

FIRST REGULAR SESSION

# SENATE BILL NO. 496

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

1908S.03I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal section 191.237, RSMo, and to enact in lieu thereof one new section relating to health information networks.

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

Section A. Section 191.237, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 191.237,  
3 to read as follows:

191.237. 1. No law or rule promulgated by an agency  
2 of the state of Missouri may impose a fine or penalty  
3 against a health care provider, hospital, or health care  
4 system for failing to participate in any particular health  
5 information [organization] **exchange**.

6 2. A health information [organization] **exchange** shall  
7 not restrict the exchange of state agency data or standards-  
8 based clinical summaries for patients for [federal Health  
9 Insurance Portability and Accountability Act (HIPAA)] **HIPAA**  
10 allowable uses. Charges for such service shall not exceed  
11 the cost of the actual technology connection or recurring  
12 maintenance thereof.

13 3. **(1) Notwithstanding any other provision of law to**  
14 **the contrary, any participant may disclose, access, or use**  
15 **individually identifiable information through a health**  
16 **information network under this section and in accordance**  
17 **with applicable federal laws, including, but not limited to,**

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 HIPAA, relating to individual consent and authorization  
19 requirements.

20 (2) Except as otherwise provided in state or federal  
21 law, an individual shall have the right to opt out of having  
22 his or her identifiable information made accessible or  
23 delivered through a health information network under this  
24 section.

25 (3) A health information exchange or health  
26 information network shall implement policies that meet the  
27 requirements of HIPAA governing the privacy and security of  
28 individually identifiable information that is made  
29 accessible or delivered through the health information  
30 exchange or health information network.

31 (4) All participants in a health information network  
32 under this section shall comply with HIPAA, if such  
33 participant is subject to HIPAA, and all policies and  
34 procedures of the health information network with respect to  
35 the health information exchange activities.

36 (5) To the extent any provision of state law, rule or  
37 regulation regarding the confidentiality of any individually  
38 identifiable information conflicts with, is contrary to, or  
39 is more stringent than the provisions of this section, the  
40 provisions of this section shall control with respect to a  
41 participant's disclosure, access, or use of that  
42 individually identifiable information through a health  
43 information network under this section. More stringent  
44 provisions would include requiring a participant to obtain  
45 individual written consent or authorization before  
46 disclosing, accessing, or using individually identifiable  
47 information through a health information network under this  
48 section that is not in accordance with applicable federal  
49 laws including, but not limited to, HIPAA.

50           (6) This section shall not limit, change, or otherwise  
51 affect the use or disclosure of individually identifiable  
52 information outside of a health information network.

53           4. (1) Participants shall maintain a written notice  
54 of privacy practices for the health information network that  
55 describes all of the following:

56           (a) The categories of individually identifiable  
57 information that are made accessible or disclosed through  
58 the health information network;

59           (b) The purposes for which access to individually  
60 identifiable information is provided through the health  
61 information network or for which individually identifiable  
62 information is disclosed through the health information  
63 network;

64           (c) Except as otherwise provided in state or federal  
65 law, an individual's right to opt out of having his or her  
66 individually identifiable information made accessible or  
67 disclosed through the health information network; and

68           (d) An explanation as to how an individual may opt out  
69 of having his or her individually identifiable information  
70 made accessible or disclosed through the health information  
71 network.

72           (2) The notice of privacy practices maintained by  
73 participants may reference a publicly accessible website or  
74 websites that contain some or all of the information  
75 described in subdivision (1) of this subsection, such as a  
76 current list of participants and the permitted purposes for  
77 accessing or disclosing individually identifiable  
78 information through the health information network.

79           (3) A participant shall post its current notice of  
80 privacy practices on its website in a conspicuous manner.

81           5. (1) A health information network shall not be  
82 considered a health care provider, as that term is defined  
83 in section 538.205, based on its health information exchange  
84 activities and shall not be subject to liability for damages  
85 or costs of any nature, in law or in equity, arising out of  
86 chapter 538 and the common law of Missouri related to the  
87 rendering of or failure to render health care services when  
88 carrying out health information exchange activities pursuant  
89 to this section.

90           (2) Participants under this section shall not be  
91 liable in any action for damages or costs of any nature, in  
92 law or equity, including a breach of the duty of  
93 confidentiality, which result solely from the participant's  
94 use or failure to use the health information exchange or the  
95 participant's disclosure of individually identifiable  
96 information through the health information exchange in  
97 accordance with the requirements of this section. Nothing  
98 in this section may be construed to limit the liability of a  
99 health care provider, as that term is defined in section  
100 538.205, for damages or costs of any nature, in law or in  
101 equity, arising out of chapter 538 or the common law of  
102 Missouri for the health care provider's rendering of or  
103 failure to render health care services, as that term is  
104 defined in section 538.205.

105           (3) No person shall be subject to antitrust or unfair  
106 competition liability based solely on participation in a  
107 health information exchange operated by a health information  
108 network under this section.

109           (4) All staff, officers, and members of the board of  
110 directors of a health information network that performs  
111 health information exchange activities under this section,  
112 whether temporary or permanent, shall not be subject to and

113 shall be immune from any claim, suit, liability, damages, or  
114 any other recourse, civil or criminal, arising from any act  
115 or proceeding, decision, or determination undertaken,  
116 performed, or reached in good faith and without malice by  
117 any such member or members acting individually or jointly in  
118 carrying out the responsibilities, authority, duties,  
119 powers, and privileges of the offices conferred by law upon  
120 them under this section, or any other law, or policies and  
121 procedures of the health information network, good faith  
122 being presumed until proven otherwise, with malice required  
123 to be shown by a complainant.

124 (5) Individually identifiable information accessible  
125 through a health information network under this section  
126 shall not be subject to discovery, subpoena, or other means  
127 of legal compulsion for the release of such individually  
128 identifiable information to any person or entity. Such a  
129 health information network shall not be compelled by a  
130 request for production, subpoena, court order, or otherwise,  
131 to disclose individually identifiable information.

132 6. As used in this section, the following terms shall  
133 mean:

134 (1) "Fine or penalty", any civil or criminal penalty  
135 or fine, tax, salary or wage withholding, or surcharge  
136 established by law or by rule promulgated by a state agency  
137 pursuant to chapter 536;

138 (2) "Health care system", any public or private entity  
139 whose function or purpose is the management of, processing  
140 of, or enrollment of individuals for or payment for, in full  
141 or in part, health care services or health care data or  
142 health care information for its participants;

143 (3) "Health information [organization] **exchange**" or  
144 "**health information network**", an organization that oversees

145 and governs [the exchange of health-related information  
146 among organizations according to nationally recognized  
147 standards.], or conducts on behalf of unaffiliated  
148 organizations, health information exchange activities;

149 (4) "Health information exchange activities", the  
150 electronic exchange, including permitting access to or the  
151 delivery, of individually identifiable information among  
152 more than two unaffiliated organizations, not including the  
153 health information exchange itself, according to nationally  
154 recognized standards. The following activities are not  
155 considered "health information exchange activities":

156 (a) Electronic exchange of individually identifiable  
157 information among unaffiliated organizations solely for the  
158 purposes of an organized health care arrangement, as  
159 described in HIPAA; and

160 (b) Electronic exchange of individually identifiable  
161 information among unaffiliated organizations solely for  
162 research purposes;

163 (5) "HIPAA", the Health Insurance Portability and  
164 Accountability Act of 1996, as amended, the Health  
165 Information Technology for Economic and Clinical Health Act,  
166 as amended, and implementing regulations;

167 (6) "Individual", the person who is the subject of the  
168 individually identifiable information;

169 (7) "Individually identifiable information", any  
170 information that identifies an individual or with respect to  
171 which there is a reasonable basis to believe the information  
172 can be used to identify the individual, and includes,  
173 without limitation, information created or generated by  
174 health care providers, health benefit plans, organizations  
175 providing social services or assessing social determinants  
176 of health, and organizations that provide services to or on

177 behalf of any of the foregoing and health care  
178 clearinghouses, and relates to the past, present, or future  
179 physical or mental health or condition of an individual, the  
180 provision of health care to an individual, or the past,  
181 present, or future payment for the provision of health care  
182 to an individual;

183 (8) "Participant", an individual or entity who  
184 accesses, uses, or discloses individually identifiable  
185 information through a health information network, and  
186 includes, without limitation, health care providers, health  
187 benefit plans, organizations providing social services or  
188 assessing social determinants of health, and organizations  
189 that provide services to or on behalf of any of the  
190 foregoing.

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