3/31/14 1:31 P.M.

Chapter No. 466
14/HR40/R637SG
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HOUSE BILL NO. 392

Originated in House _____ Clerk

HOUSE BILL NO. 392

AN ACT TO BRING FORWARD SECTIONS 41-119-1 THROUGH 41-119-17 AND TO AMEND SECTION 41-119-21, MISSISSIPPI CODE OF 1972, TO EXTEND THE AUTOMATIC REPEALER ON THE HEALTH INFORMATION TECHNOLOGY ACT (MS-HIN); TO AMEND SECTION 41-119-19, MISSISSIPPI CODE OF 1972, TO DIRECT THE PEER COMMITTEE TO DEVELOP A REPORT REGARDING THE IMPLEMENTATION OF THE ELECTRONIC HEALTH RECORDS SYSTEM IN MISSISSIPPI; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 41-119-1, Mississippi Code of 1972, is brought forward as follows:

41-119-1. This chapter shall be known and may be cited as the "Health Information Technology Act."

SECTION 2. Section 41-119-3, Mississippi Code of 1972, is brought forward as follows:

41-119-3. The Mississippi Health Information Network is a public-private partnership for the benefit of all of the citizens of this state.

SECTION 3. Section 41-119-5, Mississippi Code of 1972, is brought forward as follows:

41-119-5. (1) The Mississippi Health Information Network is established, and is referred to in this chapter as the "MS-HIN."

(2) The MS-HIN shall be governed by a board of directors (MS-HIN board) consisting of eleven (11) members. The membership of the MS-HIN board shall reasonably reflect the public-private and diverse nature of the MS-HIN.

(3) The membership of the MS-HIN board of directors shall consist of the following:

(a) The Governor shall appoint one (1) member of the MS-HIN board of directors, who shall be a representative of a health insurance carrier in Mississippi with knowledge of information technology, to serve an initial term of three (3) years;

(b) The State Board of Health shall appoint one (1) member of the MS-HIN board of directors, who shall be a representative of a Mississippi hospital with knowledge of information technology, to serve an initial term of three (3) years;

(c) The Mississippi State Medical Association shall appoint a member of the MS-HIN board of directors, who shall be a licensed physician, to serve an initial term of three (3) years;

(d) The Primary Health Care Association shall appoint a member of the MS-HIN board of directors to serve an initial term of one (1) year;

(e) The Delta Health Alliance shall appoint a member of the MS-HIN board of directors to serve an initial term of four (4) years;

(f) The Information and Quality Health Care-Mississippi Coastal Health Information Exchange (MCHIE) shall appoint a member of the MS-HIN board of directors to serve an initial term of one (1) year;

(g) The State Board of Health shall appoint a member of the MS-HIN board of directors who shall be an employee of the State Department of Health to serve an initial term of one (1) year;

(h) The Mississippi Board of Information Technology Services shall appoint a member of the MS-HIN board of directors to serve an initial term of two (2) years;

(i) The Mississippi Board of Mental Health shall appoint a member of the MS-HIN board of directors who shall be an employee of the Department of Mental Health to serve an initial term of four (4) years;

(j) The University of Mississippi Medical Center shall appoint a member of the MS-HIN board of directors to serve an initial term of two (2) years; and

(k) The Division of Medicaid shall appoint a member of the MS-HIN board of directors who shall be an employee of the Division of Medicaid to serve an initial term of two (2) years.

Initial terms shall expire on June 30 of the appropriate year, and subsequent appointments shall be made by the appointing entity for terms of four (4) years. Members may be reappointed.

(4) No state officer or employee appointed to the MS-HIN board or serving in any other capacity for the MS-HIN board will be construed to have resigned from public office or employment by reason of that appointment or service.

(5) The chairperson of the MS-HIN board shall be elected by a majority of the members appointed to the MS-HIN board.

(6) The MS-HIN board is authorized to conduct its business by a majority of a quorum. A quorum is six (6) members of the MS-HIN board.

(7) The MS-HIN board may adopt bylaws for its operations, including, but not limited to, the election of other officers, the terms of officers, and the creation of standing and ad hoc committees.

SECTION 4. Section 41-119-7, Mississippi Code of 1972, is brought forward as follows:

41-119-7. (1) In furtherance of the purposes of this chapter, the MS-HIN shall have the following duties:

(a) Initiate a statewide health information network to:

(i) Facilitate communication of patient clinical and financial information;

(ii) Promote more efficient and effective communication among multiple health care providers and payers,

including, but not limited to, hospitals, physicians, nonphysician providers, third-party payers, self-insured employers, pharmacies, laboratories and other health care entities;

(iii) Create efficiencies by eliminating redundancy in data capture and storage and reducing administrative, billing and data collection costs;

(iv) Create the ability to monitor community health status;

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

(vi) Promote the use of certified electronic health records technology in a manner that improves quality, safety, and efficiency of health care delivery, reduces health care disparities, engages patients and families, improves health care coordination, improves population and public health, and ensures adequate privacy and security protections for personal health information * * *;

(b) Develop or design other initiatives in furtherance of its purpose; and

(c) Perform any and all other activities in furtherance of its purpose.

(2) The MS-HIN board is granted all incidental powers to carry out its purposes and duties, including the following:

(a) To appoint an executive director, who will serve at the will and pleasure of the MS-HIN board. The qualifications and employment terms for the executive director shall be determined by the MS-HIN board;

(b) To adopt, modify, repeal, promulgate, and enforce rules and regulations to carry out the purposes of the MS-HIN;

(c) To establish a process for hearing and determining case decisions to resolve disputes under this chapter or the rules and regulations promulgated under this chapter among participants, subscribers or the public;

(d) To enter into, and to authorize the executive director to execute contracts or other agreements with any federal or state agency, any public or private institution, or any individual in carrying out the provisions of this chapter; and

(e) To discharge other duties, responsibilities, and powers as are necessary to implement the provisions of this chapter.

(3) The executive director shall have the following powers and duties:

(a) To employ qualified professional personnel as required for the operation of the MS-HIN and as authorized by the MS-HIN board;

(b) To administer the policies of the MS-HIN board; and

(c) To supervise and direct all administrative and technical activities of the MS-HIN.

(4) The MS-HIN shall have the power and authority to accept appropriations, grants and donations from public or private entities and to charge reasonable fees for its services. The revenue derived from grants, donations, fees and other sources of income shall be deposited into a special fund that is created in the State Treasury and earmarked for use by the MS-HIN in carrying out its duties under this chapter.

SECTION 5. Section 41-119-9, Mississippi Code of 1972, is brought forward as follows:

41-119-9. (1) All members of the MS-HIN board shall not be subject to and are immune from claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this chapter, or any other state law, or duly adopted rules and regulations of the aforementioned committees, good faith being presumed until proven otherwise, with malice required to be shown by a complainant. All employees and staff of the MS-HIN, whether temporary or permanent, shall enjoy the same rights and privileges concerning immunity from suit otherwise enjoyed by state employees under the Mississippi Constitution of 1890 and Section 11-46-1 et seq.

(2) The MS-HIN is not a health care provider and is not subject to claims under Sections 11-1-58 through 11-1-62. No person who participates in or subscribes to the services or information provided by the MS-HIN shall be liable in any action for damages or costs of any nature, in law or equity, that result solely from that person's use or failure to use MS-HIN information or data that were imputed or retrieved in accordance with the rules or regulations of the MS-HIN. In addition, no person will be subject to antitrust or unfair competition liability based on membership or participation in the MS-HIN, which provides an essential governmental function for the public health and safety.

SECTION 6. Section 41-119-11, Mississippi Code of 1972, is brought forward as follows:

41-119-11. (1) All persons providing information and data to the MS-HIN shall retain a property right in that information or data, but grant to the other participants or subscribers a nonexclusive license to retrieve and use that information or data in accordance with the rules or regulations promulgated by the MS-HIN board and in compliance with the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(2) Patients desiring to obtain a copy of their personal medical record or information are to request the copy from the health care provider who is the primary source of the information,

and the MS-HIN shall not be required to provide this information directly to the patient.

(3) All processes or software developed, designed or purchased by the MS-HIN shall remain its property subject to use by participants or subscribers in accordance with the rules and regulations promulgated by the MS-HIN board.

SECTION 7. Section 41-119-13, Mississippi Code of 1972, is brought forward as follows:

41-119-13. (1) The MS-HIN board shall by rule or regulation ensure that patient specific health information be disclosed only in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, which governs the electronic transmission of that information.

(2) Patient specific health information and data of the MS-HIN shall not be subject to the Federal Freedom of Information Act, Mississippi Open Records Act (Section 25-61-1 et seq.) nor to subpoena by any court. That information may only be disclosed by consent of the patient or in accordance with the MS-HIN board's rules, regulations or orders.

(3) Notwithstanding any conflicting statute, court rule or other law, the data in the network shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action. However, information and data otherwise discoverable or admissible from original sources are not to be

construed as immune from discovery or use in any civil action merely because they were provided to the MS-HIN.

(4) Submission of information to and use of information by the State Department of Health shall be considered a permitted disclosure for uses and disclosures required by law and for public health activities under the Health Insurance Portability and Accountability Act and the privacy rules promulgated under that act.

(5) Any violation of the rules or regulations regarding access or misuse of the MS-HIN health information or data shall be reported to the Office of the Attorney General, and shall be subject to prosecution and penalties under state or federal law.

SECTION 8. Section 41-119-15, Mississippi Code of 1972, is brought forward as follows:

41-119-15. For the purposes of this chapter, the following terms shall be defined as provided in this section:

(a) "Electronic health records" or "EHR" means electronically maintained clinical and demographic information, used by a meaningful EHR user.

(b) "Health information technology" or "HIT" means the equipment, software and networks to be used by a meaningful EHR user.

(c) "Acquisition" of HIT systems or other computer or telecommunications equipment or services means the purchase, lease, rental or acquisition in any other manner of HIT systems or

any other computer or telecommunications equipment or services used exclusively for HIT.

(d) "Meaningful EHR user" means an eligible professional or eligible hospital that, during the specified reporting period, demonstrates meaningful use of certified EHR technology in a form and manner consistent with certain objectives and measures presented in applicable federal regulations as amended or adopted. These objectives and measures shall include the use of certified EHR.

(e) "Entity" means and includes all the various state agencies, officers, departments, boards, commissions, offices and institutions of the state, but does not include any agency financed entirely by federal funds.

SECTION 9. Section 41-119-17, Mississippi Code of 1972, is brought forward as follows:

41-119-17. (1) Before the acquisition of any HIT system, an entity shall provide MS-HIN, at a minimum, description, purpose and intent of the proposed service or system, including a description and specifications of the ability to connect to MS-HIN.

(2) Where existing entities can be used to provide the proposed HIT system, in whole or in part, the submission shall include letters of commitment, memoranda of agreements, or other supporting documentation.

(3) The MS-HIN shall review proposals for acquisition of HIT systems for the purposes contained in Section 41-119-7, and provide guidance to entities including collaborative opportunities with MS-HIN members.

(4) Any acquisition of an HIT system that was approved by the Mississippi Department of Technology Services before April 28, 2010, is exempt from the requirements of Section 41-119-15 and this section.

SECTION 10. Section 41-119-19, Mississippi Code of 1972, is amended as follows:

41-119-19. The Legislative Audit Committee (PEER) shall develop and make a report to the Chairmen of the Senate and House Public Health and Welfare/Medicaid Committees regarding the following electronic health records (EHR) system items:

(a) Evaluate the Request for Proposals (RFP) for the implementation and operations services for the Division of Medicaid and the University Medical Center electronic health records system and e-prescribing system for providers;

(b) Evaluate the proposed expenditures of the Mississippi Division of Medicaid (DOM) and the University Medical Center (UMC) regarding electronic health information; * * *

(c) Evaluate the use of American Recovery and Reinvestment Act (ARRA) funds for electronic health records system implementation in the State of Mississippi * * *; <u>and</u>

(d) Evaluate the progress in implementing the electronic health records system in the State of Mississippi.

The PEER Committee shall make its report on or before December 1, * * * 2014, including any recommendations for legislation.

SECTION 11. Section 41-119-21, Mississippi Code of 1972, is amended as follows:

41-119-21. Sections 41-119-1 through 41-119-21 shall stand repealed on July 1, * * * 2019.

SECTION 12. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 11, 2014

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 5, 2014

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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