer or any other person is
20 voluntary.

21 (13) Establish advisory groups with a diverse membership
22 representing interested and affected groups and individuals,
23 two of which shall be selected by other members of the group
24 to serve as nonvoting members of the board or the authority.

25 (14) Develop and conduct public information programs to
26 educate and inform consumers and patients about health
27 information.

28 (15) Submit an annual report to the Governor, the
29 President pro tempore of the Senate and the Speaker of the
30 House of Representatives for distribution to appropriate

1 legislative committees on the activities of the authority for
2 the year, including a summary of the receipts and
3 expenditures, a list of contracts and a summary of any
4 reportable security breaches that occurred and corrective
5 actions that were taken.

6 (16) Develop and maintain:

7 (i) a registry of patients choosing to opt out of
8 the health information exchange; and

9 (ii) procedures to ~~reenroll~~ RE-ENROLL into the
10 health information exchange. ←

11 (17) Perform all other activities in furtherance of the
12 purposes of this act.

13 (b) Audit.--

14 (1) The accounts and books of the authority shall be
15 examined and audited annually by an independent certified
16 public accounting firm. The audit shall be public
17 information.

18 (2) The authority shall, by December 31 of each year,
19 file a copy of the audit of the preceding Commonwealth fiscal
20 year required under paragraph (1) with the Secretary of the
21 Senate and the Chief Clerk of the House of Representatives.

22 (c) Publication.--The authority shall annually submit a
23 financial statement to the Legislative Reference Bureau for
24 publication in the Pennsylvania Bulletin.

25 (d) Expiration.--The authority shall expire five years after
26 the effective date of this chapter. One year prior to the
27 expiration, the Legislative Budget and Finance Committee shall
28 evaluate the management, viability and performance of the health
29 information exchange and shall provide a report to the
30 Communications and Technology Committee of the Senate and the

1 Health Committee of the House of Representatives and the Human
2 Services Committee of the House of Representatives. The report
3 shall include recommendations as to reauthorization of the
4 authority, dissolution of the authority or assumption of the
5 authority's responsibilities and assets by another entity.

6 CHAPTER 5

7 PENNSYLVANIA EHEALTH PARTNERSHIP FUND

8 Section 501. Establishment.

9 There is established a separate fund in the State Treasury to
10 be known as the Pennsylvania eHealth Partnership Fund. The fund
11 shall be administered by the authority.

12 Section 502. Funds.

13 All moneys deposited into the fund shall be held for the
14 purposes of the authority and may not be considered a part of
15 the General Fund, but shall be used only to effectuate the
16 purposes of this act as determined by the authority. All
17 interest earned from the investment or deposit of moneys
18 accumulated in the fund shall be deposited in the fund for the
19 same use.

20 CHAPTER 7

21 CONSENT AND CONFIDENTIALITY

22 OF HEALTH INFORMATION

23 Section 701. Consent and confidentiality of health information.

24 (a) Construction.--

25 (1) Nothing in this act shall be construed to prohibit a
26 health care provider OR PAYER from obtaining and storing a ←
27 patient's health records in electronic form or exchanging
28 health information with another health care provider OR PAYER ←
29 in accordance with Federal law or State law other than this
30 act.

1 (2) Nothing in this act shall supersede or limit any
2 other law which requires additional consent to the release of
3 health information or otherwise establishes greater
4 restrictions or limitations on the release of health
5 information.

6 (b) Consent.--The authority shall promulgate a consent form
7 including notice of a patient's ability to decline to allow
8 exchange of the patient's electronic health information in the
9 health information exchange. The notice shall include, at a
10 minimum and in plain language, the following information:

11 (1) Definition of a health information exchange.

12 (2) Explanation of the benefits of participation in the
13 health information exchange.

14 (3) Explanation of the limits of the patient's ability
15 to decline the release or exchange of the patient's health
16 information with the health information exchange.

17 (4) Explanation of the manner in which the health
18 information exchange will address privacy issues.

19 (5) Explanation of the manner in which an individual may
20 decline to participate in the health information exchange.

21 (c) Opt-out registry.--

22 (1) In order to decline participation in the health
23 information exchange, a patient must sign and date a form
24 declining participation. If appropriate, the signature must
25 be witnessed by the patient's representative. Copies of the
26 completed form shall be sent by the provider within five
27 business days to the authority to be included in an opt-out
28 registry.

29 (2) After receipt of the form, the authority shall
30 within five business days notify health information

1 organizations that the patient has not authorized the release
2 of the health information.

3 (3) Once the patient is included in the opt-out
4 registry, the authority shall notify the patient. The
5 notification shall include a copy of the completed form
6 signed by the patient or electronic notification to the
7 patient.

8 (4) The patient alone shall decide to opt out of a
9 health information exchange.

10 (d) Disclosure.--

11 (1) The authority shall retain only the health
12 information necessary for the operation of the health
13 information exchange. The authority may not disclose, without
14 prior written consent of the patient, any health information
15 that the authority or its employees, agents or contractors
16 retain, or to which the authority or its agents or
17 contractors have access or any other health records
18 maintained or accessible by the authority under this act, to
19 any person who is not an authorized employee, agent or
20 contractor of the authority, except as required by law.

21 (2) Sharing health information among participants in the
22 health information exchange shall not be considered a
23 disclosure under paragraph (1).

24 (3) Violations of this subsection:

25 (i) shall subject employees, agents and contractors
26 to administrative discipline, including discharge and
27 suspension; and

28 (ii) shall subject contractors to monetary penalties
29 or contract revocation or suspension.

30 (e) Construction.--Nothing in this act may be construed to

1 alter a proprietary interest held by any participant in any
2 record, data or information released, accepted or included in
3 the health information exchange, except insofar as the paperwork
4 approved by the authority may require participants to license
5 those interests by contract in order to allow for the free flow
6 of information.

7 CHAPTER 40

8 MISCELLANEOUS PROVISIONS

9 Section 4001. Nonapplicability.

10 (1) This act is subject to 1 Pa.C.S. § 2310 (relating to
11 sovereign immunity reaffirmed; specific waiver).

12 (2) The authority shall be subject to the act of
13 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know
14 Law. Health information or personally identifying information
15 shall not be considered a public record for purposes of the
16 Right-to-Know Law.

17 (3) NOTHING IN THIS ACT IS INTENDED TO AFFECT COMMON LAW ←
18 OR STATUTORY RIGHTS OR OBLIGATIONS WITH RESPECT TO PATIENT
19 ACCESSIBILITY TO THEIR ELECTRONIC OR NONELECTRONIC MEDICAL
20 RECORDS.

21 Section 4002. Effective date.

22 This act shall take effect immediately.