Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 371
Author: Caballero (D), et al.
Amended: 5/20/21
Vote: 21

SENATE HEALTH COMMITTEE: 11-0, 3/24/21
AYES: Pan, Melendez, Eggman, Gonzalez, Grove, Hurtado, Leyva, Limón, Roth, Rubio, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SUBJECT: Health information technology

SOURCE: California Medical Association

DIGEST: This bill (1) establishes the California Health Information Technology (HIT) Advisory Committee and the position of Deputy Secretary for HIT within the California Health and Human Services Agency (CHHS) to provide information and advice to the Secretary on HIT and create an annual report; (2) requires a health information organization (HIO) to be connected to the California Trusted Exchange Network and to a qualified national network to facilitate bidirectional exchange of patient data across networks; (3) requires a health care provider, health system, health plan, or health insurer that engages in health information exchange to do so in accordance with specified standards; and (4) requires the Department of Health Care Services (DHCS) to apply for funding made available through the Coronavirus Aid, Relief and Economic Security Act of 2020, American Rescue Plan Act of 2021 or the Medicaid Information Technology Architecture program for specified purposes.

ANALYSIS:

Existing federal law:

1) Establishes the federal American Recovery and Reinvestment Act of 2009 (ARRA), including the Health Information Technology for Economic and

Clinical Health Act of 2009, to authorize Medicare and Medicare incentive payments to acute-care hospitals and physicians who meaningfully use certified electronic health record (EHR) technology. [42 U.S.C §300jj]

2) Establishes, under federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which among various provisions, mandates industry-wide standards for health care information on electronic billing and other processes; and, requires the protection and confidential handling of protected health information. [42 U.S.C. §300gg, 29 U.S.C. §1181, et seq., and 42 U.S.C. §1320d, et seq.]

3) Establishes the 21st Century Cures Act of 2016 (Cures Act), which among other provisions, prohibits a HIT developer or entity from taking actions that constitute information blocking, as defined, or inhibiting the appropriate exchange, access, and use of electronic health information; and establishes a process for the development of a "trusted exchange network." [42 U.S.C §300jj]

4) Defines "information blocking" as a practice that is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information; and if conducted by a HIT developer, exchange, or network, such developer, exchange, or network knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information; or if conducted by a health care provider, such provider knows that such practice is unreasonable and likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information. [42 U.S.C §300jj-52]

Existing state law:

1) Creates, in the event the CHHS applies for and receives federal funds made available through ARRA for HIT and exchange, the California HIT and Exchange Act and Fund. [HSC §130250.1 and §130255]

2) Requires every health care provider to establish and implement appropriate administrative, technical, and physical safeguards to protect the privacy of a patient's medical information, and, reasonably safeguard confidential medical information from any unauthorized access or unlawful access, use or disclosure. [HSC §1280.18]

3) Makes violations that result in economic loss or personal injury to a patient punishable as a misdemeanor, and in addition to any other remedies available

in law, permits an individual to bring an action against a person or entity who has negligently released confidential information or records concerning him or her for actual or other administrative or civil damages, as specified. [CIV §56.36]

4) Establishes the DHCS, which administers the Medi-Cal program. [WIC § 14000 et. seq.]

This bill:

1) Permits CHHS, if funds are available, upon appropriation by the Legislature, to utilize the California HIT and Exchange Fund for both of the following: (a) provide grants to small physician or dental practices, community health centers, critical access hospitals, and other safety net providers social service entities and community based organizations to help them implement or expand their use of HIT and connect to qualified health information networks; and, (b) ontract with experienced organizations to provide direct data exchange technical assistance to safety net providers and community based organizations providing social health services.

2) Establishes, the position of Deputy Secretary for HIT (deputy secretary) within CHHS, to be appointed by the Governor and confirmed by the Senate, to serve as a single point of contact for internal and external stakeholders for HIT programs that interact with the state government, and coordinate with (a) the federal Office of the National Coordinator (ONC) for HIT; and (b) the Federal Communications Commission regarding availability and implementation of broadband internet services for telehealth and health information exchange (HIE) in California.

3) Requires the deputy secretary to establish and convene the California HIT Advisory Committee (advisory committee), whose 15 members are to be appointed by the deputy secretary for three-year terms, representing health care stakeholders and experts. Requires terms of the members to be staggered such that no more than one-third of the advisory committee seats become open in any one year.

4) Establishes responsibilities of the advisory committee and requires it to provide information and advice to CHHS on HIT issues, including, all of the following:
   a) Coordination among and between providers utilizing different technologies and platforms for data exchange;

b) Federal, state, private, or philanthropic sources of funding that could support data exchange;
c) Identifying gaps in linking data from various sources within the state, including the California Department of Public Health (CDPH), the Controlled Substance Utilization Review and Evaluation System, and the Office of Statewide Health Planning and Development, and finding solutions to close those gaps;
d) The development of shared services, including a master patient index, patient attribution, a data exchange portfolio, and quality measure reporting;
e) Incorporating data related to social determinants of health, such as housing and food insecurity, into exchanged health information;
f) Incorporating data related to underserved or underrepresented populations, including, but not limited to, data regarding sexual orientation and gender identity or racial and ethnic minorities;
g) Addressing the privacy, security, and equity risks of expanding care coordination, health information exchange, and telehealth in a dynamic technology and entrepreneurial environment, where data and network security are under constant threat of attack; and,
h) Ensuring that California HIOs use national technical standards in the exchange of health information and that HIE broadly implements national frameworks and agreements.

5) Requires an HIO to be connected to the California Trusted Exchange Network (CTEN) and, either through the CTEN or independently, to a qualified national network to facilitate bidirectional exchange of patient data across networks.

6) Requires a health care provider, health system, health plan, or health insurer that engages in HIE to do so in accordance with the Interoperability Standards Advisory published and maintained by the federal ONC for HIT.

7) Requires DHCS to apply for federal funding made available through the Coronavirus Aid, Relief and Economic Security Act of 2020, American Rescue Plan Act of 2021 or the Medicaid Information Technology Architecture (MITA) program. Requires funds received through MITA to be used for all of the following purposes:
   a) Creating a unified state HIE gateway, using an application programming interface to facilitate bidirectional communication between data holders within state government and HIOs, national data exchange networks, direct interfaces with electronic health care record systems, and mobile health applications, other provider and payer organizations, and community based organizations providing social health services. Requires the primary

purpose of the unified state HIE gateway to be to improve the bidirectional exchange of data between state sources and health care providers, including the Medi-Cal program, the California Reportable Disease Information Exchange, the California Immunization Registry, and the Controlled Substance Utilization Review and Evaluation System;

b) Providing shared services to promote data exchange, in consultation with the California HIT Advisory Committee;
c) Supporting efforts by qualified HIOs to expand their services territories into geographic regions not currently served by a regional HIO; and,
d) Providing technical assistance and support to health care providers, including small physician and dental practices, community health centers, public and critical access hospitals, and other safety net providers, as well as social services entities and community based organizations.

8) Finds and declares that California needs to enhance its robust health care data exchange to achieve greater care coordination and to continue moving the health care system toward equitable value-based care. States the goal of promoting data exchange is to leverage the current national "network of networks" approach, utilizing existing technology standards to facilitate the seamless flow of data between providers, regardless of the technology they utilize, while protecting the privacy of individual patients and their data both when stored and while exchanged.

9) States the federal ONC for HIT's Cures Act Final Rule, the federal Centers for Medicare and Medicaid's Interoperability and Patient Access Final Rule, and Office for Civil Rights revisions to HIPAA privacy, security guidance, and rules will provide a policy framework and requirement for new methods of HIEs, driven by patient access and control of their own data. These rules will also require providers, health care service plans, health insurers, HIOs, and all other actors to make all patient data available at the point of care. California should build on this federal framework to facilitate access, exchange, and use of health data across the state.

10) Requires attempts to improve data exchange or reporting of, and access to, public health data to take into account privacy implications, including the privacy of sensitive health data and other private and sensitive data protected by Section 1 of Article I of the California Constitution, and the extent that private or commercial entities use public health data for non-public-health purposes, such as advertising and marketing.

Comments

Author's statement. According to the author, HIT can allow health care providers to access patient medical records and information in a safe, secure, and timely manner. This data exchange can take many forms, including HIEs, national data exchange networks, and app-based exchange. These forms of data exchange provide confidential access to a patient's unique medical history, regardless of where they go for care, which allows providers to give individualized care based on the patient's history. This bill creates a comprehensive plan for HIE access in all medical practices across the state by building support where it is needed for smaller establishments, creating more streamlined access for providers to public health data, leveraging federal funding, and re-establishing the role of Deputy Secretary of HIT and the eHealth Coordinating Committee under CHHS.

Governor's 2021-22 Budget. The Governor's budget summary states that it is imperative that the state expand the use of clinical and administrative data to better understand the health and social needs of individual patients in order to achieve high-quality, efficient, safe, and timely service delivery while improving outcomes. These goals can be accomplished by building and supporting the infrastructure and information systems to facilitate secure and appropriate exchange of electronic health information among health care providers. Despite significant federal investment over the past ten years for adoption of EHR and creation of HIEs, most patients' medical information, including clinical histories, medications, and test results, is stored on paper or across hundreds of disparate EHR systems. The goals of improved health outcomes and affordability cannot be achieved without unified patient health records and digital infrastructure to support a more integrated provision of health and human services. To further build on the promise of HIE, the Administration is interested in accelerating the utilization and integration of HIEs as part of a network that receives and integrates health data for all Californians. The building and operation of the network of exchanges will leverage existing investments in HIE and look for additional federal funding in alignment with federal interoperability rules. To do this, the state must (1) enable the right access to health information at the right time resulting in improved health and outcomes for all Californians; (2) identify and overcome the barriers to exchanging health information between public programs, as well as with California providers and consumers; and (3) engage consumers and their providers in managing medical, behavioral and social services through appropriate, streamlined access to electronic health information.

The Administration envisions an environment where health plans, hospitals, medical groups, testing laboratories, and nursing facilities—at a minimum, as a condition of participating in state health programs such as Medi-Cal, Covered California and CalPERS—contribute to, access, exchange, and make available data through the network of HIEs for every person. The May Revision includes $2.5

million one-time General Fund for CHHS to lead efforts and stakeholder engagement in building out information exchange for health and social services programs.

Related/Prior Legislation

AB 1131 (Wood, 2021) establishes the statewide health information network governing board, as an independent public entity with five members, to provide data infrastructure to meet California's health care access, equity, affordability, public health and quality goals to aggregate and integrate data. *AB 1131 is pending in the Assembly Appropriations Committee*.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, CHHS reports, "While we would anticipate costs related to the new position and responsibilities outlined in the bill, those costs are indeterminate at this time." Staff notes that the addition of the new Deputy Secretary position would result in salary and benefit costs ranging from $195,000 to $265,000 annually from the General Fund.(based upon three existing Deputy Secretary positions in the Agency and salary ranges in the CDHR February 2, 2021 published list of exempt positions).

Covered California reports no fiscal impact associated with this bill. DHCS, the Department of Managed Health Care and CDPH have not provided potential cost information at this time.

This bill also permits CHHS, if funds are available, upon appropriation by the Legislature, to utilize the California HIT and Exchange Fund for both of the following: (1) provide grants to small physician or dental practices, community health centers, critical access hospitals, and other safety net providers to help them implement or expand their use of HIT and connect to qualified health information networks; and (2) contract with experienced organizations to provide direct data exchange technical assistance to safety net providers.

SUPPORT: (Verified 5/19/21)

California Medical Association (source)
Association of California Healthcare Districts
California Association of Public Hospitals and Health Systems
California Dental Association
California Hospital Association
California Podiatric Medical Association
Data Exchange

Kaiser Permanente
Ochin, Inc.
Riverside Justice Table
Scripps Health
Silicon Valley Leadership Group
Stanford Health Care Valley Care
Stanford Health Care
Sutter Health
Tenet Healthcare

OPPOSITION: (Verified 5/19/21)

None received

ARGUMENTS IN SUPPORT: The California Medical Association, the sponsor of this bill, writes that over the past 12 years, since the passage of ARRA, health care data exchange has expanded greatly in this state. There are multiple regional health HIOs, such as LANES, OCPRHIO, San Diego Health Connect, and others, as well as vendor-based national networks (such as Carequality, Commonwell, and eHealth exchange) and other newer data exchange technologies. But the implementation and spread of data exchange has been uneven among providers, often based on access to robust EHRs and technical assistance. Moreover, as the federal ARRA funding has waned, the state infrastructure that supported the early development of data exchange in this state has dried up. Physicians and other stakeholders, whose data needs have expanded greatly over time, have been left uncertain about how to access data they need and who is in charge of the state's data apparatus. While physicians are able to access these data sources currently, it involves building multiple interfaces, and is generally only for the purposes of putting data in, not taking it back out. This limits their ability to utilize data in their clinical practices. Finally, and perhaps most importantly, the bill creates a pathway for the state to access federal funding through MITA funding. This line of federal funding provides a 90% federal match for the build out of new infrastructure, and 75% match for maintenance in future years. California can leverage this funding to support our efforts. The California Hospital Association writes that this bill provides the framework for statewide solutions that will enable many more providers to securely share health information and seeks to create an exchange gateway for state data resources that facilitates information exchange between state sources and health care providers, and establishes a state leadership role responsible for coordinating statewide efforts and an Advisory Committee composed of varied health care stakeholders. These are all essential steps to ensure the thoughtful prioritization of long-term investments and to inform future policies

and programs that enhance HIE. This bill will facilitate statewide HIE for 40 million Californians by building upon national standards of interoperability and leveraging the longstanding activities of our hospitals, clinics, and physicians.

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5/25/21 10:20:12

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