

New Hampshire Statutes - 2015

TITLE XXX OCCUPATIONS AND PROFESSIONS

CHAPTER 332-I MEDICAL RECORDS, PATIENT INFORMATION, AND THE HEALTH INFORMATION ORGANIZATION CORPORATION

Section 332-I:1

332-I:1 Medical Records; Definitions. –

I. All medical information contained in the medical records in the possession of any health care provider shall be deemed to be the property of the patient. The patient shall be entitled to a copy of such records upon request. The charge for the copying of a patient's medical records shall not exceed \$15 for the first 30 pages or \$.50 per page, whichever is greater; provided, that copies of filmed records such as radiograms, x-rays, and sonograms shall be copied at a reasonable cost.

II. In this chapter:

(a) The following terms have the same meaning as given in the regulations under sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA):

- (1) Business associate;
- (2) Use;
- (3) Disclosure; and
- (4) Protected health information.

(b) "Health care provider" means any person, corporation, facility, or institution either licensed by this state or otherwise lawfully providing health care services, including, but not limited to, a physician, advanced practice registered nurse, physician assistant, hospital, office, clinic, health center or other health care facility, dentist, nurse, optometrist, pharmacist, podiatrist, physical therapist, mental health professional, care coordinator, managed care provider, or the department of health and human services, and any officer, employee, or agent of such provider acting in the course and scope of employment or agency related to or supportive of health care services.

(c) "Health information organization" means the organization and governance structure and the health information exchange technical infrastructure created under this chapter and established for the primary purpose of enabling and overseeing the exchange of protected health information for clinical decision-making purposes. The organization may operate on a regional, statewide, or multi-state basis. For the purpose of this chapter, "health information organization" does not include entities solely owned and operated by health care providers, integrated delivery systems, or pharmacy exchanges.

(d) "Marketing" means:

(1) To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made by the individual's health care provider;

- (A) For treatment of the individual;
- (B) For case management or care coordination for the individual;
- (C) To direct or recommend to the individual:
 - (i) Alternative treatments or therapies if recommended by the individual's health care provider;
 - (ii) Health care providers;
 - (iii) Settings of care; or
- (D) For treatment-related reminders or health promotion activities by health care providers.

(2) An arrangement between a health care provider and any other person whereby the health care provider discloses protected health information to the other person, in exchange for direct or indirect remuneration, for the other person or an affiliate of the other person to make a communication about the person's own product or service that encourages recipients of the communication to purchase or use that product or service.

(e) "Audit trail" means a chronological record identifying specific persons who have accessed an electronic medical record, the date and time the record was accessed, and, if such information is available, the area of the record that was accessed. An audit trail shall not be considered a part of a person's medical care.

(f) "Individual" means the subject of the protected health information, including a guardian or other legal representative.

(g) "Board" means the health information organization board established in RSA 332-I:8.

(h) "Corporation" means the health information organization corporation established in RSA 332-I:7.

III. Release or use of patient identifiable medical information for the purpose of sales or marketing of services or products shall be prohibited without written authorization.

Source. 1989, 43:2. 1997, 331:11. 1998, 236:2. 2001, 85:2. 2004, 144:1. 2006, 250:1. 2009, 213:5; 318:2. 2010, 64:1, eff. Jan. 1, 2011. 2011, 232:2, 3, eff. July 5, 2011. 2014, 189:1, eff. Sept. 9, 2014.

Section 332-I:2

332-I:2 Patient Information. –

I. (a) The patient has the right to courtesy, respect, dignity, responsiveness, and timely attention to his or her needs.

(b) The patient has the right to receive information from the health care provider and to discuss the benefits, risks, and costs of appropriate treatment alternatives.

(c) The patient shall be fully informed by the health care provider of his or her medical condition, health care needs and diagnostic test results, including the manner by which such results will be provided and the expected time interval between testing and receiving results, unless medically inadvisable and so documented in the medical record.

(d) The patient has the right to make decisions regarding the health care that is recommended by the health care provider. Accordingly, patients may accept or refuse any recommended medical treatment and be involved in experimental research upon the patient's written consent only.

(e) The health care provider shall not reveal confidential communications or information

without the consent of the patient, unless provided for by law or by the need to protect the welfare of the individual or the public interest.

(f) Subject to the terms and conditions of the patient's insurance plan, the patient shall have access to any provider in his or her insurance plan network and referral to a provider or facility within such network shall not be unreasonably withheld pursuant to RSA 420-J:8, XIV.

(g) When an individual's medical record is maintained in electronic form, the individual has the right to a report, based on whatever audit trail of that record is then maintained, of access to the record by a health care provider named by the individual within an identified period in the prior 3 years. The report shall indicate whether the named provider had access, or did not have access, or whether access could not be determined with the available data. If the named provider had access, the report shall summarize, as the available data permit, the extent of access to the record. This subparagraph shall not apply to individuals being held in correctional facilities within the state.

II. Facilities subject to RSA 151:21 and RSA 151:21-b shall be exempt from paragraph I.

Source. 1997, 331:12. 2006, 250:2. 2009, 252:2. 2010, 64:2, eff. Jan. 1, 2011.

Section 332-I:3

332-I:3 Use and Disclosure of Protected Health Information; Health Information Exchange. –

I. Except as provided in paragraph VI, a health care provider or a business associate of a health care provider or a patient or patient's legal representative may transmit the patient's protected health information through the health information organization. Only a health care provider, for purposes of treatment, care coordination, or quality assurance, or a patient or a patient's legal representative with respect to the patient's protected health information, may have access to protected health information transmitted through the health information organization.

II. The health information organization shall adhere to the protected health information requirements for health care providers in state and federal law.

III. The health information organization shall maintain an audit log of the transactions transmitted through the health information organization. The parties transmitting or receiving information through the health information organization shall maintain audit logs in accordance with nationally accepted interoperability standards, practices, regulations, and statutes, including but not limited to:

- (a) The identity of the health care provider accessing the information;
- (b) The identity of the individual whose protected health information was accessed by the health care provider;
- (c) The date the protected health information was accessed; and
- (d) The area of the record that was accessed.

[Paragraph IV, as amended by 2011, 232:4, shall take effect upon the date provided by 2009, 318:5; see "Applicability; Certification" note in the main volume.]

IV. The health information organization shall be certified, when federal certification standards are established, to be in compliance with nationally accepted interoperability standards and practices.

V. No person shall require a health care provider to participate in the health information

organization as a condition of payment or participation.

VI. An individual shall be given an opportunity to opt out of sharing his or her name and address and his or her protected health care information through the health information organization. Such an opportunity shall be provided in a clear and conspicuous manner, including, but not limited to, simple opt out language in a font and size easily readable by the average adult reader so that the individual may make his or her decision known.

VII. The health information organization shall follow all current and future laws relative to medical information privacy and all existing laws regarding health information exchanges.

VIII. Notwithstanding paragraph I, health care providers otherwise required or authorized by law to submit data to the department of health and human services may do so through a health information organization; provided, that such transmissions meet the same standards for privacy and security of protected health information that apply when such information is exchanged between providers.

Source. 2009, 318:4, eff. Jan. 1, 2010. 2011, 232:4, eff. July 5, 2011. 2012, 184:1, eff. June 11, 2012. 2014, 189:2, 3, eff. Sept. 9, 2014.

Section 332-I:4

332-I:4 Use and Disclosure of Protected Health Information; Marketing; Fundraising. –

I. A health care provider, or a business associate of the health care provider, shall obtain an authorization for any use or disclosure of protected health information for marketing. Such authorization shall meet the authorization implementation specifications for marketing under the regulations adopted pursuant to sections 262 and 264 of HIPAA, as amended.

II. (a) For use or disclosure of protected health information for fundraising, a health care provider, or a business associate of the health care provider, shall, in a clear and conspicuous manner, provide an opportunity for any intended recipient of one or more fundraising communications to elect not to receive such communications. A clear and conspicuous opportunity shall include, but not be limited to, simple election language and type of a sufficient size as to be easily readable by the average adult reader. Such opportunity shall be provided:

(1) Sixty days prior to any fundraising communication; or

(2) Upon presentation of the notice of privacy practices required by regulations adopted pursuant to sections 262 and 264 of HIPAA, as amended, if such notice is given to the intended recipient prior to any fundraising communication; or

(3) To an individual who does not elect to not receive fundraising communications in the opportunities in subparagraph (1) or (2), in any subsequent written fundraising communications.

(b) When an individual elects not to receive any fundraising communication, such election shall be treated as a revocation of authorization under 45 C.F.R. section 164.508.

III. Protected health information disclosed for marketing or fundraising shall not be disclosed by voice mail, an unattended facsimile, or through other methods of communication that are not secure.

Source. 2009, 213:6, eff. Jan. 1, 2010 at 12:01 a.m.

Section 332-I:5

332-I:5 Unauthorized Disclosure. – In the event of a use or disclosure of protected health information by a health care provider or a business associate of a health care provider that is allowed under federal law but not permitted by RSA 332-I:4, the health care provider shall promptly **notify in writing the individual or individuals whose protected health information was disclosed.** A business associate shall be responsible for the cost of such notification if the use or disclosure was by the business associate.

Source. 2009, 213:6, eff. Jan. 1, 2010 at 12:01 a.m.

Section 332-I:6

332-I:6 Complaints; Right of Action. – **An aggrieved individual may bring a civil action** under RSA 332-I:4 or RSA 332-I:5 and, if successful, shall be awarded special or general damages of not less than \$1,000 for each violation, and costs and reasonable legal fees.

Source. 2009, 213:6, eff. Jan. 1, 2010 at 12:01 a.m.

Section 332-I:7

332-I:7 Corporation Established. – There is hereby created a body politic and corporate having a distinct legal existence separate from the state and not constituting a department of state government, **to be known as the New Hampshire health information organization corporation.** The corporation is established exclusively for the charitable purposes set forth in this chapter, subject to the provisions of this chapter and section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor provision of the Internal Revenue Code. The corporation is hereby deemed to be a public instrumentality and the exercise by the authority of the powers conferred by this chapter and section 501(c)(3) of the Internal Revenue Code, and shall be deemed and held to be the performance of essential health information organization functions which shall, among other things, promote the general health of the citizens of the state of New Hampshire. The corporation shall be the state's designated provider of health information exchange services. The corporation shall be a private nonprofit corporation solely in furtherance of those purposes that qualify the corporation as exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code, and shall have all the powers necessary to carry out the purposes of this chapter, and all activities of the corporation shall be conducted in a manner which is consistent with the requirements of section 501(c)(3) of the Internal Revenue Code, the laws of the state of New Hampshire and the bylaws of the corporation, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source, contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this chapter. It is intended that the health information organization established under this chapter be a public-private partnership for the benefit of all the citizens of the state of New Hampshire.

Source. 2011, 232:5, eff. July 5, 2011. 2012, 23:1, eff. April 25, 2012.

Section 332-I:8

332-I:8 Health Information Organization Board. –

I. The powers of the corporation shall be vested in 7 members and up to 10 at-large members. Members shall serve 3-year terms. No member shall serve more than 2 full consecutive terms. Members shall be appointed as follows:

(a) A member representing a large hospital, appointed by the New Hampshire Hospital Association.

(b) A member representing a critical access hospital, appointed by the New Hampshire Hospital Association.

(c) An independent practice physician not affiliated with any hospital, appointed by the New Hampshire Medical Society.

(d) A representative of community health centers, appointed by Bi-State Primary Care Association.

(e) A representative of community mental health centers, appointed by the New Hampshire Community Behavioral Health Association.

(f) A retail pharmacist, appointed by the pharmacy board.

(g) A representative of home health care agencies, appointed by the Home Care Association of New Hampshire.

(h) The board may appoint up to 10 at-large members with qualifications, experience, and expertise as identified and determined by the board.

II. The members shall elect annually from among their number a chairperson and such officers as they may determine. A member shall hold office until a successor has been appointed and qualified. Members shall receive no salary for the performance of their duties under this section, but each member shall be reimbursed for reasonable expenses incurred in carrying out duties under this section. Any such expenses by board members shall have prior approval by 6 members of the board of directors before reimbursement. A member of the board of directors may be removed for cause by the official who appointed that member.

III. There shall be no liability on the part of, and no cause of action shall arise against, any member of the board, or its employees or agents, for any action they take in the performance of their powers and duties under this chapter.

IV. The board shall have complete fiscal control over the corporation and shall be responsible for all corporate operations.

V. If a board member position listed in paragraph I becomes vacant and the position has not been filled within 90 days of notification by the board, the board shall complete the term with an additional at-large member with qualifications, experience, and expertise as identified and determined by the board.

Source. 2011, 232:5, eff. July 5, 2011. 2012, 23:3, eff. April 25, 2012. 2014, 189:4, eff. Sept. 9, 2014.

Section 332-I:9

332-I:9 Meetings of Board. – Meetings shall be held at the call of the chairperson or when 4 members so request. Members shall be notified 6 business days prior to the meeting date. Nine members of the board shall constitute a quorum and the affirmative vote of 7 members shall be necessary for any action taken by the authority. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the corporation.

Source. 2011, 232:5, eff. July 5, 2011.

Section 332-I:10

332-I:10 Powers and Duties. – The corporation shall:

I. Establish and maintain a health information organization that facilitates the **private and secure electronic exchange of health information** that promotes quality and patient safety, and increases efficiencies in health care delivery. Except as provided in RSA 332-I:3, VI, the health information organization may retain patient demographics, including patient name, address, date of birth, gender, medical record numbers, and location of medical records, which shall be used solely to ensure consistent patient identification between health care providers and enable electronic query for patient health information. The health information organization shall otherwise **act solely as a conduit for such electronic exchange** and shall neither access nor retain, in a database or otherwise, the clinical content of any medical record. The information retained by the health information organization or its agents or business associates shall not be sold or disclosed.

II. **Implement recognized national standards for interoperability and transmission security.** Transmission security standards shall guard against unauthorized access to electronic health information that is being transmitted over an electronic communications network and shall include appropriate integrity controls and encryption mechanisms in accordance with HIPAA security regulations.

III. Establish all administrative, operational, and financial functions to support the health information organization including, but not limited to, implementing and enforcing policies as appropriate to carry out and discharge its powers, duties, and functions. Such policies shall include protecting the privacy of patients and safeguarding confidential health care information.

IV. Enter into grants, contracts, or agreements as necessary to the operation of the corporation including any such grants, contracts, or agreements, or the transfer thereof, as necessary to effect the transition of the planning, implementation, and operation of the health information organization from the department of health and human services to the board.

V. Adopt bylaws to govern the conduct of its affairs and to carry out and discharge its powers, duties, and functions and to adopt policies as appropriate. Such bylaws shall include a provision pertaining to conflicts of interest and that board members, staff, and others conducting business or associated with the health information organization shall be required to sign conflict of interest statements.

VI. Provide an annual report, including any recommendations, on or before January 1 of each year to the governor, commissioner of the department of health and human services, chair of the department of health and human services oversight committee, speaker of the house of

representatives, and senate president, on the development and status of the health information organization.

Source. 2011, 232:5, eff. July 5, 2011. 2014, 189:5, eff. Sept. 9, 2014.

Section 332-I:11

332-I:11 Limited Immunity. – Any health care provider who relies in good faith upon any information provided through the health information organization in the treatment of a patient, shall be immune from any criminal or civil liability arising from any damages caused by such good faith reliance. This immunity shall not apply to acts or omissions constituting negligence or reckless, wanton, or intentional misconduct.

Source. 2011, 232:5, eff. July 5, 2011.

Section 332-I:12

332-I:12 Disposition of Assets. – In the event of the dissolution of the corporation, its remaining assets after payment of all debts and obligations of the corporation, if any, shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations as the court shall determine, which are organized and operated exclusively for such purposes.

Source. 2012, 23:2, eff. April 25, 2012.