

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

1

SENATE BILL 375

Short Title: Facilitate Statewide Health Info. Exchange. (Public)

Sponsors: Senators Stein and Brunstetter.

Referred to: Health Care.

March 21, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO FACILITATE AND REGULATE THE DISCLOSURE OF PROTECTED  
3 HEALTH INFORMATION THROUGH A VOLUNTARY, STATEWIDE HEALTH  
4 INFORMATION EXCHANGE NETWORK.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 90 of the General Statutes is amended by adding a new  
7 Article to read:

8 "Article 29A.

9 "North Carolina Health Information Exchange Act.

10 "§ 90-413.1. Title.

11 This act shall be known and may be cited as the "North Carolina Health Information  
12 Exchange Act."

13 "§ 90-413.2. Purpose.

14 This Article is intended to improve the quality of health care delivery within this State by  
15 facilitating and regulating the use of a voluntary, statewide health information exchange  
16 network for the secure electronic transmission of individually identifiable health information  
17 among health care providers, health plans, and health care clearinghouses in a manner that is  
18 consistent with the Health Insurance Portability and Accountability Act, Privacy Rule and  
19 Security Rule, 45 C.F.R. §§ 160, 164.

20 "§ 90-413.3. Definitions.

21 The following definitions apply in this Article:

22 (1) "Business associate" is as defined in 45 C.F.R. § 160.103.

23 (2) "Business associate contract" means the documentation required by 45  
24 C.F.R. § 164.502(e)(2) that meets the applicable requirements of 45 C.F.R. §  
25 164.504(e).

26 (3) "Covered entity" is as defined in 45 C.F.R. § 160.103.

27 (4) "Disclose" or "disclosure" means the release, transfer, provision of access to,  
28 or divulging in any other manner an individual's protected health information  
29 through the HIE Network.

30 (5) "Emergency medical condition" means a medical condition manifesting  
31 itself by acute symptoms of sufficient severity, including severe pain, such  
32 that the absence of immediate medical attention could reasonably be  
33 expected to result in (i) placing an individual's health in serious jeopardy, (ii)  
34 serious impairment to an individual's bodily functions, or (iii) serious  
35 dysfunction of any bodily organ or part of an individual.

36 (6) "HIE Network" means the voluntary, statewide health information exchange  
37 network overseen and administered by the NC HIE.



- 1           (7)    "HIPAA" means the Health Insurance Portability and Accountability Act of  
2           1996, P.L. 104-191, as amended.
- 3           (8)    "Individual" is as defined in 45 C.F.R. § 160.103.
- 4           (9)    "North Carolina Health Information Exchange" or "NC HIE" means the  
5           nonprofit corporation selected by the Governor to serve as the subrecipient  
6           of grant funds from or as the State-designated entity named by the State  
7           pursuant to section 3013 of the federal Health Information Technology for  
8           Economic and Clinical Health Act, P.L. 111-5, Div. A, Title XIII, section  
9           13001, as amended.
- 10          (10)   "Opt out" means an individual's affirmative decision to disallow his or her  
11          protected health information maintained by or on behalf of one or more  
12          specific covered entities from being disclosed to other covered entities  
13          through the HIE Network.
- 14          (11)   "Protected health information" is as defined in 45 C.F.R. § 160.103.
- 15          (12)   "Public health purposes" means the public health activities and purposes  
16          described in 45 C.F.R. § 164.512(b).
- 17          (13)   "Research purposes" means research that meets the standard described in 45  
18          C.F.R. § 164.512(i).

19    **§ 90-413.4. North Carolina Health Information Exchange; requirements.**

- 20          (a)    The NC HIE shall satisfy all of the following requirements:
- 21               (1)    Oversee and administer the HIE Network in a manner that ensures all of the  
22                following:
- 23                   a.    Compliance with this Article.
- 24                   b.    Compliance with HIPAA and any rules adopted under HIPAA,  
25                    including the Privacy Rule and Security Rule.
- 26                   c.    Compliance with the terms of any business associate contract the NC  
27                    HIE enters into with a covered entity participating in the HIE  
28                    Network.
- 29                   d.    Notice to the public about the HIE Network, including information  
30                    and education about the right of individuals on a continuing basis to  
31                    opt out or rescind a decision to opt out.
- 32                   e.    Opportunity for all individuals to exercise on a continuing basis the  
33                    right to opt out or rescind a decision to opt out.
- 34                   f.    Nondiscriminatory treatment by covered entities of individuals who  
35                    exercise the right to opt out.
- 36               (2)    Develop and enter into written participation agreements with covered  
37                entities that utilize the HIE Network. The participation agreements shall  
38                specify the terms and conditions governing participation in the HIE  
39                Network. The agreement shall also require compliance with policies  
40                developed by the NC HIE pursuant to this Article, or pursuant to applicable  
41                laws of the state of residence for entities located outside of North Carolina.
- 42               (3)    Add, remove, disclose, and access protected health information through the  
43                HIE Network in accordance with this Article.
- 44               (4)    Enter into a business associate contract with each of the covered entities  
45                participating in the HIE Network.
- 46               (5)    Grant user rights to the HIE Network to business associates of covered  
47                entities participating in the HIE Network (i) at the request of the covered  
48                entities and (ii) at the discretion of the NC HIE upon consideration of the  
49                business associates' legitimate need for utilizing the HIE Network and  
50                privacy and security concerns.
- 51               (6)    Facilitate and promote use of the HIE Network by covered entities.

1           (7) Periodically monitor compliance with this Article by covered entities  
2           participating in the HIE Network.

3           (b) Nothing in this section shall be construed to restrict the NC HIE from exercising any  
4 of its corporate powers in a manner that is not inconsistent with this Article.

5 **"§ 90-413.5. Participation by covered entities.**

6           (a) Each covered entity that elects to participate in the HIE Network shall enter into a  
7 business associate contract and a written participation agreement with the NC HIE prior to  
8 disclosing or accessing any protected health information through the HIE Network.

9           (b) Each covered entity that elects to participate in the HIE Network may authorize its  
10 business associates to disclose or access protected health information on behalf of the covered  
11 entity through the HIE Network in accordance with this Article and at the discretion of the NC  
12 HIE, as provided in G.S. 90-413.4(5).

13           (c) Notwithstanding any State law or regulation to the contrary, each covered entity that  
14 elects to participate in the HIE Network may disclose an individual's protected health  
15 information through the HIE Network (i) to other covered entities for any purpose permitted by  
16 HIPAA, unless the individual has exercised the right to opt out and (ii) in order to facilitate the  
17 provision of emergency medical treatment to the individual, subject to the requirements set  
18 forth in G.S. 90-413.6(e).

19           (d) Any health care provider who relies in good faith upon any information provided  
20 through the NC HIE in the health care provider's treatment of a patient shall not incur criminal  
21 or civil liability for damages caused by the inaccurate or incomplete nature of this information.

22 **"§ 90-413.6. Continuing right to opt out; effect of opt out; exception for emergency**  
23 **medical treatment.**

24           (a) Each individual has the right on a continuing basis to opt out or rescind a decision to  
25 opt out.

26           (b) The NC HIE or its designee shall enforce an individual's decision to opt out or  
27 rescind an opt out prospectively from the date the NC HIE or its designee receives notice of the  
28 individual's decision to opt out or rescind an opt out in the manner prescribed by the NC HIE.  
29 An individual's decision to opt out or rescind an opt out does not affect any disclosures made  
30 by the NC HIE or covered entities through the HIE Network prior to receipt by the NC HIE or  
31 its designee of the individual's notice to opt out or rescind an opt out.

32           (c) A covered entity may not deny treatment or benefits to an individual because of the  
33 individual's decision to opt out. However, nothing in this Article is intended to restrict a  
34 treating physician from otherwise appropriately terminating a relationship with a patient in  
35 accordance with applicable law and professional ethical standards.

36           (d) Except as otherwise permitted in subsection (e) of this section and  
37 G.S. 90-413.7(a)(3), the protected health information of an individual who has exercised the  
38 right to opt out may not be disclosed to covered entities through the HIE Network for any  
39 purpose.

40           (e) The protected health information of an individual who has exercised the right to opt  
41 out may be disclosed through the HIE Network in order to facilitate the provision of emergency  
42 medical treatment to the individual if all of the following criteria are met:

43           (1) The reasonably apparent circumstances indicate to the treating health care  
44 provider that (i) the individual has an emergency medical condition, (ii) a  
45 meaningful discussion with the individual about whether to rescind a  
46 previous decision to opt out is impractical due to the nature of the  
47 individual's emergency medical condition, and (iii) information available  
48 through the HIE Network could assist in the diagnosis or treatment of the  
49 individual's emergency medical condition.

1           (2)    The disclosure through the HIE Network is limited to the covered entities  
2           providing diagnosis and treatment of the individual's emergency medical  
3           condition.

4           (3)    The circumstances and extent of the disclosure through the HIE Network is  
5           recorded electronically in a manner that permits the NC HIE or its designee  
6           to periodically audit compliance with this subsection.

7    **"§ 90-413.7. Construction and applicability.**

8           (a)    Nothing in this Article shall be construed to do any of the following:

9           (1)    Impair any rights conferred upon an individual under HIPAA, including all  
10           of the following rights related to an individual's protected health  
11           information:

12           a.    The right to receive a notice of privacy practices.

13           b.    The right to request restriction of use and disclosure.

14           c.    The right of access to inspect and obtain copies.

15           d.    The right to request amendment.

16           e.    The right to request confidential forms of communication.

17           f.    The right to receive an accounting of disclosures.

18           (2)    Authorize the disclosure of protected health information through the HIE  
19           Network to the extent that the disclosure is restricted by federal laws or  
20           regulations, including the federal drug and alcohol confidentiality  
21           regulations set forth in 42 C.F.R. Part 2.

22           (3)    Restrict the disclosure of protected health information through the HIE  
23           Network for public health purposes or research purposes, so long as  
24           disclosure is permitted by both HIPAA and State law.

25           (4)    Prohibit the NC HIE or any covered entity participating in the HIE Network  
26           from maintaining in the NC HIE computer system a copy of the protected  
27           health information of an individual who has exercised the right to opt out, as  
28           long as the NC HIE does not access, use, or disclose the individual's  
29           protected health information for any purpose other than for necessary system  
30           maintenance or as required by federal or State law.

31           (b)    This Article applies only to disclosures of protected health information made  
32           through the HIE Network. It does not apply to the use or disclosure of protected health  
33           information in any context outside of the HIE Network, including the redisclosure of protected  
34           health information obtained through the HIE Network.

35    **"§ 90-413.8. Penalties and remedies.**

36           A covered entity that discloses protected health information in violation of this Article is  
37           subject to the following:

38           (1)    Any civil penalty or criminal penalty, or both, that may be imposed on the  
39           covered entity pursuant to the Health Information Technology for Economic  
40           and Clinical Health (HITECH) Act, P.L. 111-5, Div. A, Title XIII, section  
41           13001, as amended, and any regulations adopted under the HITECH Act.

42           (2)    Any civil remedy under the HITECH Act or any regulations adopted under  
43           the HITECH Act that is available to the Attorney General or to an individual  
44           who has been harmed by a violation of this Article, including damages,  
45           penalties, attorneys' fees, and costs.

46           (3)    Disciplinary action by the respective licensing board or regulatory agency  
47           with jurisdiction over the covered entity.

48           (4)    Any penalty authorized under Article 2A of Chapter 75 of the General  
49           Statutes if the violation of this Article is also a violation of Article 2A of  
50           Chapter 75 of the General Statutes.

- 1           (5)    Any other civil or administrative remedy available to a plaintiff by State or  
2                    federal law or equity."  
3            **SECTION 2.** This act becomes effective October 1, 2011.