

SECOND REGULAR SESSION

# HOUSE BILL NO. 2464

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PATTERSON.

5427H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 376, RSMo, by adding thereto one new section relating to health information exchange activities.

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

Section A. Chapter 376, RSMo, is amended by adding thereto one new section, to be known as section 376.455, to read as follows:

**376.455. 1. As used in this section, the following terms shall mean:**

**(1) "Health information exchange activities", the electronic exchange of individually identifiable information among unaffiliated organizations 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;**

**(2) "Health information organization", any organization that oversees and governs health information exchange activities;**

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

**(4) "Individually identifiable information", any information that identifies an individual or there is a reasonable basis to believe can be used to identify the individual including, but not limited to, information created or received by health care providers,**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 health plans, organizations providing social services, or assessing social determinants of  
19 health and organizations that provide services to or on behalf of any of the foregoing;

20 (5) "Participant", a person or entity who accesses, uses, or discloses individually  
21 identifiable information through a health information exchange operated by a health  
22 information organization including, but not limited to, health care providers, health plans,  
23 health care clearinghouses, organizations providing social services or assessing social  
24 determinants of health and organizations that provide services to or on behalf of any of the  
25 foregoing.

26 2. (1) Notwithstanding any other law to the contrary, any participant may disclose,  
27 access, or use individually identifiable information through a health information exchange  
28 operated by a health information organization pursuant to this chapter and in accordance  
29 with applicable federal laws including, but not limited to, the Health Insurance Portability  
30 and Accountability Act of 1996, as amended, and the Health Information Technology for  
31 Economic and Clinical Health Act, and implementing regulations, without obtaining  
32 individual consent or authorization.

33 (2) Except as otherwise provided in state or federal law, an individual has the right  
34 to opt out of having the individual's individually identifiable information accessible  
35 through a health information exchange operated by a health information organization  
36 under this chapter.

37 (3) A health information organization shall implement policies that meet the  
38 requirements under Pub. L. 104-191 and section 376.450 governing the privacy and  
39 security of individually identifiable information that is accessible through the health  
40 information exchange.

41 (4) All participants in a health information exchange operated by a health  
42 information organization pursuant to this chapter shall comply with Pub. L. 104-191 and  
43 section 376.450, if such participant is subject to Pub. L. 104-191 and section 376.450, and  
44 all policies and procedures of the health information organization with respect to the  
45 health information exchange.

46 (5) To the extent any provision of state law regarding the confidentiality of any  
47 individually identifiable information conflicts with, is contrary to or more stringent than  
48 the provisions of this section, the provisions of this section shall control with respect to a  
49 participant's disclosure, access, or use of that individually identifiable information through  
50 a health information exchange operated by a health information under this chapter.

51 (6) This section does not limit, change, or otherwise affect the use or disclosure of  
52 individually identifiable information outside of a health information exchange operated by  
53 a health information organization pursuant to this chapter.

54           **3. (1) A health information organization shall maintain a written notice of health**  
55 **information practices for the health information exchange activities that describes all of**  
56 **the following:**

57           **(a) The categories of individually identifiable information that are accessible**  
58 **through the health information exchange;**

59           **(b) The categories of participants who have access to individually identifiable**  
60 **information through the health information exchange;**

61           **(c) The purposes for which access to individually identifiable information is**  
62 **provided through the health information exchange;**

63           **(d) Except as otherwise provided in state or federal law, that an individual has the**  
64 **right to opt out of having the individual's individually identifiable information accessible**  
65 **through the health information exchange; and**

66           **(e) An explanation as to how an individual may opt out of having the individual's**  
67 **individually identifiable information accessible through the health information exchange.**

68           **(2) The notice of health information practices may reference a publicly accessible**  
69 **website that contains some or all of the information described in subdivision (1) of this**  
70 **subsection, such as a current list of participants and the permitted purposes for accessing**  
71 **individually identifiable information through the health information exchange. A health**  
72 **information organization shall post a current notice of health information practices on a**  
73 **website in a conspicuous manner.**

74           **4. (1) A health information organization is not subject to liability for damages or**  
75 **costs of any nature, in law or in equity, arising out of chapter 538, the common law of the**  
76 **state of Missouri, or any statute defining a cause of action against a health care provider**  
77 **for personal injury, death, or professional malpractice arising out of or related to its health**  
78 **information exchange activities.**

79           **(2) Participants in a health information exchange operated by a health information**  
80 **organization pursuant to this chapter shall not be liable in any action for damages or costs**  
81 **of any nature, in law or equity, which result solely from that participant's use or failure**  
82 **to use the health information exchange or participant's disclosure of individually**  
83 **identifiable information through the health information exchange in accordance with the**  
84 **requirements of this chapter.**

85           **(3) No person shall be subject to antitrust or unfair competition liability based**  
86 **solely on participation in a health information exchange operated by a health information**  
87 **organization under this chapter.**

88           **(4) All employees, officers, and members of the governing board of a health**  
89 **information organization that operates a health information exchange under this chapter,**

90 **whether temporary or permanent, shall not be subject to and shall be immune from any**  
91 **claim, suit, liability, damages, or any other recourse, civil or criminal, arising from any act**  
92 **or proceeding, decision, or determination undertaken, performed, or reached in good faith**  
93 **and without malice by any such member or members acting individually or jointly in**  
94 **carrying out the responsibilities, authority, duties, powers, and privileges of the offices**  
95 **conferred by law upon them under this chapter, or any other state law, or policies and**  
96 **procedures of the health information exchange, good faith being presumed until proven**  
97 **otherwise, with malice required to be shown by a complainant.**

98 **(5) Individually identifiable information accessible through a health information**  
99 **exchange operated by a health information organization under this chapter is not subject**  
100 **to discovery, subpoena, or other means of legal compulsion for the release of such**  
101 **individually identifiable information to any person or entity. Such a health information**  
102 **organization shall not be compelled by a request for production, subpoena, court order,**  
103 **or otherwise, to disclose individually identifiable health information.**

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