

## Summaries of Two Important Health and Healthcare-Related Bills Passed by the NC General Assembly in 2011

### **S375 – North Carolina Health Information Exchange Act**

<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=s375&submitButton=Go>

### **S607 - Conform Medical Record Laws**

<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=s607&submitButton=Go>

North Carolina's Governor Perdue signed legislation to facilitate the exchange of health information among health care providers, health plans and other health industry stakeholders with the goal to assist health care organizations in improving the quality and controlling the cost of health care services through enhanced access to medical information and clinical support. Both bills were sponsored by Senator Josh Stein and received broad bi-partisan support from the NC General Assembly.

## Highlights of S375: Facilitate Statewide HIE

- Establishes a new Article 29A, “North Carolina Health Information Exchange Act” in Chapter 90 of the NC General Statutes.
- The purpose of the Act is to facilitate the statewide health information exchange network for the secure electronic transmission of individually identifiable health information among participating entities in a manner consistent with HIPAA, (Health Insurance Portability and Accountability Act of 1996, PL 104-191, as amended), notwithstanding conflicting State laws.
- The Act will govern the use of the statewide HIE Network administered by the NC HIE, a non-profit corporation.
- **Requirements of NC HIE:** The Act requires the NC HIE to:
  - Administer the HIE Network to ensure compliance with HIPAA, terms of participation agreements, and business associate contracts entered into with participating entities or Qualified Organizations, and provisions of the new Article 29A.
  - Ensure its privacy and security policies do not impair any rights conferred under HIPAA.
  - Periodically monitor compliance with Article 29A by participating entities in the HIE Network.
- **Requirements of Participants:** The Act requires covered entities who wish to utilize the HIE Network to:
  - Enter into a written participation agreement and business associate contract prior to disclosing or accessing protected health information through the HIE Network.
  - Provide notice to their patients on the initial visit about the HIE Network, including information and education about the right of individuals on a continuing basis to opt out or rescind a decision to opt out.
  - A participating entity may not deny treatment or benefits to an individual because of the individual’s decision to opt out.
- **Right of Individual to Opt –Out of HIE Network:** Article 29A provides individuals with a right to disallow, on continuing basis, the disclosure or access to his or her health information maintained by one or more specific participating providers.
  - The individual’s decision to opt out does not restrict disclosures through the HIE Network for public health or research purposes that are permitted or required under State or HIPAA
  - Emergency medical treatment exception: the health information of an individual who has exercised their right to opt out may be disclosed through the HIE Network in order to facilitate the provision of emergency medical treatment to the individual if all of the following criteria are met:
    - Individual has an emergency medical condition;
    - Opportunity for individual to rescind their opt out is impractical due to the nature of the individual’s emergency medical condition;

- Information available through the HIE Network could assist in the diagnosis or treatment of the individual's emergency medical condition; and
  - Disclosure is documented and limited to the treatment or diagnosis of the emergency medical condition.
- **Immunity from Liability:**
    - Any health care provider who relies in good faith upon information provided through the HIE Network or within a Qualified Organization in the health care provider's treatment of a patient shall not incur criminal or civil liability for damages caused by the inaccurate or incomplete nature of the information.
    - **Penalties:** A participant that violates the provisions of Article 29A is subject to applicable civil remedies and criminal penalties under State or federal law; any disciplinary action by the respective licensing board or regulatory agency; and any civil or administrative remedy available by law or equity.
    - **Applicability:** The Article does not apply to the use or disclosure of health information in any context outside of the HIE Network, including redisclosure of health information obtained through the HIE Network.

**Effective Date:** October 1, 2011

## Summary of S607: Conform Medical Record Laws

**Purpose:** To amend multiple NC statutes pertaining to the use and disclosure of individually identifiable health information in a manner consistent with HIPAA, (Health Insurance Portability and Accountability Act of 1996, PL 104-191, as amended).

**Summary:** Senate Bill 607 amends the following provisions of State law:

- **G.S. 90-85.36** to authorize persons in custody of prescription orders on file in a pharmacy or other place where prescriptions are dispensed to disclose the contents or provide a copy of the orders to a HIPAA covered entity or business associate or a health care provider who is not a HIPAA covered entity for treatment, payment or health care operations purposes as permitted by HIPAA.
- **G.S. 122C-52** to permit any HIPAA covered entity or business associate who receives confidential information concerning a client pursuant to an authorized disclosure under G.S. 122C-53 through 56, may use and disclose the information as permitted or required by HIPAA.
- **G.S. 122C-55** to authorize mental health, developmental disability and substance abuse facilities to disclose confidential information to a HIPAA covered entity or business associate for purposes of treatment, care coordination, quality assessment or improvement unless the individual or the individual's legally responsible person objects in writing or signs a non-disclosure form disallowing such disclosures.
- **G.S. 130A-143** to clarify that information or records, whether publicly or privately maintained, that identify a person who has AIDS or who has or may have a reportable communicable disease may be disclosed for purposes of treatment, payment, research, or health care operations as permitted by HIPAA.
- **G.S. 130A-12** to authorize the disclosure of privileged patient medical information maintained by DHHS or DENR or Local Health Departments for research purposes, in addition to purposes of treatment, payment and health care operations, to the extent that such disclosures are permitted by HIPAA.
- **G.S. 131D-21** to authorize adult care home facilities to disclose patient records as permitted or required by State or federal law.
- **G.S. 131E-144.3** to authorize home health agencies to disclose medical records as permitted by State or federal law.

**Effective Date:** January 1, 2012