

SESSION OF 2013

SUPPLEMENTAL NOTE ON SENATE BILL NO. 210

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 210 would amend provisions of and rename the Kansas Health Information Technology and Exchange Act as the Kansas Health Information Technology Act (the Act), transfer the oversight of and the authorization to create and establish standards for the approval and operation of statewide and regional health information organizations from the Kansas Health Information Exchange, Inc. (KHIE) to the Department of Health and Environment (the Department), and establish the Advisory Council on Health Information Technology. The bill also generally would replace references to “health information exchange” with “the sharing of health information electronically.” The bill also would make several technical amendments.

Purpose of the Act (Section 3)

The bill would update the stated purpose of the Act, by indicating the Act is “to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and the sharing of health information electronically.” (The U.S. Department of Health and Human Services issued the Privacy Rule to implement national standards for the protection of health information

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

pursuant to the Health Insurance Portability and Accountability Act of 1996 [HIPAA].)

Definitions (Section 2)

The bill would revise definitions of the terms “approved health information organization,” “covered entity,” “health care provider,” “health information organization,” and “participation agreement.” Additionally, the term “health information technology” would be amended to specify that the term includes an electronic health record, a personal health record, the sharing of health information electronically, electronic order entry, and electronic decision support.

The bill would delete the following terms from the Act: “corporation” (this term refers to the Kansas Health Information Exchange, created by Executive Order 10-06), “designated record set,” “DPOA-HC,” “electronic protected health information,” “health care clearinghouse,” “health plan,” “hybrid entity,” “interoperability,” “public health authority,” and “standard authorization form.”

The bill would add definitions of “authorization” and “department” to the Act. “Authorization” would mean a document that permits a covered entity to use or disclose protected health information for purposes other than to carry out treatment, payment or health care operations, and that complies with the requirements of 45 CFR § 160.508.

Oversight by the Department of Health and Environment (Sections 8-10)

The bill would transfer duties to establish and revise standards for the approval and operation of the statewide and regional health information organizations operating in the state from the Kansas Health Information Exchange (“corporation”) to the Department of Health and Environment. The Department would be required to ensure that approved

health information organizations operate within the state in a manner consistent with the protection of the security and privacy of health information of the citizens of Kansas.

Standards

Among the standards in the Act and those amended or created by the bill are these:

- Adherence to nationally recognized standards for interoperability, that is, the capacity of two or more information systems to share information or data in an accurate, effective, secure, and consistent manner;
- Adoption and adherence to rules promulgated by the Department regarding access to and use and disclosure of protected health information maintained by or on an approved health information organization; and
- Development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the Department pursuant to participation agreement provisions of this act.

The bill would further prohibit State General Fund expenditures for the purpose of administration, operation, or oversight of the health information organizations, with the following exception: the Secretary of Health and Environment would be permitted to make operational expenditures for the purpose of adopting and administering the rules and regulations necessary to implement the Act.

Certificate of Authority and Re-approval, Health Information Organizations

The bill would direct the Department to establish requirements to be used by approved health information organizations in participation agreements with covered entities. Among the requirements, the Department would be required to provide:

- Specifications of procedures by which an individual's protected health information will be disclosed by covered entities, will be collected by approved health information organizations, and will be shared with other participating covered entities and with the Department as required by law for public health purposes;
- Specification of procedures by which an individual may elect that protected health information be restricted from disclosure by approved health information organizations to covered entities; and
- Specifications of purposes for, and procedures by which a covered entity can access an individual's protected health information from the approved health information organization, including access to restricted information by a covered entity in an emergency situation when necessary to properly treat the individual.

The bill also would provide procedural requirements for the written notice provided by covered entities to individuals and their personal representatives.

Health Information Organizations and Protected Health Information (Section 12)

The bill would state that protected health information in the possession of an approved health information organization cannot be subject to discovery, subpoena, or

other means of legal compulsion for the release of such information to any person or entity. Further, an approved health information organization could not be compelled by a request for production, subpoena, court order, or otherwise, to disclose protected health information relating to an individual.

***Advisory Council on Health Information Technology
(Section 13)***

The bill would create the Advisory Council on Health Information Technology (Council), a group that would serve in an advisory role to the Secretary of Health and Environment. The Council would be within the Division of Health, Department of Health and Environment. The Council would include 23 voting members serving, with the exception of the Governor and Secretary or their designees, in staggered terms at the commencement of the Council (term length, varying from one to four years for initial appointments, would be determined by lot):

- Secretary of Health and Environment, or designee;
- Governor, or designee;
- Four legislators, selected as follows,
 - Chairperson and ranking minority member, or their designees, of the House Health and Human Services Committee; and
 - Chairperson and ranking minority member, or their designees, of the Senate Public Health and Welfare Committee;
- Two members representing consumers (appointed by the Secretary);
- One member representing employers (appointed by the Secretary);

- One member representing payers (appointed by the Secretary);
- One member representing local health departments (appointed by the Secretary, from a list of three names submitted by the Kansas Association of Local Health Departments);
- Three members representing hospitals (appointed by the Secretary, from a list of three names for each position submitted by the Kansas Hospital Association)
 - One of the members must be involved in the administration of a critical access hospital;
- Three members appointed by the Secretary from a list of three names for each position submitted by the Kansas Medical Society
 - At least two of the members must be practicing physicians; and
 - One of physicians must be a physician in a primary care specialty;
- Two members representing pharmacists (appointed by the Secretary from a list of three names submitted by the Kansas Pharmacists Association)
 - At least one of the members must be a practicing pharmacist;
- One member representing the University of Kansas Center for Health Information;
- One member representing the Kansas Foundation for Medical Care;
- One member representing the Kansas Optometric Association; and

- One member representing the Association of Community Mental Health Centers of Kansas.

Following their initial terms of service on the Council, members would be eligible for reappointment and, if reappointed, those members would serve for four years. The bill would make other provisions for filling vacancies on and removal of members on the Council. The Council would be required to meet at least four times per year and at times as the Council deems appropriate or as called by the Secretary .

Members of the Council would be entitled to compensation and expenses as provided in existing law. Members attending Council meetings or subcommittee meetings authorized by the Council would be paid mileage and all other applicable expenses, provided those expenses are consistent with policies established from time-to-time by the Council.

Background

The bill was introduced by the Senate Ways and Means Committee. Proponents present at the Senate Public Health and Welfare Committee meeting included the Deputy Secretary of the Kansas Department of Health and Environment (KDHE), the Chairman of the KHIE Board of Directors (physician), and representatives of the Association of Community Mental Health Centers, the Kansas Medical Society, and the Kansas Optometric Association. Written proponent testimony was submitted by the Executive Director of the Lewis and Clark Information Exchange (LACIE) and the Kansas Hospital Association. The Deputy Secretary, KDHE, indicated there has been a drastic change in scope from the initial state plan that informed the development of the original KHIE. Under the original plan, KHIE would have been funded through the collection of fees associated with providing health information organizations (HIO) services to medical providers in the state; without the fees, KHIE needed to identify how to fund an annual budget of \$400,000 to \$500,000. The KHIE

Board considered the costs of administering the regulatory oversight functions it had been charged with and determined KDHE assuming these responsibilities would be preferred and appropriate given the evolution of KHIEs' responsibilities and the capabilities of the agency. The representative clarified the oversight of the core infrastructure (data sharing between providers and the HIOs) will continue to be provided by private companies to the health care providers of the state.

Opponents to the bill present at the hearing included a representative of the Kansas Association for Justice and a Sedgwick County Commissioner. Written opponent testimony was submitted by an individual who serves as the Vice-President of Kansans for Liberty and Chairman of the Wichita South Central KS 912 Group, and a private citizen. The Kansas Association for Justice representative indicated the Association generally was neutral to components of the bill, but opposed language prohibiting disclosure of protected health information by approved health information organizations.

The Senate Committee on Public Health and Welfare amendments provide an expenditure limitation for use of State General Fund moneys by the Secretary of Health and Environment, adjust the membership of the Council by adding representatives of the Kansas Optometric Association and the Association of Community Mental Health Centers of Kansas and reduce the number representatives of local health departments, and make several technical amendments to update a reference to federal regulation, clarify an abbreviated term, and conform with Council membership changes made by the Senate Committee.

The fiscal note prepared by the Division of the Budget on the original bill indicates KDHE states the costs and duties of administering the Council and associated activities would be absorbed within existing resources.