COMMITTEE REPORT

May 11, 2010

**H. 4538**

Introduced by Reps. Crawford, Bedingfield, Anderson and Whipper

S. Printed 5/11/10--S. [SEC 5/13/10 4:56 PM]

Read the first time April 27, 2010.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (H. 4538) 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), etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, by striking lines 14-25 and inserting:

/ (5) The Office of the National Coordinator for Health Information Technology (ONC) has created the National Information Health Network (NHIN). Currently, SCHIEx, the designated Health Information Exchange pursuant to the State Health Information Exchange Cooperative Agreement Program with the ONC is the approved portal for exchange of health information with NHIN. Until such time as NHIN has matured and is capable of accepting additional certified, designated health information exchanges, SCHIEx is the portal to this national network. /

Amend the bill further, page 4, by striking lines 6-8 and inserting:

/ (11) ‘Telemedicine’ is the use of medical information exchanged from one site to another via electronic communications to diagnose and treat illness. /

Amend the bill further, beginning on page 4, by striking Section 44-140-40 in its entirety and inserting:

/ Section 44‑140‑40. (A) There is established the South Carolina Health Information Exchange Council, a body corporate and politic, which shall serve as the governance authority for SCHIEx and as the HIO for the State and shall perform other functions as provided by law. The council consists of:

(1) the President of the South Carolina Hospital Association or his designee;

(2) the President of the South Carolina Medical Association or his designee;

(3) the President of the South Carolina Pharmacy Association or his designee;

(4) the chief executive officer of the South Carolina Primary Health Care Association or his designee;

(5) a representative from a regional health information organization chosen from among the organization;

(6) the President of Health Sciences South Carolina or his designee;

(7) the Director of the South Carolina Office of Rural Health or his designee;

(8) a member of the public appointed by the Governor;

(9) the Director of the Department of Health and Human Services or his designee;

(10) the Director of the Department of Health and Environmental Control or his designee;

(11) the Director of the Budget and Control Board’s office of research and statistics or his designee.

A vacancy in members of the council shall be filled by the appointing authority.

(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 constitute a quorum for taking action, and decisions must be by majority vote. /

Amend the bill further, beginning on page 8 by striking Section 44-140-70 in its entirety and inserting:

/ Section 44‑140‑70. The council may:

(1) promulgate regulations proposed by the office for the establishment and operation of SCHIEx;

(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 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 shall 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. /

Amend the bill further, page 9, by striking Section 44-140-90 in its entirety and inserting:

/ Section 44‑140‑90. (A)(1) An HCO desiring to participate in SCHIEx must sign the agreements required by the council to ensure the secure exchange of health information through SCHIEx and among all SCHIEx participants.

(2) If the council determines that an HCO has violated any of the agreements required by the council, the council may terminate the HCO’s participation in SCHIEx or impose an administrative penalty of up to one thousand dollars for each violation, or both.

(3) An HCO aggrieved by a decision of the council may, within fifteen days of receipt of notice of the decision, file an appeal with the Administration Law Court. The filing of a petition for review does not stay a decision by the executive director to terminate an HCO’s participation in SCHIEx.

(B)(1) A telemedicine program must be certified by the council prior to operation to be deemed a certified telemedicine program.

(2) If the organization sponsoring the telemedicine program is aggrieved by a decision of the council regarding a telemedicine program, the organization may, within fifteen days of receipt of notice of the decision, file an appeal with the Administrative Law Court.

(C) The process set forth in this section constitutes the exclusive remedy for an HCO or an organization sponsoring a telemedicine program with respect to a decision by the council or its staff under this section. /

Amend the bill further, page 11, after line 2 by adding a new section to read:

/ Section 44-140-130. (A) The Council shall charge the following annual fees for participation in the South Carolina Health Information Exchange :

(1) For hospitals

(a) from one to twenty-four beds: one hundred fifty-seven dollars per bed;

(b) from twenty-five to forty-nine beds: thirty-nine hundred dollars plus one hundred fifty dollars per bed over twenty-five;

(c) from fifty to ninety-nine beds: seventy-six hundred dollars plus one hundred forty-three dollars per bed over fifty;

(d) from one hundred to one hundred ninety-nine beds: fourteen thousand eight hundred dollars plus one hundred thirty-seven dollars per bed over one hundred;

(e) from two hundred to two hundred ninety-nine beds: twenty-eight thousand five hundred dollars plus one hundred thirty dollars per bed over two hundred;

(f) from three hundred to three hundred ninety-nine beds: forty-one thousand five hundred dollars plus one hundred twenty-three dollars per bed over four hundred;

(g) from four hundred to four hundred ninety-nine beds: fifty-three thousand eight hundred dollars plus one hundred sixteen dollars per bed over four hundred;

(h) five hundred or more beds: sixty-five thousand four hundred dollars plus one hundred ten dollars per bed over five hundred.

(2) For physician groups and clinics: a four hundred dollar base fee plus four hundred dollars per eligible user.

(B) Fees collected pursuant to this section shall be retained by the agency. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

HARVEY S. PEELER, JR. KEVIN L. BRYANT

For Majority. SHANE R. MARTIN

For Minority.

**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 AMONG HEALTH CARE ORGANIZATIONS, TO PROVIDE FOR THE COUNCIL’S POWERS AND DUTIES, AND TO FURTHER PROVIDE FOR THE ELECTRONIC MOVEMENT OF HEALTH-RELATED INFORMATION AMONG HEALTH CARE ORGANIZATIONS IN THE STATE.

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 received such a cooperation agreement.

(3) HITECH also provides for monetary incentives to encourage qualified health care professionals and hospitals to adopt electronic health records and to utilize the state health information exchange and also 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 Office of the National Coordinator for Health Information Technology (ONC) has created the national Information Health Network (NHIN). Currently, SCHIEx, the designated Health Information Exchange pursuant to the State Health Information Exchange Cooperative Agreement Program with the ONC is the approved portal for exchange of health information with NHIN. Until such time as NHIN has matured and is capable of accepting additional certified, designated health information exchanges, SCHIEx is the portal to this national network for the state agencies to include the Department of Health and Human Services and the Department of Health and Environmental Control.

(6) Because SCHIEx is currently the designated portal for exchange for state agencies with NHIN, federal reimbursement incentives are dependent upon a hospital’s or other provider’s ability to connect to SCHIEx. This is due to federal requirements for the reporting of hospital quality measures to the State, capability to submit electronic data to immunization registries, capability to provide electronic submission of reportable lab results, and a capability to provide electronic syndromic surveillance data.

(7) 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.

(8) SCHIEx is charged with establishing an orderly process and governance structure capable of responding to future changes in technology and capacity both at the state and national level. It is expected that changes will take place as adjustments are made by the governance body allowing for flexibility as the technical capabilities increase nationally, within the state health information exchange and within regional health information exchanges across the State. These future changes will likely include direct reporting of individual hospitals, hospital systems, regional health information exchanges and/or individual providers to NHIN, while maintaining the states’ mandated responsibility to protect the privacy and security of patient health information. The South Carolina Health Information Exchange Council created pursuant to this chapter is expected to provide this essential component of continual evaluation and process adjustment.

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

(1) ‘Certified telemedicine program’ means a telemedicine program certified by the council as meeting standards established by the council.

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

(3) ‘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.

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

(5) ‘Health care organization’ or ‘HCO’ means health care providers, medical home networks, public health agencies, and payors and entities offering patient engagement services including, but not limited to, Patient Health Records.

(6) ‘Health information exchange’ or ‘HIE’ means the electronic movement of health‑related information among health care organizations in this State according to nationally recognized standards.

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

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

(9) ‘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.

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

(11) ‘Telemedicine’ is the use of medical information exchanged from one site to another via electronic communications to improve patients’ health status or diagnose and treat illness.

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) There is established the South Carolina Health Information Exchange Council, a body corporate and politic, which shall serve as the governance authority for SCHIEx and as the HIO for the State and shall perform other functions as provided by law. The council consists of:

(1) a representative of a hospital in this State that is a regional referral center;

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

(3) a representative of a reference laboratory licensed by the Department of Health and Environmental Control;

(4) a representative of a business in this State that is not related to health care and that has one hundred or more employees;

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

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

(7) a patient representative nominated by the Department of Consumer Affairs;

(8) representatives of two health plans serving this State;

(9) a representative of the telecommunications industry who has expertise in wireless communications;

(10) a primary care physician licensed in good standing and actively practicing in a federally qualified health center;

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

(12) a representative of a health care business operating in this State that is not a hospital or physician practice;

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

(14) a representative of a business in this State that is not related to health care and that has fewer than one hundred employees;

(15) a representative of a community based hospital;

(16) a patient representative nominated by the Director of the Department of Insurance;

(17) a representative of the telecommunications industry who has expertise in fiber communications;

(18) a representative of a medical professional school in this State;

(19) a representative of the biopharmaceutical industry;

(20) the Director of the South Carolina Regional Extension Service or his designee;

(21) a representative of a company with significant experience in providing administrative services for the processing of electronic health care transactions to private health plans and government health care programs;

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

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

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

The members enumerated in items (1) through (10) 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 (11) through (21) 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 must not be compensated for service on the council. Council members may be reimbursed for actual and reasonable travel expenses incurred in the performance of their duties as council members when SCHIEx becomes financially self‑sustaining.

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

(E) There must be an executive committee of not more than seven members of the council, composed of one physician representative appointed by the President Pro Tempore of the Senate, one hospital representative appointed by the Speaker of the House of Representatives, the health plan representative, the administrative services representative, the regional health information organization representative, and the telecommunications industry representative. The executive committee shall meet monthly and is responsible for developing recommendations for approval by the full council.

Section 44‑140‑50. (A) The office shall designate the executive director of the council. The office shall provide staff assistance to the council.

(B) The council and the office may cooperate and coordinate with public and private entities, including Health Sciences South Carolina, 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 statewide HIE operations and for the financial stability of the statewide HIE exchange system;

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

(4) develop and implement a strategic plan for the statewide HIE 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 HIE governance and operations;

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

(d) a description of HIE 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 HIE;

(5) 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;

(6) develop and implement an operational plan for the statewide HIE 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 the statewide HIE. The operational plan must include, but is not limited to, a:

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

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

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

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

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

(7) 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;

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

(9) develop and implement privacy and security policies and procedures governing statewide HIE 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 an HIE. The council’s policies and procedures must prohibit the misuse of electronic health records while facilitating the development of the statewide HIE;

(10) develop the necessary agreements to facilitate the secure exchange of health information through SCHIEx and among all trading partners;

(11) ensure that all public programs participate in the SCHIEx; and

(12) establish standards for telemedicine programs and certify telemedicine programs meeting those standards, including establishing a fee schedule for conducting these certifications.

Section 44‑140‑70. The council may:

(1) exercise all powers granted to business corporations not in conflict with the South Carolina Constitution;

(2) approve all regulations proposed by the office for the establishment and operation of SCHIEx;

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

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

(5) approve reasonable fees set by the office for establishment and operation of the statewide HIE so as to ensure the financial sustainability of the statewide HIE and for certification of telemedicine medicine programs;

(6) establish committees of the council and delegate responsibilities to these committees and appoint special advisory groups to the council.

Section 44‑140‑80. The office shall promulgate regulations in accordance with the Administrative Procedures Act for the establishment and operation of the statewide HIE consistent with the provisions of this chapter.

Section 44‑140‑90. (A)(1) An HCO desiring to participate in SCHIEx must sign the agreements required by the council to ensure the secure exchange of health information through SCHIEx and among all SCHIEx participants.

(2) If the executive director determines that an HCO has violated any of the agreements required by the council, the executive director may terminate the HCO’s participation in SCHIEx or impose an administrative penalty of up to one thousand dollars for each violation, or both.

(3) An HCO 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 appeals subcommittee of the council as a contested case in accordance with the Administrative Procedures Act and subsection (C). The filing of a petition for review does not stay a decision by the executive director to terminate an HCO’s participation in SCHIEx.

(B) A telemedicine program must be certified by the executive director prior to operation to be deemed a certified telemedicine program.

(C) The chairman of the council shall designate three members of the council to serve as the council’s appeals subcommittee. An HCO or an organization sponsoring a telemedicine program aggrieved by the final decision of the council’s appeals subcommittee 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 appeals subcommittee. The process set forth in this section constitutes the exclusive remedy for an HCO or an organization sponsoring a telemedicine program with respect to a decision by the council or its staff under this section.

Section 44‑140‑100. (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 44‑140‑110. Notwithstanding any other provision of law, a health care organization participating in SCHIEx or a RHIO or a hospital system HIE that participates in SCHIEx may release patient records and medical information, including the results of any laboratory or other tests ordered or requested by an authorized health care provider within the scope of his or her 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 44‑140‑120. 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, and recommendations, if any, for legislative changes to improve SCHIEx.”

SECTION 2. This act takes effect upon approval by the Governor.

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