

65-6821. Kansas health information technology and exchange act. (a) K.S.A. 2011 Supp. 65-6821 through 65-6834, and amendments thereto, shall be known and may be cited as the Kansas health information technology and exchange act.

(b) This section shall take effect on and after July 1, 2011.

65-6822. Same; definitions. As used in the Kansas health information technology and exchange act:

- (a) "Act" means the Kansas health information technology and exchange act.
- (b) "Approved HIO" means a health information organization operating in the state which has been approved by the corporation.
- (c) "Corporation" means the Kansas health information exchange, inc., created by executive order 10-06.
- (d) "Covered entity" means a health care provider, a health care component of a hybrid entity, a health plan or a health care clearinghouse.
- (e) "Designated record set" means designated record set as that term is defined by the HIPAA privacy rule.
- (f) "Disclosure" means disclosure as that term is defined by the HIPAA privacy rule.
- (g) "DPOA-HC" means the person to whom a durable power of attorney for health care decisions has been granted by an individual in accordance with K.S.A. 58-625 et seq., and amendments thereto.
- (h) "Electronic protected health information" means electronic health information as that term is defined by the HIPAA privacy rule.
- (i) "Health care" means health care as that term is defined by the HIPAA privacy rule.
- (j) "Health care clearinghouse" means a health care clearinghouse, as that term is defined by the HIPAA privacy rule, doing business within the state.
- (k) "Health care provider" means a health care provider, as that term is defined by the HIPAA privacy rule, that furnishes health care to individuals in the state.
- (l) "Health information" means health information as that term is defined by the HIPAA privacy rule.
- (m) "Health information organization" means any entity operating in the state which:
 - (1) Maintains technical infrastructure for the electronic movement of health information among covered entities; and
 - (2) promulgates and enforces policies governing participation in such health information exchange.
- (n) "Health information technology" means an information processing application using computer hardware and software for the storage, retrieval, use and disclosure of health information for communication, decision-making, quality, safety and efficiency of health care. "Health information technology" includes, but is not limited to: (1) An electronic health record; (2) a personal health record; (3) health information exchange; (4) electronic order entry; and (5) electronic decision support.
- (o) "Health plan" means a health plan, as that term is defined by the HIPAA privacy rule, doing business within the state.

- (p) "HIPAA privacy rule" means the privacy rule of the administrative simplification subtitle of the health insurance portability and accountability act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. part 160 and 45 C.F.R. part 164, subparts A and E.
- (q) "Hybrid entity" means hybrid entity as that term is defined by the HIPAA privacy rule.
- (r) "Individual" means individual as that term is defined by the HIPAA privacy rule.
- (s) "Individually identifiable health information" means individually identifiable health information as that term is defined by the HIPAA privacy rule.
- (t) "Interoperability" means the capacity of two or more information systems to exchange information or data in an accurate, effective, secure and consistent manner.
- (u) "Participation agreement" means a written agreement between a covered entity and an approved HIO concerning the covered entity's participation in the approved HIO on terms consistent with K.S.A. 2011 Supp. 65-6832, and amendments thereto.
- (v) "Personal representative" means the person who has the legal authority to act on behalf of an individual.
- (w) "Protected health information" means protected health information as that term is defined by the HIPAA privacy rule.
- (x) "Public health authority" means public health authority as that term is defined by the HIPAA privacy rule.
- (y) "Secretary" means the secretary of health and environment.
- (z) "Standard authorization form" means the standard authorization form developed and promulgated by the secretary pursuant to K.S.A. 2011 Supp. 65-6826, and amendments thereto.
- (aa) "State" means the state of Kansas.
- (bb) "Use" means, with respect to individually identifiable health information, use as the term is defined by the HIPAA privacy rule.

This section shall take effect on and after July 1, 2011.

65-6823. Same; purpose. (a) It is the purpose of this act 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 health information exchange.

(b) This section shall take effect on and after July 1, 2011.

65-6824. Same; duties of covered entity. (a) A covered entity shall provide an individual or such individual's personal representative with access to the individual's protected health information maintained by the covered entity in a designated record set in compliance with 45 C.F.R. 164.524.

(b) A covered entity shall implement and maintain appropriate administrative, technical and physical safeguards to protect the privacy of protected health information in a manner consistent with 45 C.F.R. 164.530(c).

(c) This section shall take effect on and after July 1, 2011.

65-6825. Same; use and disclosure of protected health information. (a) No covered entity shall use or disclose protected health information except as follows:

(1) Use and disclosure of protected health information consistent with an authorization that satisfies the requirements of 45 C.F.R. 164.508;

(2) use and disclosure of protected health information without an authorization as permitted under 45 C.F.R. 164.502, 164.506, 164.508, 164.510 and 164.512; or

(3) use and disclosure of protected health information as required under 45 C.F.R. 164.502.

(b) Notwithstanding the provisions of subsection (a), no covered entity shall disclose an individual's protected health information to a health information organization for any purpose without an authorization that satisfies the requirements of 45 C.F.R. 164.508, unless such covered entity:

(1) Is a party to a current participation agreement with an approved HIO at the time the disclosure is made;

(2) discloses the individual's protected health information to that approved HIO in a manner consistent with the approved HIO's established procedures;

(3) prior to the disclosure, has furnished to the individual, or such individual's personal representative, whose information is to be disclosed to the approved HIO, the notice required under K.S.A. 2011 Supp. 65-6832, and amendments thereto; and

(4) restricts disclosure to the approved HIO of any protected health information concerning the individual that is the subject of a written request delivered to the covered entity by the individual, or such individual's personal representative, for reasonable restrictions on disclosure of all or any specified categories of the individual's protected health information, as defined pursuant to K.S.A. 2011 Supp. 65-6832, and amendments thereto, following the covered entity's receipt of such written request.

(c) Notwithstanding the provisions of subsections (a) and (b), a covered entity that uses or discloses protected health information in compliance with this section shall be immune from any civil or criminal liability or any adverse administrative action arising out of or relating to such use or disclosure.

(d) This section shall take effect on and after July 1, 2011.

65-6826. Same; rules and regulations; standard authorization form. (a) No later than six months following the effective date of this act, the secretary shall develop and adopt by rules and regulations a standard authorization form for the use and disclosure of protected health information consistent with the requirements of 45 C.F.R. 164.508.

(b) Any person or entity in possession, custody or control of any protected health information which is the subject of a properly completed standard authorization form shall accept such form as valid authorization for the disclosure of such protected health information to the person or entity identified in such standard authorization form. Notwithstanding any other provisions, a person or entity is not precluded from accepting or relying upon any document which satisfies the requirements of 45 C.F.R. 164.508, as valid authorization for the use or disclosure of protected health information.

(c) No later than six months after the effective date of this act the secretary shall develop educational materials intended to increase awareness and promote a greater understanding of the standard authorization form created under this section, including the importance of ensuring that an individual's health information is readily available to health care providers at the point of care, in order to enable the best possible provision of health care services.

(d) This section shall take effect on and after July 1, 2011.

65-6827. Same; payment of charges for furnishing copies of protected health

information. Notwithstanding any other provision of this act, a covered entity may condition the furnishing of copies of an individual's protected health information in paper or electronic form to the individual, the individual's personal representative, or any other person or entity authorized by law to obtain or reproduce such information, upon the payment of charges to be established and updated by the secretary, except no provider shall condition the furnishing of copies to another provider needed for that provider's treatment of an individual on payment of such fee. This section shall not apply to disclosures by a covered entity to an approved HIO, or by an approved HIO to a covered entity.

65-6828. Same; controlling law on confidentiality of protected health information. To the extent any provision of state law regarding the confidentiality, privacy, security or privileged status of any protected health information conflicts with the provisions of this act, the provisions of this act shall control, except that: (a) Nothing in this act shall limit or restrict the effect and application of the peer review statute, K.S.A. 65-4915, and amendments thereto; the risk management statute, K.S.A. 65-4921, and amendments thereto; or any statutory health care provider-patient privilege; and (b) nothing in this act shall limit or restrict the ability of any state agency to require the disclosure of protected health information by any person or entity pursuant to law.

This section shall take effect on and after July 1, 2011.

65-6829. Same; disclosure of protected health information, when required or permitted. (a) A health care provider may disclose protected health information without authorization to any state agency for any public health purpose that is required by law. Nothing in this act shall be construed to limit the use, transfer or disclosure of protected health information as required or permitted by any other provision of law.

(b) This section shall take effect on and after July 1, 2011.

65-6830. Same; health information organizations; standards for approval and operation. The corporation shall establish and revise, as appropriate, standards for approval and operation of statewide and regional health information organizations operating in the state as approved HIOs including, but not limited to, the following:

- (a) Satisfaction of certification standards for health information exchanges promulgated by the federal government;
- (b) adherence to nationally recognized standards for interoperability;
- (c) adoption and adherence to rules promulgated by the corporation regarding access to and use and disclosure of protected health information maintained by or on an approved HIO;
- (d) demonstration of adequate financial resources to sustain continued operations in compliance with the standards;
- (e) participation in outreach activities for individuals and covered entities;
- (f) conduct of operations in a transparent manner to promote consumer confidence;
- (g) implementation of security breach notification procedures; and
- (h) development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the corporation pursuant to K.S.A. 2011 Supp. 65-6832, and amendments thereto.

This section shall take effect on and after July 1, 2011.

65-6831. Same; process established for approval and investigation of HIOs. (a) The corporation shall establish and implement:

- (1) A process by which a health information exchange may apply for and receive approval by the corporation by demonstrating compliance with the standards promulgated by the corporation pursuant to K.S.A. 2011 Supp. 65-6830, and amendments thereto;
- (2) a process by which an approved HIO shall be re-approved on appropriate intervals by demonstrating continued compliance with the standards promulgated by the corporation pursuant to K.S.A. 2011 Supp. 65-6830, and amendments thereto; and
- (3) a process for the investigation of reported concerns and complaints regarding an approved HIO and imposition of appropriate remedial and proactive measures to address any identified deficiencies.

(b) This section shall take effect on and after July 1, 2011.

65-6832. Same; participation agreements; specification of procedures and requirements. (a) The corporation shall establish requirements for participation agreements to include the following:

- (1) Specification of procedures for the covered entity to disclose an individual's protected health information to the approved HIO;

- (2) specification of procedures for the covered entity to access an individual's protected health information from the approved HIO;
- (3) specification of the written notice to be provided by the covered entity to any individual, or such individual's personal representative, prior to the covered entity's disclosure of the individual's protected health information to the approved HIO. Such written notice, which may be incorporated into the covered entity's notice of privacy practices required under the HIPAA privacy rule, shall include the following that:
- (A) The individual's protected health information will be disclosed to the approved HIO to facilitate the provision of health care to the individual;
 - (B) the approved HIO maintains appropriate safeguards to protect the privacy and security of protected health information;
 - (C) only authorized individuals may access protected health information from the approved HIO;
 - (D) the individual, or such individual's personal representative, has the right to request in writing that the covered entity: (i) Not disclose any of the individual's protected health information to the approved HIO; or (ii) not disclose specified categories of the individual's protected health information to the approved HIO;
 - (E) such restrictions may result in a health care provider not having access to information necessary to provide appropriate care for the individual;
 - (F) the covered entity is required to honor a written request delivered to the covered entity by an individual, or such individual's representative, not to disclose any of the individual's protected health information to an approved HIO; and
 - (G) the covered entity is required to honor a written request delivered to the covered entity by an individual, or such individual's representative, for reasonable restrictions on the disclosure of specified categories of the individual's protected health information to an approved HIO.
- (4) specification of documentation requirements to demonstrate delivery of such notice to an individual, or such individual's personal representative, by or on behalf of the covered entity prior to the covered entity's disclosure of the individual's protected health information to the approved HIO;
- (5) standards for determining the reasonableness of an individual's written request, or the written request of such individual's personal representative, not to disclose specified categories of the individual's protected health information to the approved HIO based on the covered entity's technological capabilities; and
- (6) specification of the purposes for which a covered entity may access protected health information through the approved HIO.
- (b) This section shall take effect on and after July 1, 2011.

65-6833. Same; health information organizations; eligibility for financial support from the state. (a) Any health information organization which is not an approved HIO shall not be eligible for any financial support from the state, or assistance or support from the state in securing any other source of funding.

- (b) This section shall take effect on and after July 1, 2011.

65-6834. Same; use and disclosure of protected health information; immunity from liability. (a)

Notwithstanding any other provision of this act, no use or disclosure of protected health information maintained by or on an approved HIO shall be made except pursuant to rules adopted by the corporation consistent with this act. An approved HIO that uses or discloses protected health information in compliance with such rules shall be immune from any civil or criminal liability or any adverse administrative action arising out of or relating to such use or disclosure.

(b) This section shall take effect on and after July 1, 2011.