Stricken language would be deleted from and underlined language would be added to present law.

Act 891 of the Regular Session

State of Arkansas
88th General Assembly
Regular Session, 2011

A Bill


HOUSE BILL 1905

By: Representatives Woods, Tyler, Lea, Pennartz, Biviano, Dale, Allen, Gaskill, Lampkin, Leding,
Lindsey, McCrory, Patterson, Powers, G. Smith, Webb, B. Wilkins
By: Senators P. Malone, M. Lamoureux, D. Johnson, Teague

For An Act To Be Entitled

AN ACT TO ESTABLISH THE OFFICE OF HEALTH
INFORMATION TECHNOLOGY; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO ESTABLISH THE OFFICE OF HEALTH
INFORMATION TECHNOLOGY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 25 is amended to add an additional
chapter to read as follows:

Chapter 42 — Health Information Technology

The purpose of this chapter is to:
(1) Establish the Arkansas Office of Health Information
Technology; and
(2) Authorize the Arkansas Office of Health Information
Technology to form a nonprofit corporation to be known as the State Health
Alliance for Records Exchange.

(a) The coordination of health information technology activities
throughout Arkansas by the Office of Health Information Technology is
necessary to obtain the maximum potential value from the investment of
federal and state resources to increase the use of health information technology.

(b) The exchange of health information made possible by the State Health Alliance for Records Exchange can improve the quality of health of Arkansas citizens by reducing the potential for medical errors, reduce the incidence of redundant tests and procedures, improve patient safety, and make the delivery of healthcare services more efficient and affordable.

(c) The Office of Health Information Technology and the State Health Alliance for Records Exchange shall respect and safeguard each person's privacy interests in his or her health and medical information.

25-42-103. Office of Health Information Technology — Creation. The Office of Health Information Technology is created.

25-42-104 Definitions.
As used in this chapter:

(1) “Agency” means any agency, board, commission, public instrumentality, political subdivision, or any of the foregoing entities acting on behalf of the State of Arkansas which store, gather, or generate health information;

(2) “Deidentified” means the same as the meaning under the Health Insurance Accountability and Portability Act of 1996, Public Law 104-191;

(3) “Health information exchange” means the electronic movement of health-related information among organizations according to nationally recognized standards;

(4) “Health information” means any information, whether oral or recorded in any form or medium, that:

(A) Is created or received by:

(i) A provider of health care;

(ii) A health plan;

(iii) A public health authority;

(iv) An employer;

(v) A health insurer;

(vi) A school or university; or

(vii) A health care clearinghouse; and
(B) Relates to the:

(i) Past, present, or future physical or mental health or condition of an individual;

(ii) Provision of health care to an individual; or

(iii) Past, present, or future payment for the provision of health care to an individual;

(5) “Health information technology” means the application of information processing involving both computer hardware and software and other technology devices that deal with the storage, retrieval, sharing, and use of health care information, data, and knowledge for communication and decision-making;

(6) “Identified” means the same the meaning as under the Health Insurance Accountability and Portability Act of 1996, Public Law 104-191;

(7) “Nonprofit corporation” means a corporation no part of the income of which is distributable to its members, directors, or officers as under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.;

(8) “State Health Alliance for Records Exchange” means the entity responsible for the processes and procedures that enable the electronic exchange of interoperable health information in Arkansas.


(a) The Office of Health Information Technology shall coordinate the health information technology initiatives of the state with relevant executive branch agencies, including without limitation state boards, commissions, nonprofit corporations, and institutions of higher education.

(b) The Office of Health Information Technology Coordinator shall serve as the executive officer of the office.

(c) The office shall:

(1) Assure the effective coordination and collaboration of health information technology planning, development, implementation, and financing;

(2) Review all health information technology-related grant applications before submission to funding entities;

(3) Accept, receive, retain, disburse, and administer any state special or general revenue funds or federal funds specifically appropriated for health information technology;
(4) Make contracts and execute all instruments necessary or
convenient for carrying out its business;

(5) Adopt rules necessary to carry out the policies and
objectives of this chapter;

(6) Plan, establish, and operate the State Health Alliance for
Records Exchange until the time when a nonprofit corporation is formed to
operate the State Health Alliance for Records Exchange and operational
responsibility and authority for the State Health Alliance for Records
Exchange is transferred to that nonprofit; and

(7)(A) Establish reasonable fees or charges for the use of the
State Health Alliance for Records Exchange to fund the operational costs of
the State Health Alliance for Records Exchange and the office.

(B) Fees or charges established under subdivision
(c)(7)(A) of this section shall be set with the input and guidance of the
users of the State Health Alliance for Records Exchange, stakeholders, and
other interested parties.

(C) Fees or charges established under subdivision
(c)(7)(A) of this section shall not exceed the total cost of operating he
State Health Alliance for Records Exchange, not including staffing costs for
the State Health Alliance for Records Exchange and the office.

(D) Users of data under this chapter shall will be charged
in a manner that is proportional to their use of the State Health Alliance
for Records Exchange.

(E) Revenue generated by the fees or charges under
subdivision (c)(7) of this section shall be deposited into the Health
Information Technology Fund, § 19-5-1243.

(a) The State Health Alliance For Records Exchange shall:

(1) Serve as the official health information exchange for the
State of Arkansas;

(2) Be organized for the purpose of improving the health of
Arkansans by:

(A) Promoting efficient and effective communication among
multiple health care providers, including without limitation hospitals,
physicians, payers, employers, pharmacies, laboratories, and other health
care entities;

(B) Creating efficiencies in health care costs by eliminating redundancy in data capture and storage and reducing administrative, billing, and data collection costs;

(C) Creating the ability to monitor community health status; and

(D) Providing reliable information to health care consumers and purchasers regarding the quality and cost-effectiveness of health care, health plans, and health care providers;

(3)(A) Until the nonprofit corporation is formed, the State Health Alliance for Records Exchange shall be established and operated by the office with the advice of the Health Information Exchange Council consisting of the following members appointed by the Governor:

(i) The Office of Health Information Technology Coordinator;

(ii) A representative of the Department of Finance and Administration;

(iii) A representative of the Department of Health;

(iv) A representative of the Department of Human Services;

(v) A representative of the Department of Information Systems;

(vi) A representative of the health insurance industry;

(vii) The Surgeon General appointed under § 20-7-103;

(viii) A representative of the Arkansas Foundation for Medical Care;

(ix) A representative of the Arkansas Hospital Association;

(x) A representative of the Arkansas Medical Society;

(xi) A representative of the Arkansas Minority Health Commission;

(xii) A representative of the Arkansas Nurses Association;
(xiii) A representative of the Arkansas Science and Technology Authority;
(xiv) A representative of the Arkansas Pharmacists Association;
(xv) A representative of the business community;
(xvi) A representative of the Community Health Centers of Arkansas, Inc.
(xvii) A representative of the University of Arkansas for Medical Sciences;
(xviii) A representative of the Arkansas Health Care Association; and
(xix) Two (2) health care consumers.

(b) The Chair of the Health Information Exchange Council shall be elected by the members of the council.

(c) All members will serve until the time the non-profit corporation is formed and operational responsibility and authority for the State Health Alliance for Records Exchange is transferred to that nonprofit.

(d)(1) The State Health Alliance for Records Exchange is not a health care provider and is not subject to claims under § 16-114-201 et seq.

(2) A person who participates in or subscribes to the services or information provided by the State Health Alliance for Records Exchange shall not be liable in any action for damages or cost of any nature that result solely from the person's use or failure to use the State Health Alliance for Records Exchange information or data that was imputed or retrieved under the Health Insurance Portability and Accountability Act of 1996, as it existed on January 1, 2011, and regulations adopted under the act, state confidentiality laws and the rules of the State Health Alliance for Records Exchange as approved by the Office of Health Information Technology or the governing body of the nonprofit corporation.

(3) A person shall not be subject to antitrust or unfair competition liability based on membership or participation in the State Health Alliance for Records Exchange that provides an essential governmental function for the public health and safety and enjoys state action immunity.

(d) A person who provides information and data to the State Health Alliance for Records Exchange retains a property right in the information or data, but grants to the other participants or subscribers a nonexclusive
license to retrieve and use that information or data under the with Health Insurance Portability and Accountability Act of 1996, as it existed on January 1, 2011, and any amendments and regulations adopted under the act, state confidentiality laws, and the rules of the State Health Alliance for Records Exchange.

(f) All processes or software developed, designed, or purchased by the State Health Alliance for Records Exchange shall remain the property of the State Health Alliance for Records Exchange subject to use by participants or subscribers under the rules of the State Health Alliance for Records Exchange.

(g) Patient-specific protected health information shall only be disclosed in accordance with the patient’s authorization or in compliance with state confidentiality laws and the Health Insurance Portability and Accountability Act of 1996, as it existed on January 1, 2011, and regulations under the act.

(h) No later than December 31, 2014, executive branch agencies, including state boards, commissions, nonprofit corporations, and institutions of higher education, that implement, acquire, or upgrade health information technology systems shall use health information technology systems and products that meet minimum standards adopted by the State Health Alliance for Records Exchange.

(i) All identified or deidentified health information contained in, stored in, submitted to, transferred by, or released from the State Health Alliance for Records Exchange is not disclosable under applicable state or federal law.

(j)(1) When the nonprofit corporation is formed, the State Health Alliance for Records Exchange shall be governed under the bylaws and incorporation documents of the corporation.

(2) The bylaws and incorporation documents of the corporation shall only further the objectives and policies set forth in this chapter.

SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 12 is amended to read as follows:

19-5-1243. Health Information Technology Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous
fund to be known as the “Health Information Technology Fund”.

(b)(1) All moneys collected under § 25-42-101 et seq. shall be deposited into the State Treasury to the credit of the Health Information Technology Fund as special revenues.

(2) The Health Information Technology Fund shall also consist of funds transferred to it from the General Improvement Fund or other funds, gifts, bequests, foundation grants and gifts, Governor’s or other emergency funds, federal grants and matching funds, proceeds from bond issues, service charges or fees, interagency transfer of funds and other funds that may be appropriated by the General Assembly.

(c) The Health Information Technology Fund shall be used by the Office of Health Information Technology for the operating expenses of the Office of Health Information Technology and the State Health Alliance for Records Exchange.

/s/Woods

APPROVED: 03/31/2011