ARIZONA STATE SENATE

Fiftieth Legislature, Second Regular Session

FACT SHEET FOR 2369

electronic medical records

Purpose

Allows e-prescriptions as outlined, eliminates the requirement for a health professional to acquire a patient's log-in information for accessing advance directives and allows other individuals as outlined to access advance directives, and clarifies that a person can opt out of having individually identifiable health information shared through a health information organization (HIO) versus the right to choose to keep personal health information out of the HIO.

Background

Last year legislation passed establishing the procedures, requirements and standards for the exchange of individually identifiable health information through a HIO. Included in the legislation was the requirement for HOIs to provide prescribed rights to individuals, including the right to opt out of participating in the HIO. The definition for *opt out* is "an individual's written decision that the individual's individually identifiable health information cannot be shared through the health information organization." (A.R.S. § 36-3801).

In 2004, the Legislature required the Secretary of State (Secretary) to establish a health care directives registry to be accessible through a website and to include health care powers of attorney, living wills and mental health care powers of attorney for people who choose to submit such documents. Once a document is submitted, the Secretary provides the participant with a wallet-sized card that contains the file number and password to access the document online. A health care provider may access the registry to receive a patient's health care directives by submitting the patient's file number and password. As current law prohibits the Secretary from disclosing to any person (other than the submitting person) file numbers and passwords, a health care professional must obtain such information directly from the patient.

The Health Insurance Portability and Accountability Act (HIPAA) was enacted on August 21, 1996 (P.L. 104-191). HIPAA required the Secretary of the U.S. Department of Health and Human Services (HHS) to publicize standards for the electronic exchange, privacy and security of health information. Pursuant to the requirements of the legislation, HHS developed a proposed rule governing the privacy of individually identifiable health information. The regulation, known as the Privacy Rule, was published in its final form on August 14, 2002 (45 Code of Federal Regulations, Part 160 and Part 164, Subparts A and E). The Privacy Rule established a set of national standards governing the protection of certain health information. The standards address the use and disclosure of individuals' health information as well as standards for privacy rights for individuals to understand and control how their health information is used (http://www.hhs.gov/ocr/privacy/).

The fiscal impact associated with this legislation is unknown.

Provisions

Clinical Laboratory

1. Clarifies that a clinical laboratory may share results with a person or entity that provides services to the laboratory if there is an agreement requiring the person or entity to protect the confidentiality of patient information as required by HIPAA.

2. Permits clinical laboratory test results to be reported to the patient or the patient's health care decision maker.

E-Prescriptions

3. Permits electronic prescription orders as prescribed by federal law or regulation for controlled substances contained in schedule II.

4. Allows controlled substances in schedules II, III, IV and V to be dispensed as electronically transmitted prescriptions if the prescribing medical practitioner is:
   a) properly registered by the United States Drug Enforcement Administration;
   b) licensed in good standing in the U.S. jurisdiction in which the practitioner practices; and
   c) authorized to issue such prescriptions in the jurisdiction in which the practitioner is licensed.

Arizona Advance Directive Registry (Registry)

5. Eliminates the requirement that access to a patient's information contained in the Registry is permitted *only* by entering a file number and password.

6. Allows a person or entity that provides services to a patient's health care provider to access the Registry and receive a patient's health care directive documents for the provision of health care services, as long as there is a business associate agreement that requires the person or entity to protect the confidentiality of the patient information as required by HIPAA.

7. Eliminates the requirement for a health care provider to submit a patient's file number and password to access the Registry and receive a patient's health care directive documents for the provision of health care services.

Health Information Organization (HIO)

8. Eliminates the notification requirement to inform patients of their ability to choose to keep their personal health information out of the HIO.

9. Requires the notification to inform a patient of the right not to share his or her individually identifiable health information through the HIO.

10. Specifies that a *health information organization* does not include health care providers exchanging individually identifiable health information with each other without a separate organization governing that exchange.

11. States that if a patient chooses to opt out of the HIO, the patient's *individually identifiable* (replacing *personal*) health information shall not be accessible through the HIO after 30 days of opting out.

Miscellaneous

12. Excludes an inmate from the definition of an *individual*, which is *the person who is subject of the individually identifiable health information*.

13. Removes a provision for clarity that allows a health care provider to deny a medical records request if the provider determines access by the patient's health care decision maker is reasonably likely to endanger the life or physical safety of the patient or another person.

14. Makes technical and conforming changes.

15. Becomes effective on the general effective date.

House Action

TI	1/19/12	W/D	
HHS	2/1/12	DPA	7-0-0-2-0
3rd Read	2/21/12		57-0-2-0-1

Prepared by Senate Research
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MY/tf