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Indicates New Matter

AMENDED

February 22, 2011

**H. 3413**

Introduced by Reps. Sandifer and Brady

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Read the first time January 25, 2011.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 140 TO TITLE 44 SO AS TO ESTABLISH THE SOUTH CAROLINA HEALTH INFORMATION EXCHANGE (SCHIEX), TO ESTABLISH THE SOUTH CAROLINA HEALTH INFORMATION EXCHANGE COUNCIL AS THE GOVERNING BODY OF SCHIEX TO OVERSEE AND GOVERN THE EXCHANGE OF HEALTH‑RELATED INFORMATION THROUGH SCHIEX, TO PROVIDE FOR THE COUNCIL’S POWERS AND DUTIES, AND TO FURTHER PROVIDE FOR THE ELECTRONIC MOVEMENT OF HEALTH‑RELATED INFORMATION THROUGH SCHIEX; AND TO AMEND SECTION 8‑17‑370, AS AMENDED, RELATING TO EXEMPTIONS FROM THE STATE EMPLOYEE GRIEVANCE PROCEDURES, SO AS TO INCLUDE THE EXECUTIVE DIRECTOR OF SCHIEX IN THESE EXEMPTIONS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 140

South Carolina Health Information Exchange

Section 44‑140‑10. The General Assembly finds that:

(1) Congress has enacted the Health Information Technology for Economic and Clinical Health Act of 2009, also known as HITECH, to advance the use of health information technology and health information exchange to improve quality and efficiency of health care and to decrease the costs of health care.

(2) HITECH authorizes funding for states to establish health information exchanges, and the State of South Carolina has entered into a cooperation agreement with the Office of the National Coordinator for Health Information Technology to receive these grant funds.

(3) HITECH provides for monetary incentives to encourage qualified health care professionals and hospitals to adopt electronic health records and to utilize a state health information exchange and penalizes Medicare providers who do not utilize this technology.

(4) The establishment of a statewide health information exchange is necessary for the State and health care providers in the State to comply with these HITECH provisions and is an essential element for improving health care for all South Carolinians and thus improving their health status.

(5) The proper establishment and operation of a statewide health information exchange requires the creation of a governance body composed of a broad‑based group of stakeholders with the expertise to ensure the efficient and secure exchange of electronic health information of South Carolina.

Section 44‑140‑20. As used in this chapter:

(1) ‘Council’ means the South Carolina Health Information Exchange Council created pursuant to this chapter.

(2) ‘Electronic health record’ or ‘EHR’ means an electronic record of health‑related information regarding an individual that conforms to nationally recognized interoperability standards and that can be created, managed, and consulted by authorized clinicians and staff across more than one health care organization.

(3) ‘Executive Director’ means the executive director of the council designated pursuant to Section 44‑140‑50.

(4) ‘Health information exchange’ or ‘HIE’ means the electronic movement of health‑related information according to nationally recognized standards.

(5) ‘Health information organization’ or ‘HIO’ means an organization that oversees and governs the exchange of health‑related information according to nationally recognized standards.

(6) ‘HIPAA’ means the Health Insurance Portability and Accountability Act of 1996, Public Law 104‑91, as amended, and related HIPAA regulations (45 C.F.R. Parts 160‑164).

(7) ‘Office’ means the Office of Research and Statistics of the State Budget and Control Board.

(8) ‘Participant’ means an eligible individual, entity, or governmental agency that is a signatory to the participation agreement except for the governing authority. If the entity or agency within which the individual practices signs a participant agreement, the individual is not required to sign a separate participation agreement but must sign a participant user agreement. Eligible individuals are health care providers licensed in this State and providing health care services within their statutory scope of practice, including medical doctors, dentists, chiropractors, optometrists, podiatrists, pharmacists, physician assistants, and nurse practitioners. Eligible entities are health information exchanges, entities within which eligible individuals practice, hospitals, ambulatory surgical facilities, home health agencies, case management providers, telemonitoring providers, and pharmacies. Eligible governmental agencies are the South Carolina Department of Health and Environmental Control, the South Carolina Department of Mental Health, the South Carolina Department of Social Services, the South Carolina Department of Disabilities and Special Needs, and the South Carolina Department of Alcohol and Other Drug Abuse Services.

(9) ‘Permitted purposes’ means the following reasons for which a participant may legitimately exchange individual health information through SCHIEx:

(a) treatment of an individual with whom the participant has a treatment relationship;

(b) HIPAA permitted uses and disclosures under 45 C.F.R. § 164.512(a) ‑ (d), (h), and (j) ‑ (l), related to:

(i) an individual with whom a participant has an established treatment relationship; or

(ii) a public health initiative;

(c) a participant’s submission of information required by law, including, but not limited to, immunization data, quality reporting data, and communicable disease data, to a state or federal agency; and

(d) uses and disclosures premised on a HIPAA authorization provided by the individual who is the subject of the authorization.

(10) ‘Regional health information organization’ or ‘RHIO’ means a health information organization that brings together health care stakeholders within a defined geographic area and governs health information exchange among them for the purpose of improving health care in that community.

(11) ‘South Carolina Health Information Exchange’ or ‘SCHIEx’ means the health information organization that has been designated as the official statewide HIE.

Section 44‑140‑30. There is established the South Carolina Health Information Exchange known as SCHIEx. SCHIEx must be governed by the South Carolina Health Information Exchange Council established pursuant to this chapter and operated by the Office of Research and Statistics of the State Budget and Control Board. SCHIEx is the official statewide Health Information Exchange for this State.

Section 44‑140‑40. (A)(1) There is established the South Carolina Health Information Exchange Council, a body corporate and politic, which shall serve as the governance authority for SCHIEx. The Council consists of:

(a) a representative of a hospital in this State;

(b) a physician licensed in good standing and actively practicing in this State in a rural health clinic;

(c) a physician licensed in good standing and actively practicing in this State;

(d) a representative of a federally qualified health center in this State;

(e) a pharmacist licensed in good standing and actively practicing in this State;

(f) the Director or a designee of the Department of Health and Human Services;

(g) the Executive Director of the State Budget and Control Board or a designee with experience regarding the State Health Plan;

(h) the Commissioner or a designee of the Department of Health and Environmental Control;

(i) a representative of a regional health information organization in this State that provides countywide services or that serves a population of more than ten thousand;

(j) a representative of research institutions in this State;

(k) a patient representative; and

(l) two representatives of health insurance plans regulated by the South Carolina Department of Insurance, one of whom must be appointed by the President Pro Tempore of the Senate for a four‑year term and until a successor is appointed and qualifies, and one of whom must be appointed by the Speaker of the House for a four‑year term and until a successor is appointed and qualifies.

(2) The members enumerated in items (1), (2), (5), and (11) must be appointed by the President Pro Tempore of the Senate for four‑year terms and until their successors are appointed and qualify. The members enumerated in items (3), (4), (9), and (10) must be appointed by the Speaker of the House of Representatives for four‑year terms and until their successors are appointed and qualify. A vacancy in appointed members of the Council must be filled by the appointing authority for the vacated position for the unexpired portion of the term. The remaining members serve ex officio.

(B) The council annually shall elect a chairman from among its members. The council shall rotate the position of chairman among the members of the council on an annual basis. No member who has served as chairman is eligible to serve again as chairman for a period of four years after last serving as chairman.

(C) Members of the council shall not be compensated for service on the council. Council members may be reimbursed for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and may be reimbursed for actual and necessary expenses incurred in connection with and as a result of their work as members of the council.

(D) The council shall meet on a regular basis but no less than quarterly. A majority of the members constitutes a quorum for taking action, and decisions must be by majority vote.

Section 44‑140‑50. (A) The council shall hire and set the compensation of the executive director of the council in consultation with the office. The office shall provide staff assistance to the council as directed by the executive director.

(B) The council must develop in coordination with the office the position description and performance criteria for the position of executive director. Both the council and the office must participate in an annual review of the job performance of the executive director.

(C) The position of executive director of the council is exempt from Article 5, Chapter 17, Title 8. The executive director serves at the pleasure of the council and may be terminated at will by the office; however, the council and office must consult prior to dismissal of the executive director.

(D) The council and the office may cooperate and coordinate with public and private entities in conducting outreach programs on participation in SCHIEx.

Section 44‑140‑60. The council shall:

(1) oversee the development, implementation, and operation of SCHIEx in compliance with all applicable state and federal requirements;

(2) establish a legal and policy framework for SCHIEx operations to ensure the privacy and security of individual health information exchanged through SCHIEx and to ensure that individual health information is exchanged through SCHIEx solely for permitted purposes;

(3) ensure the financial sustainability of SCHIEx;

(4) adopt nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation;

(5) develop and implement a strategic plan for SCHIEx as approved by the National Coordinator for Health Information Technology. The strategic plan must include, but is not limited to:

(a) a description of the council, its decision making authority, and governance model;

(b) a business plan that provides for the financial sustainability of SCHIEx governance and operations;

(c) specification of how the State will meet ‘meaningful use’ SCHIEx requirements established by the Secretary of the United States Department of Health and Human Services;

(d) a description of SCHIEx accountability and transparency requirements;

(e) a description of how privacy and security issues related to health information exchange within the State and interstate will be addressed;

(f) a description of how policies and procedures will be developed to enable and foster information exchange within the State and interstate; and

(g) a description of how the State will address issues of noncompliance with federal and state laws and policies applicable to SCHIEx;

(6) review and, if needed, revise the strategic plan on an annual basis; however, to the extent that the terms of a federal cooperative agreement require approval of changes to the strategic plan by the National Coordinator for Health Information Technology or other federal authority, changes to the strategic plan adopted by the council must not take effect until these changes have been approved by the National Coordinator for Health Information Technology or other competent federal authority;

(7) develop and implement an operational plan for SCHIEx as approved by the National Coordinator for Health Information Technology. The operational plan must include details on how the strategic plan will be carried forward and executed to enable SCHIEx. The operational plan must include, but is not limited to:

(a) a description of the ongoing development of the governance and policy structures;

(b) a detailed cost estimate and staffing plan based on the provisions of the strategic plan;

(c) a description of activities to implement financial policies, procedures, and controls to maintain compliance with generally accepted accounting principles and relevant Office of Management and Budget circulars;

(d) a description of how the technical architecture will accommodate the requirements to ensure statewide availability of HIE and how technical solutions will be deployed;

(e) a description of how the State will leverage current HIE capacity; and

(f) a description of how the SCHIEx will comply with federal and state legal and policy requirements, including privacy and security provisions;

(8) review and, if needed, revise the operational plan on an annual basis; however, to the extent that the terms of a federal cooperative agreement require approval of changes to the operational plan by the National Coordinator for Health Information Technology or other federal authority, changes to the operational plan adopted by the council must not take effect until these changes have been approved by the National Coordinator for Health Information Technology or other competent federal authority;

(9) develop and implement financial policies and procedures, consistent with state and federal requirements that provide for the financial sustainability of SCHIEx;

(10) develop and implement privacy and security policies and procedures governing SCHIEx that are consistent with state and federal law including, but not limited to, the privacy provisions of the American Reinvestment and Recovery Act of 2009, the Privacy Act of 1974, the HIPAA Security Rule, the HIPAA Privacy Rule, the Federal Information Security Management Act of 2002, the Confidentiality of Alcohol and Drug Abuse Patient Records, and the HHS Privacy and Security Framework Principles. The council’s policies and procedures must include the right of patients to opt out of having their individual health and identifying information exchanged through SCHIEx. The council’s policies and procedures must prohibit the misuse of electronic health records while facilitating the development of SCHIEx; and

(11) develop the necessary agreements to facilitate the secure and appropriate exchange of health information through SCHIEx and among its participants solely for permitted purposes.

Section 44‑140‑70. The council may:

(1) promulgate regulations in accordance with the Administrative Procedures Act for the establishment and operation of SCHIEx consistent with the provisions of this chapter;

(2) enter into contracts of any type on terms and conditions determined by the council;

(3) accept revenue from public or private sources, or both, for the establishment and operation of SCHIEx;

(4) establish reasonable fees for the establishment and operation of SHCIEx as the statewide HIE. The fees must be established at a level as low as reasonably possible while maintaining the financial sustainability of SCHIEx. The council must review the fee schedule on an annual basis and make any necessary adjustments to the fees, either upward or downward, to ensure the financial sustainability of SCHIEx and to ensure fair cost allocation among all users of SCHIEx. The council also may offer discounts on fees to encourage participation in SCHIEx; and

(5) establish committees of the council and delegate responsibilities to these committees and appoint special advisory groups to the council. Members appointed by the council to committees and special advisory groups must not be compensated for service. Members may be reimbursed for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions.

Section 44‑140‑80. (A)(1) An eligible individual, entity, or agency desiring to participate in SCHIEx must sign the agreements required by the council to ensure the secure and appropriate exchange of health information through SCHIEx and among all SCHIEx participants.

(2) The executive director or the executive director’s designee must investigate any report or complaint of a breach or inappropriate access, use, or disclosure of patient information exchanged through SCHIEx or violation of the agreements required for participation in SCHIEx.

(3) If the executive director determines that a participant has violated any of the agreements required by the council, the executive director shall issue a letter to the participant imposing appropriate sanctions on the participant, which may include termination of the participant’s participation in SCHIEx or imposition of an administrative penalty of up to one thousand dollars for each violation, or both.

(4) If the executive director determines that no violation occurred, the executive director shall issue a letter to the participant dismissing the alleged violation.

(5) If the executive director determines that the violation was minor and has been adequately addressed by the participant, the executive director shall issue a letter to the participant setting forth his or her findings and recommendations, if any, to avoid future violations.

(6) A participant aggrieved by a decision of the executive director may, within fifteen days of receipt of notice of the decision, file a petition for review of the decision by the Fair Hearing Committee of the council as a contested case in accordance with the Administrative Procedures Act and subsection (B). The filing of a petition for review does not stay a decision by the executive director to terminate a participant’s participation in SCHIEx. The Fair Hearing Committee assigned to the matter may grant a stay of the decision by the executive director upon appropriate terms. If a participant requests in writing a stay of the decision by the executive director, the Fair Hearing Committee must rule on the request for a stay within ten calendar days of receipt of the request or other period of time as agreed to by the parties.

(B) The chairman of the council shall designate on a rotating basis three members of the council to serve as the council’s Fair Hearing Committee. A participant aggrieved by the final decision of the council’s Fair Hearing Committee may file an appeal with the Administrative Law Court, in its appellate jurisdiction, in accordance with the Administrative Procedures Act and the rules of the Administrative Law Court. Service of a petition requesting a review under this section does not stay the decision of the council’s Fair Hearing Committee. The process set forth in this section constitutes the exclusive remedy for a participant with respect to a decision by the council or its staff under this section.

Section 44‑140‑90. (A) The State, its agencies and employees, and the council, its staff and employees, are immune from suit and liability for any acts performed in the course of official duties pursuant to this chapter so long as these acts do not constitute actual fraud, actual malice, intent to harm, or a crime of moral turpitude.

(B) Nothing in this section affects the power of a court of equity to enjoin unlawful acts committed by governmental entities or mandate lawful action by governmental entities.

Section 44‑140‑100. Notwithstanding any other provision of law, a participant participating in SCHIEx, a regional HIE, or a hospital system HIE that participates in SCHIEx may release patient records and medical information, including, but not limited to, the results of any laboratory or other tests ordered or requested by an authorized health care provider within the scope of his license or practice act, to another health information organization that requests the information via a HIE for treatment purposes with or without express written consent or authorization from the patient. A health information organization that receives or views this information from a patient’s electronic health record or incorporates this information into the health information organization’s electronic medical record for the patient in providing treatment is considered an authorized person for purposes of 42 C.F.R. 493.2 and the Clinical Laboratory Improvement Amendments.

Section 44‑140‑110. The council shall submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee no later than January fifteenth of each year regarding the activities of the council, the status and financial stability of SCHIEx including a copy of the applicable fee schedule, and recommendations, if any, for legislative changes to improve SCHIEx.”

SECTION 2. Section 8‑17‑370 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 8‑17‑370. The provisions of this article do not apply to:

(1) members, officers, or employees of the General Assembly;

(2) employees within the Office of the Governor who work at the mansion or in the State House or those employees appointed by the Governor to serve at or above the organizational level of assistant directors of the individual program components;

(3) elected public officials of this State or persons appointed to fill vacancies in these offices;

(4) all judges, officers, and employees of the Judicial Department; jurors; all employees of the Commission on Prosecution Coordination; and the judges, officers, and employees of the Administrative Law Judge Division;

(5) members of state boards, commissions, councils, advisory councils, or committees compensated on a per diem basis;

(6) inmate help in a charitable, penal, or correctional institution, residents of rehabilitation facilities, or students employed in institutions of learning;

(7) part‑time professional personnel engaged in consultant or contractual services;

(8) an agency head who has the authority and responsibility for an agency within state government including the divisions of the State Budget and Control Board;

(9) employees of the Public Service Authority, State Ports Authority, the Jobs‑Economic Development Authority, or the Division of Public Railways and the Division of Savannah Valley Development of the Department of Commerce;

(10) teaching or research faculty, professional librarians, academic administrators, or other persons holding faculty appointments at a four‑year post‑secondary educational institution, including its branch campuses, if any, as defined in Section 59‑107‑10;

(11) athletic coaches and unclassified employees in the athletic departments of four‑year post‑secondary educational institutions as defined in Section 59‑107‑10;

(12) deputy directors as defined in Section 8‑17‑320;

(13) regional and county directors of the Department of Social Services as defined in Section 43‑3‑40(B);

(14) employees of the Medical University Hospital Authority, provided the Medical University Hospital Authority has promulgated an employee grievance plan in accordance with its enabling provision;

(15) presidents of the South Carolina Technical College System;

(16) a retired member of the South Carolina Police Officers Retirement System or a retired member of the South Carolina Retirement System who is hired by an agency to fill all or some fraction of a full‑time equivalent (FTE) position covered by the State Employee Grievance Procedure Act; ~~and~~

(17) notwithstanding the provisions of Section 9‑1‑2210(E), any participant in the Teacher and Employee Retention Incentive Program~~.~~;

(18) the chief investment officer and all other employees of the Retirement System Investment Commission~~.~~;

(19) employees of the Office of the Lieutenant Governor if the employees report directly to the Lieutenant Governor or report directly to a person who reports directly to the Lieutenant Governor~~.~~;

(20) the executive director, assistant directors, and the area directors of the South Carolina Department of Workforce created pursuant to Section 1‑30‑10(A)(20)~~.~~;

(21) the Executive Director of the South Carolina Health Information Exchange (SCHIEx).”

SECTION 3. This act takes effect upon approval by the Governor.

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