
Be it enacted by the Legislature of the State of Kansas:

New Section 1. Section 1 through 18, and amendments thereto, shall be known and may be cited as the Kansas health information technology and exchange act.

New Sec. 2. As used in the Kansas health information technology and exchange act:

(a) “Act” means the Kansas health information technology and exchange act.

(b) “Approved HIO” means a health information organization operating in the state which has been approved by the corporation.

(c) “Corporation” means the Kansas health information exchange, inc., created by executive order 10-06.

(d) “Covered entity” means a health care provider, a health care component of a hybrid entity, a health plan or a health care clearinghouse.

(e) “DPOA-HC” means the person to whom a durable power of attorney for health care decisions has been granted by an individual in accordance with K.S.A. 58-625 et seq., and amendments thereto.

(f) “Health care clearinghouse” means a health care clearinghouse, as that term is defined by the HIPAA privacy rule, doing business within the state.

(g) “Health care provider” means a health care provider, as that term is defined by the HIPAA privacy rule, that furnishes health care to individuals in the state.

(h) “Health information organization” means any entity operating in the state which (1) maintains technical infrastructure for the electronic movement of health information among covered entities, and (2) promulgates and enforces policies governing participation in such health information exchange.

(i) “Health information technology” means an information processing application using computer hardware and software for the
storage, retrieval, use and disclosure of health information for
communication, decision-making, quality, safety and efficiency of health
care. “Health information technology” includes, but is not limited to: (1)
An electronic health record; (2) a personal health record; (3) health
information exchange; (4) electronic order entry; and (5) electronic
decision support.

(j) “Health plan” means a health plan, as that term is defined by the
HIPAA privacy rule, doing business within the state.

(k) “HIPAA privacy rule” means the privacy rule of the
administrative simplification subtitle of the health insurance portability
and accountability act of 1996 (Pub. L. No. 104-191) contained in 45
C.F.R. part 160 and 45 C.F.R. part 164, subparts A and E, as amended
from time to time. As used in the act, the following terms shall be defined
using the definitions set forth in the HIPAA privacy rule: (a) Designated
record set; (b) disclosure; (c) electronic protected health information; (d)
health care; (e) health care clearinghouse; (f) health care provider; (g)
health information; (h) hybrid entity; (i) individual; (j) individually
identifiable health information; (k) protected health information; (l)
public health authority; and (m) use.

(l) “Incapacitated adult” means a person whose ability to receive and
evaluate relevant health care information or to effectively communicate
personal health care decisions, or both, notwithstanding the use of
assistive technologies or other supports, is impaired such that the person,
in the opinion of the health care provider presently providing examination
or treatment for the individual, lacks the capacity to reasonably weigh the
risks and benefits of the provision of health care or to effectively
communicate personal health care decisions. No person who is being
treated by prayer in the practice of the religion of any church which
teaches reliance on spiritual means alone through prayer for healing shall
be determined to be an incapacitated adult under the act for that reason
alone.

(m) “Interoperability” means the capacity of two or more
information systems to exchange information or data in an accurate,
effective, secure and consistent manner.

(n) “Minor” means any person under age 18 unless: (1) Such person
is 16 or older and is, or has been, married; or (2) a court of proper
jurisdiction has conferred rights of majority upon such person.

(o) “Participation agreement” means a written agreement between a
covered entity and an approved HIO concerning the covered entity’s
participation in the approved HIO on terms consistent with section 16 of
this act.

(p) “Personal representative” means the person who has the legal
authority to act on behalf of an individual for one of the purposes listed in
section 9 of this act.
(q) “Secretary” means the secretary of the department of health and
environment.
(r) “Standard authorization form” means the standard authorization
form developed and promulgated by the secretary pursuant to section 6 of
this act.
(s) “State” means the state of Kansas.
t) “State agency” means the department of health and environment;
the Kansas health policy authority; the department of social and
rehabilitation services; the department on aging; the department of
corrections; the office of the attorney general; the insurance department;
those state boards responsible for licensing and disciplining health care
providers; other state regulatory bodies; and any county or municipal
government or instrumentality thereof, including local boards of health
and local health officers, but not including any community mental health
center as defined by K.S.A. 75-3307e, and amendments thereto.
u) “State law” means any Kansas statute; regulation promulgated
by a state agency; directive, opinion, or guidance issued by a state
agency; opinion issued by any state or municipal court; or any opinion
issued by the attorney general.

New Sec. 3. It is the purpose of this act to harmonize state law with
the HIPAA privacy rule with respect to individual access to protected
health information, proper safeguarding of protected health information,
and the use and disclosure of protected health information for purposes of
facilitating the development and use of health information technology and
health information exchange.

New Sec. 4. (a) A covered entity shall provide an individual or such
individual's personal representative with access to the individual’s
protected health information maintained by the covered entity in a
designated record set in compliance with 45 C.F.R. 164.524.
(b) A covered entity shall implement and maintain appropriate
administrative, technical and physical safeguards to protect the privacy of
protected health information in a manner consistent with 45 C.F.R
164.530(c).

New Sec. 5. (a) No covered entity shall use or disclose protected
health information except as follows:
(1) Use and disclosure of protected health information consistent
with an authorization that satisfies the requirements of 45 C.F.R. 164.508;
(2) use and disclosure of protected health information without an
authorization as permitted under 45 C.F.R. 164.502, 164.506, 164.508,
164.510 and 164.512; or
(3) use and disclosure of protected health information as required
(b) Notwithstanding the provisions of subsection (a), no covered entity shall disclose an individual’s protected health information to a health information organization for any purpose without an authorization that satisfies the requirements of 45 C.F.R. 164.508, unless such covered entity:

(1) Is a party to a current participation agreement with an approved HIO at the time the disclosure is made;

(2) discloses the individual’s protected health information to that approved HIO in a manner consistent with the approved HIO’s established procedures;

(3) prior to the disclosure, has furnished to the individual, or such individual's personal representative, whose information is to be disclosed to the approved HIO, the notice required under section 16 of this act; and

(4) restricts disclosure to the approved HIO of any protected health information concerning the individual that is the subject of a written request delivered to the covered entity by the individual, or such individual's personal representative, for reasonable restrictions on disclosure of all or any specified categories of the individual’s protected health information, as defined pursuant to section 16 of this act, following the covered entity’s receipt of such written request.

(c) Notwithstanding the provisions of subsections (a) and (b), a covered entity that uses or discloses protected health information in compliance with this section shall be immune from any civil or criminal liability or any adverse administrative action arising out of or relating to such use or disclosure.

New Sec. 6. (a) No later than six months following the effective date of this act, the secretary shall develop and adopt by rules and regulations a standard authorization form for the use and disclosure of protected health information consistent with the requirements of 45 C.F.R. 164.508.

(b) Any person or entity in possession, custody or control of any protected health information which is the subject of a properly completed standard authorization form shall accept such form as valid authorization for the disclosure of such protected health information to the person or entity identified in such standard authorization form. Notwithstanding any other provisions, a person or entity is not precluded from accepting or relying upon any document which satisfies the requirements of 45 C.F.R. 164.508, as valid authorization for the use or disclosure of protected health information.

New Sec. 7. (a) Notwithstanding any other provision of this act, a covered entity may condition the furnishing of copies of an individual’s protected health information in paper or electronic form to the individual, the individual’s personal representative, or any other person or entity
authorized by law to obtain or reproduce such information, upon the
payment of charges to be established and updated by the secretary, except
no provider shall condition the furnishing of copies to another provider
needed for that provider’s treatment of an individual on payment of such
fee. This section shall not apply to disclosures by a covered entity to an
approved HIO, or by an approved HIO to a covered entity.

New Sec. 8. (a) Any provision of state law regarding the
confidentiality, privacy, security or privileged status of any protected
health information which may be contrary to, inconsistent with or more
restrictive than the rules set forth in this act shall be superseded by the
rules set forth in this act, except that: (1) Nothing in this act shall limit or
restrict the effect and application of the peer review statute, K.S.A. 65-
4915, and amendments thereto; the risk management statute, K.S.A. 65-
4921, and amendments thereto; or the statutory physician-patient
privilege, K.S.A. 60-427, and amendments thereto; and (2) nothing in this
act shall supersede the provisions of any state law relating to the
confidentiality, privacy, security or privileged status of protected health
information in the possession or custody of any state agency.

(b) Nothing in this act shall limit or restrict the ability of any state
agency to require the disclosure of protected health information by any
person or entity pursuant to law.

New Sec. 9. It is the purpose of this act to identify the person who
qualifies as a personal representative to act on behalf of an individual for
any of the following purposes:

(1) Consent to treatment and for the provision of health care to an
individual by a health care provider;
(2) consent for autopsy of a decedent’s body or part;
(3) disposition of a decedent’s remains including burial, cremation
or entombment;
(4) consent for anatomical gift of decedent’s body or part;
(5) Informed consent for an individual’s participation in a research
protocol in accordance with the provisions of 21 C.F.R. 56.101 et seq.,
and 45 C.F.R. 46.101 et seq.;
(6) an individual’s exercise of individual rights under the HIPAA
privacy rule in accordance with 45 C.F.R. 164.520 to 164.528;
(7) an individual’s authorization for use or disclosure of that
individual’s protected health information in accordance with 45 C.F.R.
164.502 to 164.514;
(8) an individual’s exercise of individual rights with respect to
inclusion of protected health information within an approved HIO in
accordance with section 16 of this act; or
(9) an individual’s exercise of patient rights in accordance with any
other state or federal statute or regulation, including, but not limited to,
42 C.F.R. 482.13 and 45 C.F.R. 635, but only to the extent such statute or
regulation does not otherwise identify a personal representative for such
purpose.

New Sec. 10. (a) When any person or entity requires a personal
representative to act on behalf of an incapacitated adult or deceased
individual for one of the purposes listed in section 9 of this act, such
person or entity shall first make a reasonable inquiry as to whether a
DPOA-HC or a legal guardian has been designated or appointed for such
incapacitated adult or deceased individual.

(b) If no DPOA-HC or legal guardian has been designated or
appointed or such DPOA-HC or legal guardian is incompetent or
unavailable at the time, the person or entity requiring a personal
representative to act on behalf of an incapacitated adult or deceased
individual for one of the purposes listed in section 9 of this act shall make
a reasonable inquiry as to the availability of another individual to serve as
the personal representative, in the following priority, provided such
person is competent and available at the time:

(1) The incapacitated adult’s or deceased individual’s spouse;
(2) any adult son or daughter of the incapacitated adult or deceased
individual;
(3) either parent of the incapacitated adult or deceased individual;
(4) any adult brother or sister of the incapacitated adult or deceased
individual;
(5) any adult grandchild of the incapacitated adult or deceased
individual;
(6) a close friend of the incapacitated adult or deceased individual.

(c) Where there are multiple personal representatives at the same
priority level in the hierarchy, it shall be the responsibility of those
personal representatives to make reasonable efforts to reach a consensus
as to their decision on behalf of the patient. If two or more personal
representatives who are in the same category and have equal priority
disagree about the matter at issue, a majority of the available persons in
that category shall control, unless, in the case of an incapacitated adult,
the minority initiates guardianship proceedings in accordance with K.S.A.
59-3050 et seq., and amendments thereto. No health care provider or
other person or entity shall be required to seek appointment of a legal
guardian on behalf of an incapacitated adult for any purpose listed in
section 9 of this act.

(d) In the event a person of a higher priority to an individual’s
identified personal representative becomes available and is willing to
serve the individual’s personal representative for one of the purposes
listed in section 9 of this act, the person with higher priority shall be
identified as the individual’s personal representative. In the event a
person in a higher, a lower, or the same priority level or a health care
provider seeks to challenge the priority of an individual’s recognized
personal representative, the challenging party may initiate guardianship
proceedings in accordance with the K.S.A. 59-3030 et seq., and
amendments thereto.

(e) A personal representative’s authority to act on behalf of an
incapacitated adult shall extend only so long as the adult is incapacitated.
Upon gaining capacity, the individual shall have the sole authority to act
for any of the purposes listed in section 9 of this act.

New Sec. 11. (a) The person with the authority to consent to the
provision of health care to a minor by a health care provider also shall
have the authority to act as that minor’s personal representative with
respect to any other purpose listed in section 9 of this act as it relates to
the provision of such health care.

(b) If no parent or legal guardian of a minor with authority to
consent to the provision of health care by a health care provider to that
minor is available by any means, personally, telephonically or
electronically or competent to provide such consent, the person or entity
requiring a personal representative for a minor for one of the purposes
listed in section 9 of this act shall make a reasonable inquiry as to the
availability of another person to act as the minor’s personal
representative, in the following priority, provided such person is
competent and available at the time:

(1) Any person designated in writing by such parent or legal
guardian to consent for the provision of health care by a health care
provider for the minor;

(2) any grandparent of the minor;

(3) any adult brother or sister of the minor;

(4) any adult aunt or uncle of the minor;

(5) any adult cousin of the minor; or

(6) any adult close friend of the minor’s parent or legal guardian.

No person or entity shall seek or rely upon a decision made by a
personal representative of a minor with respect to treatment and provision
of health care unless such person or entity reasonably determines the
delay associated with locating the minor’s parent or legal guardian would
be detrimental to the health or welfare of such minor.

(c) Upon reaching the age of majority and otherwise becoming
emancipated, an individual shall gain control over the protected health
information, including protected health information relating to the
provision of health care to the individual while such individual was a
minor. The parent, legal guardian or other person who consented for the
provision of health care by a health care provider may not access or
otherwise exercise control over such protected health information once
the individual reaches the age of majority or otherwise becomes emancipated.

(d) Any person who identifies and relies upon a personal representative to act for a minor with respect to one of the purposes listed in section 9 of this act in compliance with this provision shall be immune from any civil or criminal liability or adverse licensure or disciplinary action by a state agency relating to the subject matter of such purpose regardless of any other provision of state law.

New Sec. 12. (a) Nothing herein shall amend or repeal the laws related to the Kansas durable power of attorney act for health care decisions, K.S.A. 58-625 et seq., and amendments thereto, the Kansas natural death act, K.S.A. 65-28,101 et seq., and amendments thereto, or the laws related to do-not-resuscitate directives, K.S.A. 65-4941 et seq., and amendments thereto. A personal representative does not have the power to revoke any of the following valid advance directives properly executed by the individual, regardless of the individual’s subsequent incapacity:

(1) A durable power of attorney for health care decisions; or
(2) a Kansas natural death act declaration.

(b) Nothing herein shall alter or amend any existing laws related to the necessity of obtaining consent for provision of health care by a health care provider; informed consent for a research protocol; the determination of whether an adult has an impairment or a minor has been emancipated; or the circumstances in which a minor may consent for the provision of health care by a health care provider on such minor's own behalf.

New Sec. 13. A health care provider may disclose protected health information without authorization to any state agency for any public health purpose that is permitted or required by law. Nothing in this act shall be construed to limit the use, transfer, or disclosure of protected health information as required or permitted by any other provision of law.

New Sec. 14. (a) The corporation shall establish and revise, as appropriate, standards for approval and operation of statewide and regional health information organizations operating in the state as approved HIOs including, but not limited to, the following:

(1) Satisfaction of certification standards for health information exchanges promulgated by the federal government;
(2) adherence to nationally recognized standards for interoperability;
(3) adoption and adherence to rules promulgated by the corporation regarding access to and use and disclosure of protected health information maintained by or on an approved HIO;
(4) demonstration of adequate financial resources to sustain continued operations in compliance with the standards;
(5) participation in outreach activities for individuals and covered
entities;
(6) conduct of operations in a transparent manner to promote consumer confidence;
(7) implementation of security breach notification procedures; and
(8) development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the corporation pursuant to section 16 of this act.

New Sec. 15. (a) The corporation shall establish and implement:
(1) a process by which a health information exchange may apply for and receive approval by the corporation by demonstrating compliance with the standards promulgated by the corporation pursuant to section 14 of this act;
(2) a process by which an approved HIO shall be re-approved on appropriate intervals by demonstrating continued compliance with the standards promulgated by the corporation pursuant to section 14 of this act; and
(3) a process for the investigation of reported concerns and complaints regarding an approved HIO and imposition of appropriate remedial and proactive measures to address any identified deficiencies.

New Sec. 16. (a) The corporation shall establish requirements for participation agreements to include the following:
(1) specification of procedures for the covered entity to disclose an individual’s protected health information to the approved HIO;
(2) specification of procedures for the covered entity to access an individual’s protected health information from the approved HIO;
(3) specification of the written notice to be provided by the covered entity to any individual, or such individual's personal representative, prior to the covered entity’s disclosure of the individual’s protected health information to the approved HIO. Such written notice, which may be incorporated into the covered entity’s notice of privacy practices required under the HIPAA privacy rule, shall include the following that:
(A) The individual’s protected health information will be disclosed to the approved HIO to facilitate the provision of health care to the individual;
(B) the approved HIO maintains appropriate safeguards to protect the privacy and security of protected health information;
(C) only authorized individuals may access protected health information from the approved HIO;
(D) the individual, or such individual's personal representative, has the right to request in writing that the covered entity: (i) Not disclose any of the individual’s protected health information to the approved HIO; or (ii) not disclose specified categories of the individual’s protected health information.
information to the approved HIO;

(E) such restrictions may result in a health care provider not having access to information necessary to provide appropriate care for the individual;

(F) the covered entity is required to honor a written request delivered to the covered entity by an individual, or such individual's representative, not to disclose any of the individual’s protected health information to an approved HIO; and

(G) the covered entity is required to honor a written request delivered to the covered entity by an individual, or such individual's representative, for reasonable restrictions on the disclosure of specified categories of the individual’s protected health information to an approved HIO.

(4) specification of documentation requirements to demonstrate delivery of such notice to an individual, or such individual's personal representative, by or on behalf of the covered entity prior to the covered entity’s disclosure of the individual’s protected health information to the approved HIO;

(5) standards for determining the reasonableness of an individual’s written request, or the written request of such individual's personal representative, not to disclose specified categories of the individual’s protected health information to the approved HIO based on the covered entity’s technological capabilities; and

(6) specification of the purposes for which a covered entity may access protected health information through the approved HIO.

New Sec. 17. Any health information organization which is not an approved HIO shall not be eligible for any financial support from the state, or assistance or support from the state in securing any other source of funding.

New Sec. 18. Notwithstanding any other provision of this act, no use or disclosure of protected health information maintained by or on an approved HIO shall be made except pursuant to rules adopted by the corporation consistent with this act. An approved HIO that uses or discloses protected health information in compliance with such rules shall be immune from any civil or criminal liability or any adverse administrative action arising out of or relating to such use or disclosure.

Sec. 19. K.S.A. 16-1602 is hereby amended to read as follows: 16-1602. In this act:

(a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(b) "Automated transaction" means a transaction conducted or
performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.

(c) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

(e) "Digital signature" means a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer's public key can accurately determine whether:

(1) The transformation was created using the private key that corresponds to the signer's public key; and

(2) the initial message has not been altered since the transformation was made.

(f) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(g) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(h) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

(i) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(j) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.

(k) "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

(l) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

(m) "Message" means a digital representation of information.

(n) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.
(o) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(p) "Registered certification authority" means a person providing certification of a digital signature who is, or is certified by, a member of the group of certification authorities approved by and registered with the secretary.

(q) "Secretary" means the Kansas secretary of state.

(r) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures.

(s) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(t) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, insurance, health care, commercial or governmental affairs.


Sec. 21. This act shall take effect and be in force from and after its publication in the Kansas register.