

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN SENATE JUNE 3, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 278

Introduced by Assembly Member Monning

February 12, 2009

An act to add and repeal Division 109.6 (commencing with Section 130275) ~~to~~ of the Health and Safety Code, relating to health information.

LEGISLATIVE COUNSEL'S DIGEST

AB 278, as amended, Monning. Health information exchange: demonstration projects.

Existing law establishes the Office of Health Information Integrity within the California Health and Human Services Agency to ensure the enforcement of state law mandating confidentiality of medical information and to impose administrative fines for the unauthorized use of medical information. Existing law authorizes the California Health and Human Services Agency, or one of the departments under its jurisdiction, to apply for federal funds made available through the federal American Recovery and Reinvestment Act of 2009 (ARRA) for health information technology and exchange.

This bill would authorize the office to establish and administer demonstration projects to evaluate potential solutions to facilitate health information exchange that promote quality of care, respect the privacy and security of personal health information, and enhance the trust of the stakeholders. This bill would authorize California-based health care entities, as defined, to submit an application with the office to be

approved as demonstration project participants, as defined. The bill would authorize the office to approve annually up to 4 projects as demonstration projects. The bill would require any costs associated with the support, assistance, and evaluation of approved demonstration projects to be funded exclusively by the above-described federal funds or other non-General Fund sources.

This bill would ~~provide that it shall~~ become inoperative on the date the Director of the Office of Health Information Integrity executes a declaration stating that grant period for the above-described federal funds has ended, and as of that date would be repealed.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 109.6 (commencing with Section
2 130275) is added to the Health and Safety Code, to read:

3
4 DIVISION 109.6. HEALTH INFORMATION EXCHANGE
5 PRIVACY AND SECURITY DEMONSTRATION PROJECTS

6
7 130275. The Legislature finds and declares all of the following:

8 (a) There is a need to enhance California’s ability to obtain and
9 use federal funding, as awarded in the State Cooperative Grant
10 Agreement for health information exchange, for the establishment
11 of statewide health information exchange infrastructure in
12 California. The California Health and Human Services Agency is
13 authorized by the Legislature, under Section 130255, to use those
14 federal funds to achieve that purpose.

15 (b) Health information exchange has the potential to significantly
16 improve the quality of treatment and care, reduce unnecessary
17 health care costs, and increase administrative efficiencies within
18 the health care system. The application of health information
19 exchange technology to manage health information will also have
20 a significant impact on consumers, health care facilities, and
21 licensed health care providers.

22 (c) Current laws may not adequately protect privacy, or may
23 impose obstacles to the exchange of vital health information, as
24 required by the State Cooperative Grant Agreement for health

1 information exchange and other federal health information funding
2 programs.

3 (d) It is the intent of the Legislature to authorize the Office of
4 Health Information Integrity within the California Health and
5 Human Services Agency to establish and administer demonstration
6 projects funded by federal grants and other sources. It is the intent
7 of the Legislature that the demonstration projects do all of the
8 following:

9 (1) Identify barriers to implementing health information
10 exchanges.

11 (2) Test potential security and privacy policies for the safe and
12 secure exchange of health information, *including, but not limited*
13 *to, issues related to access to, and storage of, individual health*
14 *information.*

15 (3) Identify and address differences between state and federal
16 laws regarding privacy of health information.

17 130276. For purposes of this division, the following definitions
18 apply:

19 (a) “California-based health care entity” means a health care
20 entity based primarily in California.

21 (b) “Demonstration project” means a project approved and
22 administered by the office in accordance with this division and the
23 State Cooperative Grant Agreement for health information
24 exchange or any other similar grant or grants.

25 (c) “Demonstration project participant” means a California-based
26 health care entity that is approved by the office to participate in a
27 demonstration project.

28 (d) “Director” means the Director of the Office of Health
29 Information Integrity.

30 (e) “Health information exchange service participant” means a
31 California-based health care entity that has voluntarily agreed to
32 use the health information exchange services developed in
33 accordance with this division.

34 (f) “Meaningful use” means the term as defined in the federal
35 Health Information Technology for Economic and Clinical Health
36 Act (HITECH Act) (Public Law 111-5) and the regulations
37 promulgated thereunder.

38 (g) “Office” means the Office of Health Information Integrity.

39 (h) “State Cooperative Grant Agreement” means the grant
40 agreement between the federal government and the state in which

1 the federal government awarded the state with grant money
2 pursuant to the HITECH Act in February 2010.

3 130277. The director may adopt regulations to ensure all
4 approved health information exchange service participants and
5 demonstration project participants follow rules, and work within
6 parameters, *as defined by the office*, that are consistent for the
7 exchange of information.

8 130278. Before adopting regulations pursuant to Section
9 130277, the office shall adopt the following standards:

10 (a) At least 45 days prior to adoption, the office shall post a
11 proposed regulation on its Internet Web site. Public comment shall
12 be accepted by the office for at least 30 days after the proposed
13 regulation is posted. If a member of the public requests a public
14 hearing during the 30-day review period, the hearing shall be held
15 prior to adoption of the regulation. The process described in this
16 subdivision shall apply to the adoption of new regulations and to
17 changes to existing regulations.

18 (b) Adoption of, and changes to, regulations adopted pursuant
19 to this division shall not be subject to the rulemaking requirements
20 of Section 11343.4 and Article 5 (commencing with Section 11346)
21 and Article 6 (commencing with Section 11349) of Chapter 3.5 of
22 Part 1 of Division 3 of Title 2 of the Government Code.

23 (c) The director shall file any regulation adopted pursuant to
24 Section 130277 with the Office of Administrative Law for filing
25 with the Secretary of State and publication in the California Code
26 of Regulations. Any regulation filed with the Office of
27 Administrative Law pursuant to this subdivision shall include a
28 citation to this section and any other applicable state or federal
29 laws as providing authority for the adoption of the regulation.

30 (1) Any regulation adopted pursuant to Section 130277 shall
31 become effective on the date it is filed with the Secretary of State
32 unless the director prescribes a later date in the regulation or in a
33 written instrument filed with the regulation.

34 (2) Any regulation adopted pursuant to Section 130277 shall
35 expire the date that this division is repealed.

36 130279. (a) The California Health and Human Services
37 Agency, through the office, may establish and administer
38 demonstration projects to evaluate potential solutions to facilitate
39 health information exchange that promote quality of care, respect

1 the privacy and security of personal health information, and
2 enhance the trust of the stakeholders.

3 (b) California-based health care entities may submit an
4 application with the office to be approved as demonstration project
5 participants. Upon receiving an application, the office shall do
6 both of the following:

7 (1) Assist applicants in soliciting federal funds for the
8 demonstration projects.

9 (2) Work with applicants to define the scope of the
10 demonstration project.

11 (c) The director may approve demonstration projects to test for,
12 but not limited to, any of the following areas:

13 ~~(1) Patient consent and informing policies and practices.~~

14 *(1) Policies and practices related to patient consent, informing,*
15 *and notification.*

16 (2) New technologies and applications that enable the
17 transmission of protected health information, while increasing
18 privacy protections by ensuring only required health data is
19 transmitted for purposes and uses consistent with state and federal
20 law.

21 (3) Implementation issues, *if any*, encountered by small solo
22 health care providers as a result of higher privacy and security
23 requirements.

24 (d) The selection of demonstration projects shall be based on,
25 but not limited to, the following criteria:

26 (1) Areas critical to building consumer trust and confidence in
27 the health information exchange system.

28 (2) Projects that help support the exchange of information
29 critical to meeting the federal meaningful use provisions.

30 (3) Areas recommended by the California health information
31 exchange consumer and industry stakeholder advisory process.

32 (e) The office shall engage with health care stakeholders to
33 evaluate issues identified by the demonstration projects, comment
34 upon proposed regulations, and discuss solutions for health
35 information exchange.

36 (f) The office may annually approve up to four projects, as
37 demonstration projects.

38 (g) The office shall work collaboratively with approved
39 demonstration project participants to identify a set of common

1 data elements that will be used to collect, analyze, and measure
2 performance.

3 (h) The office shall receive reports from the demonstration
4 project participants on the outcome of the demonstration projects
5 no later than 60 business days after the end of the demonstration
6 project.

7 130280. (a) The office shall review the results of a
8 demonstration project and report those results to the Legislature
9 no later than six months after the end of a demonstration project.

10 (b) The demonstration projects carried out utilizing federal grant
11 funds may be subject to federal auditing provisions.

12 130281. Any costs associated with the support, assistance, and
13 evaluation of approved demonstration projects shall be funded
14 exclusively by federal funds or other non-General Fund sources.

15 130282. This division shall become inoperative on the date the
16 director executes a declaration stating that grant period for the
17 State Cooperative Grant Agreement for health information
18 exchange has ended, and as of that date is repealed.