

SENATE BILL No. 210

By Committee on Ways and Means

2-18

1 AN ACT concerning health information technology; amending K.S.A.
2 2012 Supp. 65-6821, 65-6822, 65-6823, 65-6824, 65-6825, 65-6828,
3 65-6829, 65-6830, 65-6831, 65-6832, 65-6833 and 65-6834 and
4 repealing the existing sections; also repealing K.S.A. 2012 Supp. 65-
5 6826 and 65-6827.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2012 Supp. 65-6821 is hereby amended to read as
9 follows: 65-6821. ~~(a)~~ K.S.A. 2012 Supp. 65-6821 through 65-6834 *and*
10 *section 13*, and amendments thereto, shall be known and may be cited as
11 the Kansas health information technology ~~and exchange~~ act.

12 ~~(b) This section shall take effect on and after July 1, 2011.~~

13 Sec. 2. K.S.A. 2012 Supp. 65-6822 is hereby amended to read as
14 follows: 65-6822. As used in the Kansas health information technology
15 ~~and exchange~~ act:

16 (a) "Act" means the Kansas health information technology ~~and~~
17 ~~exchange~~ act.

18 (b) "Approved ~~HO~~ health information organization" means a health
19 information organization operating in the state ~~which has been approved~~
20 ~~by the corporation~~ under a valid certificate of authority issued by the
21 department.

22 (c) ~~"Corporation" means the Kansas health information exchange,~~
23 ~~inc., created by executive order 10-06.~~ "Authorization" means a document
24 that permits a covered entity to use or disclose protected health
25 information for purposes other than to carry out treatment, payment or
26 health care operations, and that complies with the requirements of 45
27 C.F.R. § 164.508.

28 (d) "Covered entity" ~~means a health care provider, a health care~~
29 ~~component of a hybrid entity, a health plan or a health care clearinghouse~~
30 *a covered entity as the term is defined in 45 C.F.R. § 160.301 160.103.*

31 (e) ~~"Designated record set" means designated record set as that term~~
32 ~~is defined by the HIPAA privacy rule~~ "Department" means the Kansas
33 department of health and environment.

34 (f) "Disclosure" means disclosure as that term is defined by the
35 HIPAA privacy rule.

36 (g) ~~"DPOA-HC" means the person to whom a durable power of~~

1 attorney for health care decisions has been granted by an individual in
2 accordance with K.S.A. 58-625 et seq., and amendments thereto.

3 ~~(h)~~ "Electronic protected health information" means electronic health
4 information as that term is defined by the HIPAA privacy rule.

5 ~~(i)~~ "Health care" means health care as that term is defined by the
6 HIPAA privacy rule.

7 ~~(j)~~ "Health care clearinghouse" means a health care clearinghouse, as
8 that term is defined by the HIPAA privacy rule, doing business within the
9 state.

10 ~~(k)~~ ~~(h)~~ "Health care provider" means a health care provider, as that
11 term is defined by the HIPAA privacy rule, that furnishes health care to
12 individuals in the state.

13 ~~(l)~~ ~~(i)~~ "Health information" means health information as that term is
14 defined by the HIPAA privacy rule.

15 ~~(m)~~ ~~(j)~~ "Health information organization" means any entity operating
16 in the state which:

17 (1) Maintains technical infrastructure for the electronic movement of
18 health information among covered entities; and

19 (2) promulgates and enforces policies governing participation in such
20 *sharing of health information exchange*.

21 ~~(n)~~ ~~(k)~~ "Health information technology" means an information
22 processing application using computer hardware and software for the
23 storage, retrieval, use and disclosure of health information for
24 communication, decision-making, quality, safety and efficiency of health
25 care. "Health information technology" includes, but is not limited to: (1)
26 An electronic health record; (2) a personal health record; (3) *the sharing of*
27 *health information exchange electronically*; (4) electronic order entry; and
28 (5) electronic decision support.

29 ~~(o)~~ "Health plan" means a health plan, as that term is defined by the
30 HIPAA privacy rule, doing business within the state.

31 ~~(p)~~ ~~(l)~~ "HIPAA privacy rule" means the privacy rule of the
32 administrative simplification subtitle of the health insurance portability
33 and accountability act of 1996 (Pub. L. No. 104-191) contained in 45
34 C.F.R. part 160 and 45 C.F.R. part 164, subparts A and E.

35 ~~(q)~~ "Hybrid entity" means hybrid entity as that term is defined by the
36 HIPAA privacy rule.

37 ~~(r)~~ ~~(m)~~ "Individual" means individual as that term is defined by the
38 HIPAA privacy rule.

39 ~~(s)~~ ~~(n)~~ "Individually identifiable health information" means
40 individually identifiable health information as that term is defined by the
41 HIPAA privacy rule.

42 ~~(t)~~ "Interoperability" means the capacity of two or more information
43 systems to exchange information or data in an accurate, effective, secure

1 ~~and consistent manner.~~

2 (tt) (o) "Participation agreement" means a written agreement between
3 a covered entity and an approved ~~HIO~~ *health information organization*
4 concerning the covered entity's participation in the approved ~~HIO~~ *health*
5 *information organization* on terms consistent with K.S.A. 2012 Supp. 65-
6 6832, and amendments thereto.

7 (tv) (p) "Personal representative" means the person who has the legal
8 authority to act on behalf of an individual.

9 (tw) (q) "Protected health information" means protected health
10 information as that term is defined by the HIPAA privacy rule.

11 (x) ~~"Public health authority" means public health authority as that~~
12 ~~term is defined by the HIPAA privacy rule.~~

13 (y) (r) "Secretary" means the secretary of health and environment.

14 (z) ~~"Standard authorization form" means the standard authorization~~
15 ~~form developed and promulgated by the secretary pursuant to K.S.A. 2012~~
16 ~~Supp. 65-6826, and amendments thereto.~~

17 (aa) (s) "State" means the state of Kansas.

18 (bb) (t) "Use" means, with respect to individually identifiable health
19 information, use as the term is defined by the HIPAA privacy rule.

20 ~~This section shall take effect on and after July 1, 2011.~~

21 Sec. 3. K.S.A. 2012 Supp. 65-6823 is hereby amended to read as
22 follows: 65-6823. (a) It is the purpose of this act to harmonize state law
23 with the HIPAA privacy rule with respect to individual access to protected
24 health information, proper safeguarding of protected health information,
25 and the use and disclosure of protected health information for purposes of
26 facilitating the development and use of health information technology and
27 ~~health information exchange~~ *the sharing of health information*
28 *electronically.*

29 (b) ~~This section shall take effect on and after July 1, 2011.~~

30 Sec. 4. K.S.A. 2012 Supp. 65-6824 is hereby amended to read as
31 follows: 65-6824. (a) A covered entity shall provide an individual or such
32 individual's personal representative with access to the individual's
33 protected health information maintained ~~by the, collected, used or~~
34 ~~disseminated by or for the~~ covered entity ~~in a designated record set~~ in
35 compliance with 45 C.F.R. § 164.524.

36 (b) A covered entity shall implement and maintain appropriate
37 administrative, technical and physical safeguards to protect the privacy of
38 protected health information in a manner consistent with 45 C.F.R. §
39 164.530(c).

40 (c) ~~This section shall take effect on and after July 1, 2011.~~

41 Sec. 5. K.S.A. 2012 Supp. 65-6825 is hereby amended to read as
42 follows: 65-6825. (a) No covered entity shall use or disclose protected
43 health information except as follows:

1 ~~(1) Use and disclosure of protected health information~~*In a manner*
2 consistent with an authorization that satisfies the requirements of 45 C.F.R.
3 § 164.508;

4 ~~(2) use and disclosure of protected health information without an~~
5 ~~authorization~~*in a manner* as permitted under 45 C.F.R. §§ 164.502,
6 164.506, 164.508, 164.510 and 164.512; or

7 ~~(3) use and disclosure of protected health information~~ *in a manner* as
8 required under 45 C.F.R. § 164.502.

9 ~~(b) Notwithstanding the provisions of subsection (a), no covered~~
10 ~~entity shall disclose an individual's protected health information to a~~
11 ~~health information organization for any purpose without an authorization~~
12 ~~that satisfies the requirements of 45 C.F.R. § 164.508, unless~~ *A covered*
13 *entity may disclose an individual's protected health information to a*
14 *health information organization without an authorization if such covered*
15 *entity:*

16 (1) Is a party to a current participation agreement with an approved
17 ~~HIO~~ *health information organization* at the time the disclosure is made;

18 (2) discloses the individual's protected health information to that
19 approved ~~HIO~~ *health information organization* in a manner consistent with
20 the ~~approved HIO's~~ *established procedures of the approved health*
21 *information organization; and*

22 ~~(3) prior to the disclosure, has furnished~~ *furnishes* to the individual,
23 or such individual's personal representative, whose information is to be
24 disclosed to the approved ~~HIO~~ *health information organization*, the notice
25 required under K.S.A. 2012 Supp. 65-6832, and amendments thereto; ~~and~~

26 ~~(4) restricts disclosure to the approved HIO of any protected health~~
27 ~~information concerning the individual that is the subject of a written~~
28 ~~request delivered to the covered entity by the individual, or such~~
29 ~~individual's personal representative, for reasonable restrictions on~~
30 ~~disclosure of all or any specified categories of the individual's protected~~
31 ~~health information, as defined pursuant to K.S.A. 2012 Supp. 65-6832, and~~
32 ~~amendments thereto, following the covered entity's receipt of such written~~
33 ~~request.~~

34 ~~(c) Notwithstanding the provisions of subsections (a) and (b), A~~
35 ~~covered entity that uses or discloses protected health information in~~
36 ~~compliance with this section shall be immune from any civil or criminal~~
37 ~~liability or any adverse administrative action arising out of or relating to~~
38 ~~such use or disclosure.~~

39 ~~(d) This section shall take effect on and after July 1, 2011.~~

40 Sec. 6. K.S.A. 2012 Supp. 65-6828 is hereby amended to read as
41 follows: 65-6828. To the extent any provision of state law regarding the
42 confidentiality, privacy, security or privileged status of any protected
43 health information conflicts with, *is contrary to, or more stringent than the*

1 provisions of this act, the provisions of this act shall control, except that:
 2 (a) Nothing in this act shall limit or restrict the effect and application of the
 3 peer review statute, K.S.A. 65-4915, and amendments thereto; the risk
 4 management statute, K.S.A. 65-4921 *through 65-4930*, and amendments
 5 thereto; or any statutory health care provider-patient evidentiary privilege
 6 applicable to a judicial or administrative proceeding; and

7 (b) nothing in this act shall limit or restrict the ability of any state
 8 agency to require the disclosure of protected health information by any
 9 person or entity pursuant to law.

10 Sec. 7. K.S.A. 2012 Supp. 65-6829 is hereby amended to read as
 11 follows: 65-6829. ~~(a) A health care provider covered entity~~ may disclose
 12 protected health information without authorization to any state agency for
 13 any public health purpose that is required by law. Nothing in this act shall
 14 be construed to limit the use, transfer or disclosure of protected health
 15 information as required or permitted by any other provision of law *for*
 16 *public health purposes*.

17 ~~(b) This section shall take effect on and after July 1, 2011.~~

18 Sec. 8. K.S.A. 2012 Supp. 65-6830 is hereby amended to read as
 19 follows: 65-6830. ~~(a) The corporation department~~ shall establish and
 20 revise, as appropriate, standards for *the* approval and operation of
 21 statewide and regional health information organizations operating in the
 22 state as approved ~~HIOs~~ *health information organizations* including, but not
 23 limited to, the following:

24 ~~(a) Satisfaction of certification standards for health information~~
 25 ~~exchanges promulgated by the federal government;~~

26 ~~(b)~~ (1) Adherence to nationally recognized standards for
 27 interoperability, *that is, the capacity of two or more information systems to*
 28 *share information or data in an accurate, effective, secure and consistent*
 29 *manner;*

30 ~~(c)~~(2) adoption and adherence to rules promulgated by the
 31 ~~corporation department~~ regarding access to and use and disclosure of
 32 protected health information maintained by or on an approved ~~HIO~~ *health*
 33 *information organization;*

34 ~~(d)~~(3) demonstration of adequate financial resources to sustain
 35 continued operations in compliance with the standards;

36 ~~(e)~~(4) participation in outreach activities for individuals and covered
 37 entities;

38 ~~(f)~~(5) conduct of operations in a transparent manner to promote
 39 consumer confidence;

40 ~~(g)~~(6) implementation of security breach notification procedures; and

41 ~~(h)~~(7) development of procedures for entering into and enforcing the
 42 terms of participation agreements with covered entities which satisfy the
 43 requirements established by the ~~corporation department~~ pursuant to K.S.A.

1 2012 Supp. 65-6832, and amendments thereto.

2 (b) *The department shall ensure that approved health information*
3 *organizations operate within the state in a manner consistent with the*
4 *protection of the security and privacy of health information of the citizens*
5 *of Kansas.*

6 (c) *No expenditure shall be made from the state general fund for*
7 *the purposes of administration, operation or oversight of the health*
8 *information organizations defined in K.S.A. 65-6821, and amendments*
9 *thereto, except that the secretary of health and environment may make*
10 *operational expenditures for the purpose of adopting and administering*
11 *the rules and regulations necessary to implement the Kansas health*
12 *information technology act.*

13 ~~This section shall take effect on and after July 1, 2011.~~

14 Sec. 9. K.S.A. 2012 Supp. 65-6831 is hereby amended to read as
15 follows: 65-6831. ~~(a) The corporation department shall establish and~~
16 ~~implement:~~

17 ~~(1)(a) A process by which a health information exchange organization~~
18 ~~may apply for and receive approval a certificate of authority issued by the~~
19 ~~corporation department by demonstrating compliance with the standards~~
20 ~~promulgated by the corporation department pursuant to K.S.A. 2012 Supp.~~
21 ~~65-6830, and amendments thereto;~~

22 ~~(2)(b) a process by which an approved HHO health information~~
23 ~~organization shall be re-approved on appropriate intervals by~~
24 ~~demonstrating continued compliance with the standards promulgated by~~
25 ~~the corporation department pursuant to K.S.A. 2012 Supp. 65-6830, and~~
26 ~~amendments thereto; and~~

27 ~~(3)(c) a process for the investigation of reported concerns and~~
28 ~~complaints regarding an approved HHO health information organization~~
29 ~~and imposition of appropriate remedial and proactive measures to address~~
30 ~~any identified deficiencies.~~

31 ~~(b) This section shall take effect on and after July 1, 2011.~~

32 Sec. 10. K.S.A. 2012 Supp. 65-6832 is hereby amended to read as
33 follows: 65-6832. ~~(a) The corporation department shall establish~~
34 ~~requirements for participation agreements to to be used by approved~~
35 ~~health information organizations in participation agreements with covered~~
36 ~~entities and shall include the following:~~

37 ~~(1)(a) Specification of procedures for the covered entity to disclose~~
38 ~~by which an individual's protected health information to the approved HHO~~
39 ~~will be disclosed by covered entities, will be collected by approved health~~
40 ~~information organizations and will be shared with other participating~~
41 ~~covered entities and with the department as required by law for public~~
42 ~~health purposes;~~

43 ~~(2)(b) specification of procedures for the covered entity to access an~~

1 ~~individual's protected health information from the approved HHO by which~~
2 ~~an individual may elect that protected health information be restricted~~
3 ~~from disclosure by approved health information organizations to covered~~
4 ~~entities;~~

5 ~~(C)(c) specifications of purposes for, and procedures by which a~~
6 ~~covered entity can access an individual's protected health information~~
7 ~~from the approved health information organization, including access to~~
8 ~~restricted information by a covered entity in an emergency situation when~~
9 ~~necessary to properly treat the individual;~~

10 ~~(d) specification of the written notice to be provided by the covered~~
11 ~~entity to any individual, or such individual's personal representative, prior~~
12 ~~to the covered entity's disclosure of the individual's protected health~~
13 ~~information to the approved HHO that explains how and what protected~~
14 ~~health information will be shared with the approved health information~~
15 ~~organization. Such written notice, which may be incorporated into the~~
16 ~~covered entity's notice of privacy practices required under the HIPAA~~
17 ~~privacy rule, shall include the following that:~~

18 ~~(A)(1) The individual's protected health information will be disclosed~~
19 ~~to the approved HHO health information organization to facilitate the~~
20 ~~provision of health care to the individual;~~

21 ~~(B)(2) the approved HHO health information organization maintains~~
22 ~~appropriate safeguards to protect the privacy and security of protected~~
23 ~~health information;~~

24 ~~(C)(3) only authorized individuals may access protected health~~
25 ~~information from the approved HHO health information organization;~~

26 ~~(D)(4) the individual, or such individual's personal representative, has~~
27 ~~the right to request in writing that the covered entity: (i) Not disclose any~~
28 ~~of the individual's protected health information to the approved HHO; or~~
29 ~~(ii) not disclose specified categories of the individual's protected health~~
30 ~~information to the approved HHO the individual's protected health~~
31 ~~information not be disclosed by the health information organization;~~

32 ~~(E)(5) such restrictions may result in a health care provider not~~
33 ~~having access to information necessary to provide appropriate care for the~~
34 ~~individual;~~

35 ~~(F) the covered entity is required to honor a written request delivered~~
36 ~~to the covered entity by an individual, or such individual's representative,~~
37 ~~not to disclose any of the individual's protected health information to an~~
38 ~~approved HHO; and~~

39 ~~(G) the covered entity is required to honor a written request delivered~~
40 ~~to the covered entity by an individual, or such individual's representative,~~
41 ~~for reasonable restrictions on the disclosure of specified categories of the~~
42 ~~individual's protected health information to an approved HHO. the health~~
43 ~~information organization is required to honor a written request not to~~

1 *disclose an individual's protected health information, except that*
2 *disclosure is permitted (A) in an emergency situation when necessary to*
3 *properly treat the individual, or (B) when necessary to satisfy a covered*
4 *entity's legal obligation to report certain information to a government*
5 *official; and*

6 *(6) the inability to access restricted information by a covered entity*
7 *may result in a health care provider not having access to information*
8 *necessary to provide appropriate care for the individual;*

9 ~~(4)(e) specification of documentation requirements to demonstrate~~
10 ~~delivery of such notice to an individual, or such individual's personal~~
11 ~~representative, by or on behalf of the covered entity prior to the covered~~
12 ~~entity's disclosure of the individual's protected health information to the~~
13 ~~approved HIO;~~

14 ~~(5) standards for determining the reasonableness of an individual's~~
15 ~~written request, or the written request of such individual's personal~~
16 ~~representative, not to disclose specified categories of the individual's~~
17 ~~protected health information to the approved HIO based on the covered~~
18 ~~entity's technological capabilities; and~~

19 ~~(6) specification of the purposes for which a covered entity may~~
20 ~~access protected health information through the approved HIO.~~

21 ~~(b) This section shall take effect on and after July 1, 2011.~~

22 Sec. 11. K.S.A. 2012 Supp. 65-6833 is hereby amended to read as
23 follows: 65-6833. ~~(a)~~ Any health information organization which is not an
24 approved ~~HIO~~ *health information organization* shall not be eligible for any
25 financial support from the state, or assistance or support from the state in
26 securing any other source of funding.

27 ~~(b) This section shall take effect on and after July 1, 2011.~~

28 Sec. 12. K.S.A. 2012 Supp. 65-6834 is hereby amended to read as
29 follows: 65-6834. (a) ~~Notwithstanding any other provision of this act,~~ No
30 use or disclosure of protected health information maintained by or on an
31 approved ~~HIO~~ *health information organization* shall be made except
32 pursuant to rules *and regulations* adopted by the ~~corporation~~ *department*
33 consistent with this act. An approved ~~HIO~~ *health information organization*
34 that uses or discloses protected health information in compliance with such
35 rules shall be immune from any civil or criminal liability or any adverse
36 administrative action arising out of or relating to such use or disclosure.

37 ~~(b) This section shall take effect on and after July 1, 2011. Protected~~
38 ~~health information in the possession of an approved health information~~
39 ~~organization shall not be subject to discovery, subpoena or other means of~~
40 ~~legal compulsion for the release of such **PHH protected health information**~~
41 ~~to any person or entity. An approved health information organization shall~~
42 ~~not be compelled by a request for production, subpoena, court order or~~
43 ~~otherwise, to disclose protected health information relating to an~~

1 *individual.*

2 New Sec. 13. (a) There is hereby established an advisory council on
3 health information technology. The advisory council on health information
4 technology shall be advisory to the secretary of health and environment
5 and shall be within the division of health of the department of health and
6 environment.

7 (b) The advisory council on health information technology shall be
8 composed of ~~22~~ **23** voting members, as follows:

9 (1) The secretary of the Kansas department of health and
10 environment, or such secretary's designee;

11 (2) the governor of the state of Kansas, or such governor's designee;

12 (3) four legislators selected as follows: The chairperson and ranking
13 minority member or their designees of the committee on health and human
14 services of the house of representatives, and the chairperson and ranking
15 minority member or their designees from the committee on public health
16 and welfare of the senate;

17 (4) two members appointed by the secretary who represent
18 consumers;

19 (5) one member appointed by the secretary who represents
20 employers;

21 (6) one member appointed by the secretary who represents payers;

22 (7) ~~two~~ **one** members appointed by the secretary who represent local
23 health departments from a list of three names submitted by the Kansas
24 association of local health departments;

25 (8) three members appointed by the secretary who represent
26 hospitals, from a list of three names for each position submitted by the
27 Kansas hospital association. One of the hospital representatives appointed
28 herein shall be involved in the administration of a critical access hospital;

29 (9) three members appointed by the secretary from a list of three
30 names for each position by the Kansas medical society. At least two of the
31 members appointed herein shall be practicing physicians, and one of the
32 physicians shall be a physician in a primary care specialty;

33 (10) two members appointed by the secretary who represent
34 pharmacists, from a list of three names submitted by the Kansas
35 pharmacists association. At least one of the members appointed herein
36 shall be a practicing pharmacist;

37 (11) one member shall be a representative of the university of Kansas
38 center for health information; ~~and~~

39 (12) one member shall be a representative of the Kansas foundation
40 for medical care;

41 **(13) one member shall be a representative of the Kansas optometric**
42 **association; and**

43 **(14) one member shall be a representative of the association of**

1 ***community mental health centers of Kansas.***

2 (c) At the first meeting of the council, following the effective date of
3 this act, terms of its members, except the secretary and governor or their
4 designees, shall be determined by lot with five members serving for one
5 year, five members serving for two years, five members serving for three
6 years, and ~~five~~ **six** members serving for four years. Following their initial
7 term, members of the council shall be eligible for re-appointment and, if
8 re-appointed, shall serve for terms of four years. Members shall only be
9 eligible to serve two consecutive four-year terms. Whenever a vacancy
10 occurs regarding a member of the council due to the resignation, death,
11 removal or expiration of a term, a new member shall be appointed prior to
12 the next meeting, according to the process and to the specific position on
13 the council as provided in subsection (b). In the event of a vacancy during
14 an unexpired term due to resignation, death or removal of a council
15 member, the appointment shall be for the remainder of the unexpired
16 portion of the term. Each member of the council shall hold office for the
17 term of appointment and until a successor has been appointed. Any
18 member of the council may be removed by the secretary for malfeasance
19 or misfeasance in office, regularly failing to attend meetings, or for any
20 cause which renders the member incapable of the discharge of the duties of
21 director.

22 (d) The council shall meet at least four times per year and at such
23 times as the council deems appropriate or as called by the secretary.

24 (e) Members of the council are entitled to compensation and expenses
25 as provided in K.S.A. 75-3223, and amendments thereto. Members of the
26 council attending council meetings or subcommittee meetings authorized
27 by the council shall be paid mileage and all other applicable expenses,
28 provided such expenses are consistent with policies established from time-
29 to-time by the council.

30 Sec. 14. K.S.A. 2012 Supp. 65-6821, 65-6822, 65-6823, 65-6824, 65-
31 6825, 65-6826, 65-6827, 65-6828, 65-6829, 65-6830, 65-6831, 65-6832,
32 65-6833 and 65-6834 are hereby repealed.

33 Sec. 15. This act shall take effect and be in force from and after its
34 publication in the statute book.