



## Legislative Fiscal Bureau

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TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 779: Electronic Health Information Exchange

Assembly Bill 779 would authorize the Department of Health Services (DHS) to designate a nonprofit corporation to receive and administer federal funds to implement statewide electronic health information exchange (HIE). On March 24, 2010, the Assembly Committee on Health and Healthcare Reform recommended passage of the bill by a vote of 11 to 0, with two members absent. On March 24, Senate Bill 579, which is identical to Assembly Bill 779, was recommended for passage by the Senate Committee on Rural Issues, Biofuels, and Information Technology by a vote of 5 to 0.

### **BACKGROUND**

*Electronic Health Information Exchange.* In December 2009, the Governor issued Executive Order #303, which created the Wisconsin Relay of Electronic Data (WIRED) for Health Board to replace the eHealth Care Quality and Patient Safety Board established under Executive Order #129 in 2004. The new executive order directs the Board to develop statewide HIE capacity and resolve issues related to HIE governance, finance, infrastructure, operations, and legal framework. The Board is directed to develop, no later than June 1, 2010, strategic and operational plans for statewide HIE. The executive order specifies that the Board will exist until a qualified, not-for-profit corporation is designated by the Governor, or created and designated in statute specifically for the purpose of governing the implementation and operation of statewide HIE services.

*ARRA Funds.* On February 12, 2010, the state was notified that it would receive \$9,441,000 in federal funds authorized under the American Recovery and Reinvestment Act (ARRA) to plan and implement statewide HIE. This funding opportunity was included in several ARRA provisions related to the promotion and funding of health information technology (HIT), collectively referred to as the Health Information Technology for Economic and Clinical Health (HITECH) Act. Using the review process established in 2009 Wisconsin Act 2, on January 14, 2010, the Joint Committee on Finance approved the allocation and expenditure of \$1,300,800 in 2009-10 and \$3,676,300 of

these stimulus funds for this purpose.

Under the federal grant, the state received the authority to expend funding provided through the state HIE cooperative agreement. This agreement provides planning and implementation grants to states or state-designated entities (SDEs) for HIE-related activities.

Under the plan approved by the U.S. Department of Health and Human Services, Office of the National Coordinator for Health Information Technology (ONC) and the Committee, the WIRED for Health Board will conduct the initial phase of planning for the implementation of statewide HIE. The Board will be responsible for developing strategic and operational plans for the subsequent implementation phase of statewide HIE. This aspect of the plan will be conducted over the first six to eight months of the project, following initial transmittal of the ARRA funds from ONC. Any plan developed by the WIRED for Health Board requires final approval of the ONC.

If the ONC approves the plan, it is anticipated that the responsibilities for future HIE administration and operation would be transferred to a not-for-profit SDE, with limited state role in the implementation phase of the statewide HIE. The SDE would be responsible for contracting with vendors to construct and implement the HIE system described in the strategic and operational plans. However, the specific responsibilities of the SDE would depend on the provisions of the final strategic and operational plans approved by the ONC.

*State Funding for Health Information Activities.* Chapter 153 of the statutes assigns DHS and its contracted entities responsibilities relating to health care information, including the collection and dissemination of specified information, health care data reports submitted to the Governor and Legislature, and patient confidentiality requirements. These activities are partially supported by annual fees contributed by health care providers and fees paid by the Group Insurance Board for data collection and analysis services. The revenue from these fees is credited to a program revenue (PR) appropriation. DHS is budgeted \$1,266,900 PR in 2009-10 and \$1,118,700 PR in 2010-11 from this appropriation.

## **SUMMARY OF BILL**

The bill would permit the state to designate a nonprofit corporation to receive funding under the HITECH Act, if the corporation meets certain criteria. This corporation would act as the SDE described in the state's application for federal HITECH funds, and in Executive Order #303.

*Requirements for Designation and Funding.* In designating the nonprofit corporation as the SDE, the DHS Secretary would be required to determine that all of the following conditions are satisfied:

- The articles of incorporation or bylaws of the SDE state that a purpose of the corporation is to use information technology to improve health care quality and efficiency through the authorized and secure electronic exchange and use of health information.
- The corporation annually evaluates, analyze and reports to the DHS Secretary on the progress toward implementing a statewide HIE and how these efforts are enabling meaningful use

of certified electronic health record technology by health care providers.

- The corporation complies with the federal requirements to be a qualified SDE under the HITECH Act, and the requirements to receive a grant under the HITECH Act.

- The governing structure and bylaws of the SDE allow it to consult and consider recommendations from all persons specified in federal law in carrying out statewide HIE, which include the following: (a) health care providers (including providers that provide services to low income and underserved populations); (b) health plans; (c) patient or consumer organizations that represent the population to be served; (d) health information technology vendors; (e) health care purchasers and employers; (f) public health agencies; (g) health professions schools, universities and colleges; (h) clinical researchers; (i) other users of health information technology, such as the support and clerical staff of providers and others involved in the care and care coordination of patients; and (j) such other entities, as may be determined appropriate by the Secretary of the U.S. Department of Health and Human Services.

- The Board of Directors of the SDE includes all of the following persons: (a) the state health officer, or his or her designee; (b) the director of the state Medical Assistance program, or his or her designee; (c) one individual appointed by the Governor, or that individual's designee.

- The Board also includes one or more persons who represent each of the following groups, such that the representation of the public and private health sector is balanced: (a) health care providers; (b) health insurers or health plans; (c) employers who purchase or self-insure employee health care; (d) health care consumers or consumer advocates; and (e) higher education.

- The corporation agrees to fulfill all of the following purposes: (a) building substantial statewide HIE capacity to support health care provider's meaningful use of electronic health records, population health improvement; and reporting of health care performance; (b) developing policies and recommending legislation that advance efficient statewide and interstate health information exchange, and that protect consumer privacy; (c) developing or facilitating the creation of a statewide technical infrastructure that supports statewide HIE, and enabling interoperability among users of health information; (d) coordinating between the Medical Assistance and public health programs to enable information exchange and promote meaningful use of electronic health records; (e) providing oversight and accountability for health information exchange to protect the public interest; (f) increasing public awareness of and support for statewide HIE, and fostering agreement among health care providers and other users of health care information on an approach to statewide HIE; (g) adopting standards for HIE in accordance with national standards, implementation protocols, and reporting requirements; (h) prioritizing among HIE services according to the needs of the residents of the state; (i) managing and sustaining funding necessary to develop and sustain statewide HIE infrastructure and services; (j) conducting or overseeing HIE business and technical operations, including providing technical assistance to health information organizations and other exchanges; (k) developing or facilitating the creation and use of shared directories and technical services, as applicable to statewide HIE; (l) creating a model, uniform statewide patient consent and authorization process to allow electronic access to, review of, or disclosure of a patient's identifiable health care information; (k) certifying regional health information exchange networks, if any, and

confirming that any regional health information exchange network meets the criteria to participate in and connect to the statewide HIE network; (l) monitoring HIT and HIE efforts nationally, and facilitating alignment of statewide, interstate, and national health information exchange strategies; and (m) developing programs and initiatives to promote and advance HIE to improve the safety, quality, and efficiency of health care, and to reduce waste due to redundancy and administrative costs.

DHS would be authorized to make payments to a nonprofit corporation if the DHS Secretary determines that the conditions listed above are satisfied.

*Creation of Corporation.* The bill would authorize the DHS Secretary to organize and assist in maintaining the nonstock, nonprofit corporation for the purposes described above. If the Secretary organizes the corporation, the Secretary would be required to appoint all of the following as initial directors of the board of the corporation: (a) the state health officer, or his or her designee; (b) the director of the state Medical Assistance program, or his or her designee; (c) one individual appointed by the Governor, or that individual's designee.

The bill specifies that the assets and liabilities of the corporation would be separate from all other assets and liabilities of the state, of all political subdivisions of the state, and of DHS. Further, the bill indicates that the state, any political subdivisions of the state, and DHS do not guarantee any obligation of, or have any obligation to, the corporation. Finally, the state, any political subdivision of the state, and DHS would not be liable for any debt or liability of the corporation.

*Expand Purposes of Current PR Appropriation.* The bill would permit DHS to expend funds from the current PR appropriation, funded from provider assessment and contract fees to support current health care information activities under Chapter 153, to make payments to the SDE to support health information exchange.

## **FISCAL EFFECT**

The bill would not increase the current sum certain PR appropriation DHS uses to support health care information activities. However, the bill would modify this appropriation to permit DHS to use the fee revenue it currently collects to make payments to a qualifying nonprofit corporation, as specified in the bill, to support health information exchange. This change is intended to permit DHS to expend revenue it currently uses to fund the state's eHealth program to support the corporation's health information exchange activities.

DHS could also provide the corporation with a portion of the \$9.44 million in federal stimulus funding for implementation of state-wide HIE. In the initial grant application submitted by DHS to the ONC, DHS estimated that the SDE would receive approximately \$6.26 million in federal grant funding over the four-year project. This preliminary estimate may be revised, depending on the implementation plan developed by the WIRED for Health Board.

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