ACT NO. 7264

BILL NO. 29-0036

TWENTY-NINTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2011

An Act creating the Electronic Health Records Act, providing for the maintenance and use of electronic health records, clarifying individual rights with respect to the disclosure of information contained in electronic health records and clarifying the protection of privacy of electronic health records

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***Be it enacted by the Legislature of the Virgin Islands*:**

SECTION 1. Title 19 V.I.C., Part I, is amended by inserting a new chapter 8, to read as follows:

"Chapter 8. The Electronic Health Records Act

§ 160. Short title

This act may be cited as "The Electronic Health Records Act".

§ 161. Purpose

The purpose of the Electronic Health Records Act is to provide for the use, disclosure and protection of electronic health records.

§ 162. Definitions

As used in the Electronic Health Records Act:

(a) "demographic information" means information that identifies the individual who is the subject of the health care information, including the individual's name, date of birth and address and other information that identifies the individual, that may be used to identify the individual or that associates the individual with the individual's electronic health record;

(b) "disclose" means to release, transfer, provide or otherwise divulge an individual's health care information to a person other than the holder of the records.

(c) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(d) "electronic health record" means an electronic record of an individual patient's health care information that may contain demographic information;

(e) "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record;

(f) "health care" means care, services or supplies related to the health of an individual and includes:

(1) preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care and counseling;

(2) services, assessments or procedures that are concerned with the physical or mental condition or functional status of an individual or that affect the structure or function of the body of an individual; and

(3) the sale or dispensing of a drug, a device, a piece of equipment or other item in accordance with a prescription;

(g) "health care group purchaser" means a person who is licensed, certified or otherwise authorized or permitted by the Virgin Islands Code to pay for or purchase health care on behalf of an identified individual or group of individuals, regardless of whether the cost of coverage or services is paid for by the purchaser or the persons receiving coverage or services;

(h) "health care information" means any information, whether oral or recorded in any form or medium, related to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual;

(i) "health care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business;

(j) "health information exchange" means an arrangement among persons participating in a defined secure electronic network service, such as a regional health information organization, that allows the sharing of health care information about individual patients among different health care institutions or unaffiliated providers. The use of an electronic health record system by a health care provider or by an organized health care arrangement as defined by the federal Health Insurance Portability and Accountability Act of 1996 does not constitute a health information exchange;

(k) "information" means data, including text, images, sounds and codes and computer programs, software and databases;

(l) "provider" means an individual who is licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession;

(m) "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;

(n) "record locator service" means an information service that contains demographic information and the location of health care information of a specified individual across different health care institutions or unaffiliated providers that participate in the service. The use of an electronic health record system by a health care provider or by an organized health care arrangement as defined by the federal Health Insurance Portability and Accountability Act of 1996 does not constitute a record locator service; and

(o) "treatment" means the provision, coordination or management of health care and related services by one or more providers, including the coordination or management of health care by a provider with a third party; consultation between providers relating to an individual; or the referral of an individual for health care from one provider to another.

§ 163. Electronic health records; electronic signatures; legal recognition

If a law or rule requires a health record to be in writing, or if a law or rule requires a signature pertaining to a health record, an electronic health record or an electronic signature satisfies that law or rule except where excluded by court rules.

"(a)" Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this territory may create and maintain health records in an electronic format. The health care provider, facility, or governmental unit shall not be required to maintain a separate paper copy of the electronic health record; however, when a consent for treatment or authorization to disclose health information is contained in a paper writing, the writing shall be preserved in a durable medium, and its existence and location shall be noted in the electronic record. A health care provider, facility, or governmental unit shall maintain electronic health records in a legible and retrievable from, including adequate data backup.

"(b)" "Notwithstanding any other provision of law, any health care provider or facility licensed, certified or registered under the laws of this territory may permit authorized individuals to authenticate orders and health record entries by written signature, or by electronic or digital signature in lieu of a signature in ink. Health record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, "authentication" means identification of the author and confirmation that the contents of the entry are what the author intended.

"(c)" "The legal rights and responsibilities of patients, health care providers, facilities and governmental units shall apply to records created or maintained in electronic form to the same extent as those rights and responsibilities apply to health

records embodied in paper or other media. This subsection applies with respect to the security, confidentiality, accuracy, integrity, access to, and disclose of health records."

§ 164. Retention of health records

(a) If a law or rule requires that a health record be retained, the requirement is satisfied by retaining an electronic record that:

(1) accurately reflects the health record after it was first generated and in its final form as an electronic health record or otherwise; and

(2) remains accessible and is capable of being accurately reproduced for later reference.

(b) If a law or rule requires a health record to be presented or retained in its original form or provides consequences if the health record is not presented or retained in its original form, that law or rule is satisfied by an electronic health record retained in accordance with subsection (a) of this section. A health record retained as an electronic health record in accordance with Subsection (a) of this section satisfies a law or rule requiring a person to retain a health record for evidentiary, audit or other purposes.

"(c)" Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this territory may create and maintain health records in an electronic format. The health care provider, facility, or governmental unit shall not be required to maintain a separate paper copy of the health record; however, when a consent for treatment or authorization to disclose health record information is contained in a paper writing, the writing shall be preserved in a durable medium, and its existence and location shall be noted in the electronic record. A health care provider, facility, or governmental unit shall maintain electronic health records in legible and retrievable form, including adequate date backup.

"(d)" "Notwithstanding any other provision of law, any health care provider or facility licensed, certified or registered under the laws of this territory may permit authorized individuals to authenticate orders and other health records entries by written signature, or by electronic or digital signature in lieu of a signature in ink. Health record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, "authenticating" means identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.

"(e)" "Notwithstanding any other provision of law, any health care provider or facility licensed, certified or registered under the laws of this territory may permit authorized individuals to authenticate orders and other health record entries by written signature, or by electronic or digital signature in lieu of a signature in ink. Health record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, "authenticating" means identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.

§ 165. Use and disclosure of electronic health care information

(a) A provider, health care institution, health information exchange or health care group purchaser shall not use or disclose health care information in an individual's electronic health record to another person in violation of territoral or federal law and without the consent of the individual.

(b) A provider, health care institution or health care group purchaser may disclose demographic information and information about the location of an individual's electronic health records to a record locator service in accordance with territorial or federal law. A provider or health care institution participating in a health information exchange using a record locator service shall not have access to demographic information, information about the location of the individual's electronic health records or information in an individual's electronic health record except in connection with the treatment of the individual or as permitted by the consent of the individual or as otherwise permitted by territorial or federal law.

(c) A health information exchange maintaining a record locator service shall maintain an audit log of persons obtaining access to information in the record locator service, which audit log shall contain, at a minimum, information on:

(1) the identity of the person obtaining access to the information;
(2) the identity of the individual whose information was obtained;
(3) the location from which the information was obtained;
(4) the specific information obtained; and
(5) the date that the information was obtained.

(d) The audit log shall be made available by a health information exchange on the request of an individual whose health care information is the subject of the audit log; provided, however, that the audit log made available to the individual shall include only information related to that individual. The audit log shall be made available to the requesting individual annually for a reasonable fee as established by the V.I. Department of Health for access to health records for any purpose an individual wishes to receive the audit log information records.

(e) A person operating a record locator service or a health information exchange shall provide a mechanism under which individuals may exclude their demographic information and information about the location of their electronic health records from the record locator service. A person operating a record locator service or a health information exchange that receives an individual's request to exclude all of the individual's information from the record locator service is responsible for removing that information from the record locator service within thirty days; provided, however, that the request to exclude information shall not apply to a provider, a group of providers, a health care institution or an organization of providers that has provided health care to the individual and retains information about that health care. An individual's request for exclusion of information shall be in writing and shall include a waiver of liability for any harm caused by the exclusion of the individual's information.

(f) When information in an individual's electronic health record is requested using a record locator service or a health information exchange:

(1) the requesting provider or health care institution shall warrant that the request is for the treatment of the individual, is permitted by the individual's written authorization or is otherwise permitted by territory or federal law; and

(2) the person disclosing the information may rely upon the warranty of the person making the request that the request is for the treatment of the individual, is permitted with the consent of the individual or is otherwise permitted by territory or federal law.

(g) Notwithstanding any other provision of law, information in an individual's electronic health record may be disclosed to a provider that has a need for information about the individual to treat a condition that poses an immediate threat to the life of the individual and that requires immediate health attention.

(h) Notwithstanding any other provision of law, information in an individual's electronic health record may be disclosed to a person that uses non-patient-specific information to maintain or improve the health of the general public or to conduct research that has been sanctioned by a legally authorized health review board; provided, however, that the information disclosed does not include any data that could serve to identify specifically an individual patient and provided further that any individual whose data is disclosed for these purposes has provided written authorization for its use or is otherwise permitted by territory or federal law.

(i) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this territory may create and maintain health records in an electronic format. The health care provider, facility or governmental unit shall not be required to maintain to separate paper copy of the electronic health record; however, when a consent for treatment or authorization to disclose health record information is contained on a paper writing, the writing shall be preserved in a durable medium, and its existence and location shall be noted in je electronic record. A health care provider, facility or governmental unit shall, maintain electronic health records in a legible and retrievable form, including adequate date backup.

(j) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this territory may create and maintain health records in an electronic format. The health care provider, facility or governmental unit shall not be required to maintain to separate paper copy of the electronic health record; however, when a consent for treatment or authorization to disclose health record information is contained on a paper writing, the writing shall be preserved in a durable medium, and its existence and location shall be noted in je electronic record. A health care provider, facility or governmental unit shall, maintain electronic health records in a legible and retrievable form, including adequate date backup.

(k) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this territory may create and maintain health records in an electronic format. The health care provider, facility or governmental unit shall not be required to maintain to separate paper copy of the electronic health record; however, when a consent for treatment or authorization to disclose health record information is contained on a paper writing, the writing shall be preserved in a durable medium, and its existence and location shall be noted in je electronic record. A health care provider, facility or governmental unit shall, maintain electronic health records in a legible and retrievable form, including adequate date backup.

§ 166. Liability

If an individual requests to exclude all of the individual's information from the record locator service pursuant to Subsection (e) of §164 of the Electronic Health Records Act, the record locator service, health information exchange, health care institution or provider shall not be liable for any harm to the individual caused by the exclusion of the individual's information.

(l) "Notwithstanding any other provision of law, any health care provider or facility licensed, certified or registered under the laws of this territory may permit authorized individuals to authenticate orders and other health record entries by written signature, or by electronic or digital signature in lieu of a signature in ink. Health record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, "authenticating" means identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.

(m) "Notwithstanding any other provision of law, any health care provider or facility licensed, certified or registered under the laws of this territory may permit authorized individuals to authenticate orders and other health record entries by written signature, or by electronic or digital signature in lieu of a signature in ink. Health record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, "authenticating" means identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.

§ 167. Out-of-state disclosures

A disclosure otherwise permissible under the Electronic Health Records Act may be made to providers, health care group purchasers, health care institutions, health information exchanges or record locator services located or operating outside of the territory.

§ 168. Exclusion of certain insurers

Nothing in the Electronic Health Records Act may be construed to apply to a person operating as a property and casualty insurer, workers' compensation insurer, life insurer, long-term care insurer or disability income insurer."

Thus passed by the Legislature of the Virgin Islands on June 22, 2011.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 28th Day of June, A.D., 2011.



Ronald E. Russell
President

Sammuel Sanes
Legislative Secretary



Bill No. 29-0036 is hereby approved.

Witness my hand and the Seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 12th day of July, A.D., 2011.

John P. de Jongh, Jr.
Governor