

By: Representative Formby

To: Rules; Public Health and Human Services

HOUSE BILL NO. 392
(As Sent to Governor)

1 AN ACT TO BRING FORWARD SECTIONS 41-119-1 THROUGH 41-119-17
2 AND TO AMEND SECTION 41-119-21, MISSISSIPPI CODE OF 1972, TO
3 EXTEND THE AUTOMATIC REPEALER ON THE HEALTH INFORMATION TECHNOLOGY
4 ACT (MS-HIN); TO AMEND SECTION 41-119-19, MISSISSIPPI CODE OF
5 1972, TO DIRECT THE PEER COMMITTEE TO DEVELOP A REPORT REGARDING
6 THE IMPLEMENTATION OF THE ELECTRONIC HEALTH RECORDS SYSTEM IN
7 MISSISSIPPI; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** Section 41-119-1, Mississippi Code of 1972, is
10 brought forward as follows:

11 41-119-1. This chapter shall be known and may be cited as
12 the "Health Information Technology Act."

13 **SECTION 2.** Section 41-119-3, Mississippi Code of 1972, is
14 brought forward as follows:

15 41-119-3. The Mississippi Health Information Network is a
16 public-private partnership for the benefit of all of the citizens
17 of this state.

18 **SECTION 3.** Section 41-119-5, Mississippi Code of 1972, is
19 brought forward as follows:



20 41-119-5. (1) The Mississippi Health Information Network is
21 established, and is referred to in this chapter as the "MS-HIN."

22 (2) The MS-HIN shall be governed by a board of directors
23 (MS-HIN board) consisting of eleven (11) members. The membership
24 of the MS-HIN board shall reasonably reflect the public-private
25 and diverse nature of the MS-HIN.

26 (3) The membership of the MS-HIN board of directors shall
27 consist of the following:

28 (a) The Governor shall appoint one (1) member of the
29 MS-HIN board of directors, who shall be a representative of a
30 health insurance carrier in Mississippi with knowledge of
31 information technology, to serve an initial term of three (3)
32 years;

33 (b) The State Board of Health shall appoint one (1)
34 member of the MS-HIN board of directors, who shall be a
35 representative of a Mississippi hospital with knowledge of
36 information technology, to serve an initial term of three (3)
37 years;

38 (c) The Mississippi State Medical Association shall
39 appoint a member of the MS-HIN board of directors, who shall be a
40 licensed physician, to serve an initial term of three (3) years;

41 (d) The Primary Health Care Association shall appoint a
42 member of the MS-HIN board of directors to serve an initial term
43 of one (1) year;



44 (e) The Delta Health Alliance shall appoint a member of
45 the MS-HIN board of directors to serve an initial term of four (4)
46 years;

47 (f) The Information and Quality Health Care-Mississippi
48 Coastal Health Information Exchange (MCHIE) shall appoint a member
49 of the MS-HIN board of directors to serve an initial term of one
50 (1) year;

51 (g) The State Board of Health shall appoint a member of
52 the MS-HIN board of directors who shall be an employee of the
53 State Department of Health to serve an initial term of one (1)
54 year;

55 (h) The Mississippi Board of Information Technology
56 Services shall appoint a member of the MS-HIN board of directors
57 to serve an initial term of two (2) years;

58 (i) The Mississippi Board of Mental Health shall
59 appoint a member of the MS-HIN board of directors who shall be an
60 employee of the Department of Mental Health to serve an initial
61 term of four (4) years;

62 (j) The University of Mississippi Medical Center shall
63 appoint a member of the MS-HIN board of directors to serve an
64 initial term of two (2) years; and

65 (k) The Division of Medicaid shall appoint a member of
66 the MS-HIN board of directors who shall be an employee of the
67 Division of Medicaid to serve an initial term of two (2) years.



68 Initial terms shall expire on June 30 of the appropriate
69 year, and subsequent appointments shall be made by the appointing
70 entity for terms of four (4) years. Members may be reappointed.

71 (4) No state officer or employee appointed to the MS-HIN
72 board or serving in any other capacity for the MS-HIN board will
73 be construed to have resigned from public office or employment by
74 reason of that appointment or service.

75 (5) The chairperson of the MS-HIN board shall be elected by
76 a majority of the members appointed to the MS-HIN board.

77 (6) The MS-HIN board is authorized to conduct its business
78 by a majority of a quorum. A quorum is six (6) members of the
79 MS-HIN board.

80 (7) The MS-HIN board may adopt bylaws for its operations,
81 including, but not limited to, the election of other officers, the
82 terms of officers, and the creation of standing and ad hoc
83 committees.

84 **SECTION 4.** Section 41-119-7, Mississippi Code of 1972, is
85 brought forward as follows:

86 41-119-7. (1) In furtherance of the purposes of this
87 chapter, the MS-HIN shall have the following duties:

88 (a) Initiate a statewide health information network to:

89 (i) Facilitate communication of patient clinical
90 and financial information;

91 (ii) Promote more efficient and effective
92 communication among multiple health care providers and payers,



93 including, but not limited to, hospitals, physicians, nonphysician
94 providers, third-party payers, self-insured employers, pharmacies,
95 laboratories and other health care entities;

96 (iii) Create efficiencies by eliminating
97 redundancy in data capture and storage and reducing
98 administrative, billing and data collection costs;

99 (iv) Create the ability to monitor community
100 health status;

101 (v) Provide reliable information to health care
102 consumers and purchasers regarding the quality and
103 cost-effectiveness of health care, health plans and health care
104 providers; and

105 (vi) Promote the use of certified electronic
106 health records technology in a manner that improves quality,
107 safety, and efficiency of health care delivery, reduces health
108 care disparities, engages patients and families, improves health
109 care coordination, improves population and public health, and
110 ensures adequate privacy and security protections for personal
111 health information * * *;

112 (b) Develop or design other initiatives in furtherance
113 of its purpose; and

114 (c) Perform any and all other activities in furtherance
115 of its purpose.

116 (2) The MS-HIN board is granted all incidental powers to
117 carry out its purposes and duties, including the following:



118 (a) To appoint an executive director, who will serve at
119 the will and pleasure of the MS-HIN board. The qualifications and
120 employment terms for the executive director shall be determined by
121 the MS-HIN board;

122 (b) To adopt, modify, repeal, promulgate, and enforce
123 rules and regulations to carry out the purposes of the MS-HIN;

124 (c) To establish a process for hearing and determining
125 case decisions to resolve disputes under this chapter or the rules
126 and regulations promulgated under this chapter among participants,
127 subscribers or the public;

128 (d) To enter into, and to authorize the executive
129 director to execute contracts or other agreements with any federal
130 or state agency, any public or private institution, or any
131 individual in carrying out the provisions of this chapter; and

132 (e) To discharge other duties, responsibilities, and
133 powers as are necessary to implement the provisions of this
134 chapter.

135 (3) The executive director shall have the following powers
136 and duties:

137 (a) To employ qualified professional personnel as
138 required for the operation of the MS-HIN and as authorized by the
139 MS-HIN board;

140 (b) To administer the policies of the MS-HIN board; and

141 (c) To supervise and direct all administrative and
142 technical activities of the MS-HIN.



143 (4) The MS-HIN shall have the power and authority to accept
144 appropriations, grants and donations from public or private
145 entities and to charge reasonable fees for its services. The
146 revenue derived from grants, donations, fees and other sources of
147 income shall be deposited into a special fund that is created in
148 the State Treasury and earmarked for use by the MS-HIN in carrying
149 out its duties under this chapter.

150 **SECTION 5.** Section 41-119-9, Mississippi Code of 1972, is
151 brought forward as follows:

152 41-119-9. (1) All members of the MS-HIN board shall not be
153 subject to and are immune from claim, suit, liability, damages or
154 any other recourse, civil or criminal, arising from any act or
155 proceeding, decision or determination undertaken, performed or
156 reached in good faith and without malice by any such member or
157 members acting individually or jointly in carrying out the
158 responsibilities, authority, duties, powers and privileges of the
159 offices conferred by law upon them under this chapter, or any
160 other state law, or duly adopted rules and regulations of the
161 aforementioned committees, good faith being presumed until proven
162 otherwise, with malice required to be shown by a complainant. All
163 employees and staff of the MS-HIN, whether temporary or permanent,
164 shall enjoy the same rights and privileges concerning immunity
165 from suit otherwise enjoyed by state employees under the
166 Mississippi Constitution of 1890 and Section 11-46-1 et seq.



167 (2) The MS-HIN is not a health care provider and is not
168 subject to claims under Sections 11-1-58 through 11-1-62. No
169 person who participates in or subscribes to the services or
170 information provided by the MS-HIN shall be liable in any action
171 for damages or costs of any nature, in law or equity, that result
172 solely from that person's use or failure to use MS-HIN information
173 or data that were imputed or retrieved in accordance with the
174 rules or regulations of the MS-HIN. In addition, no person will
175 be subject to antitrust or unfair competition liability based on
176 membership or participation in the MS-HIN, which provides an
177 essential governmental function for the public health and safety.

178 **SECTION 6.** Section 41-119-11, Mississippi Code of 1972, is
179 brought forward as follows:

180 41-119-11. (1) All persons providing information and data
181 to the MS-HIN shall retain a property right in that information or
182 data, but grant to the other participants or subscribers a
183 nonexclusive license to retrieve and use that information or data
184 in accordance with the rules or regulations promulgated by the
185 MS-HIN board and in compliance with the provisions of the Health
186 Insurance Portability and Accountability Act of 1996, Public Law
187 104-191.

188 (2) Patients desiring to obtain a copy of their personal
189 medical record or information are to request the copy from the
190 health care provider who is the primary source of the information,



191 and the MS-HIN shall not be required to provide this information
192 directly to the patient.

193 (3) All processes or software developed, designed or
194 purchased by the MS-HIN shall remain its property subject to use
195 by participants or subscribers in accordance with the rules and
196 regulations promulgated by the MS-HIN board.

197 **SECTION 7.** Section 41-119-13, Mississippi Code of 1972, is
198 brought forward as follows:

199 41-119-13. (1) The MS-HIN board shall by rule or regulation
200 ensure that patient specific health information be disclosed only
201 in accordance with the provisions of the Health Insurance
202 Portability and Accountability Act of 1996, Public Law 104-191,
203 which governs the electronic transmission of that information.

204 (2) Patient specific health information and data of the
205 MS-HIN shall not be subject to the Federal Freedom of Information
206 Act, Mississippi Open Records Act (Section 25-61-1 et seq.) nor to
207 subpoena by any court. That information may only be disclosed by
208 consent of the patient or in accordance with the MS-HIN board's
209 rules, regulations or orders.

210 (3) Notwithstanding any conflicting statute, court rule or
211 other law, the data in the network shall be confidential and shall
212 not be subject to discovery or introduction into evidence in any
213 civil action. However, information and data otherwise
214 discoverable or admissible from original sources are not to be



215 construed as immune from discovery or use in any civil action
216 merely because they were provided to the MS-HIN.

217 (4) Submission of information to and use of information by
218 the State Department of Health shall be considered a permitted
219 disclosure for uses and disclosures required by law and for public
220 health activities under the Health Insurance Portability and
221 Accountability Act and the privacy rules promulgated under that
222 act.

223 (5) Any violation of the rules or regulations regarding
224 access or misuse of the MS-HIN health information or data shall be
225 reported to the Office of the Attorney General, and shall be
226 subject to prosecution and penalties under state or federal law.

227 **SECTION 8.** Section 41-119-15, Mississippi Code of 1972, is
228 brought forward as follows:

229 41-119-15. For the purposes of this chapter, the following
230 terms shall be defined as provided in this section:

231 (a) "Electronic health records" or "EHR" means
232 electronically maintained clinical and demographic information,
233 used by a meaningful EHR user.

234 (b) "Health information technology" or "HIT" means the
235 equipment, software and networks to be used by a meaningful EHR
236 user.

237 (c) "Acquisition" of HIT systems or other computer or
238 telecommunications equipment or services means the purchase,
239 lease, rental or acquisition in any other manner of HIT systems or



240 any other computer or telecommunications equipment or services
241 used exclusively for HIT.

242 (d) "Meaningful EHR user" means an eligible
243 professional or eligible hospital that, during the specified
244 reporting period, demonstrates meaningful use of certified EHR
245 technology in a form and manner consistent with certain objectives
246 and measures presented in applicable federal regulations as
247 amended or adopted. These objectives and measures shall include
248 the use of certified EHR.

249 (e) "Entity" means and includes all the various state
250 agencies, officers, departments, boards, commissions, offices and
251 institutions of the state, but does not include any agency
252 financed entirely by federal funds.

253 **SECTION 9.** Section 41-119-17, Mississippi Code of 1972, is
254 brought forward as follows:

255 41-119-17. (1) Before the acquisition of any HIT system, an
256 entity shall provide MS-HIN, at a minimum, description, purpose
257 and intent of the proposed service or system, including a
258 description and specifications of the ability to connect to
259 MS-HIN.

260 (2) Where existing entities can be used to provide the
261 proposed HIT system, in whole or in part, the submission shall
262 include letters of commitment, memoranda of agreements, or other
263 supporting documentation.



264 (3) The MS-HIN shall review proposals for acquisition of HIT
265 systems for the purposes contained in Section 41-119-7, and
266 provide guidance to entities including collaborative opportunities
267 with MS-HIN members.

268 (4) Any acquisition of an HIT system that was approved by
269 the Mississippi Department of Technology Services before April 28,
270 2010, is exempt from the requirements of Section 41-119-15 and
271 this section.

272 **SECTION 10.** Section 41-119-19, Mississippi Code of 1972, is
273 amended as follows:

274 41-119-19. The Legislative Audit Committee (PEER) shall
275 develop and make a report to the Chairmen of the Senate and House
276 Public Health and Welfare/Medicaid Committees regarding the
277 following electronic health records (EHR) system items:

278 (a) Evaluate the Request for Proposals (RFP) for the
279 implementation and operations services for the Division of
280 Medicaid and the University Medical Center electronic health
281 records system and e-prescribing system for providers;

282 (b) Evaluate the proposed expenditures of the
283 Mississippi Division of Medicaid (DOM) and the University Medical
284 Center (UMC) regarding electronic health information; * * *

285 (c) Evaluate the use of American Recovery and
286 Reinvestment Act (ARRA) funds for electronic health records system
287 implementation in the State of Mississippi * * *; and



288 (d) Evaluate the progress in implementing the
289 electronic health records system in the State of Mississippi.

290 The PEER Committee shall make its report on or before
291 December 1, * * * 2014, including any recommendations for
292 legislation.

293 **SECTION 11.** Section 41-119-21, Mississippi Code of 1972, is
294 amended as follows:

295 41-119-21. Sections 41-119-1 through 41-119-21 shall stand
296 repealed on July 1, * * * 2019.

297 **SECTION 12.** This act shall take effect and be in force from
298 and after July 1, 2014.

