

Assembly Bill No. 278

Passed the Assembly August 26, 2010

Chief Clerk of the Assembly

Passed the Senate August 19, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 278, 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 health care entities or governmental authorities, as defined, that receive, share, exchange, or use a California resident's medical information 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. The bill would require the office to report to prescribed committees of the Legislature within 6 months after the end of the project.

This bill would become inoperative on the date the Director of the Office of Health Information Integrity executes a declaration

stating that the grant period for the above-described federal funds has ended, and as of that date would be repealed.

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

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

**DIVISION 109.6. HEALTH INFORMATION EXCHANGE
PRIVACY AND SECURITY DEMONSTRATION PROJECTS**

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

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

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

(c) Current laws may not adequately protect privacy, or may impose obstacles to the exchange of vital health information, as required by the State Cooperative Grant Agreement for health information exchange and other federal health information funding programs.

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

(1) Identify barriers to implementing health information exchanges.

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

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

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

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

(b) “Demonstration project participant” means a health care entity that is approved by the office to participate in a demonstration project.

(c) “Director” means the Director of the Office of Health Information Integrity.

(d) “Governmental authority” means any municipal, county, state, or other governmental entity that has jurisdiction and control over the provision of, or payment for, medical services or that routinely receives medical information to complete its designated governmental function.

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

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

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

(h) “State Cooperative Grant Agreement” means the grant agreement between the federal government and the state in which the federal government awarded the state with grant money pursuant to the HITECH Act in February 2010.

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

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

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

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

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

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

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

130279. (a) The California Health and Human Services Agency, through the office, may 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.

(b) Health care entities or governmental authorities, that receive, share, exchange, or use a California resident's medical information, may submit an application with the office to be approved as demonstration project participants. Upon receiving an application, the office shall do both of the following:

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

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

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

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

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

(3) Implementation issues, if any, encountered by small solo health care providers as a result of exchanging electronic health information.

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

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

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

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

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

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

(g) The office shall work collaboratively with approved demonstration project participants to identify a set of common data elements that will be used to collect, analyze, and measure performance.

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

130280. (a) The office shall review the results of a demonstration project and, notwithstanding Sections 9795 and

10231.5 of the Government Code, shall report those results to the Joint Legislative Budget Committee, the Senate Committee on Appropriations, the Senate Committee on Budget and Fiscal Review, the Senate Committee on Health, the Assembly Committee on Appropriations, the Assembly Committee on Budget, and the Assembly Committee on Health within six months after the end of a demonstration project.

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

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

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

Approved _____, 2010

Governor