

HOUSE No. 1238

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel J. Ryan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to improve patient care through integrated electronic health records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/19/2023</i>

HOUSE No. 1238

By Representative Ryan of Boston, a petition (accompanied by bill, House, No. 1238) of Daniel J. Ryan for legislation to establish integrated electronic health records. Health Care Financing.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to improve patient care through integrated electronic health records.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 118I of the General Laws is hereby amended by striking out the chapter and
2 inserting in place thereof the following chapter:.

3 Chapter 118I

4 HEALTH INFORMATION EXCHANGE

5 Section 1. As used in this chapter, the following words shall, unless the context clearly
6 requires otherwise, have the following meanings:

7 “Council”, the health information technology council established under section 2.

8 “Electronic health record”, an electronic record of patient health information generated
9 by 1 or more encounters in any care delivery setting.

10 “Executive office”, the executive office of health and human services.

11 “Health care entity”, a payer, health care provider or provider organization.

12 “Health care provider”, a provider of medical or health services or any other person or
13 organization that furnishes, bills or is paid for health care service delivery in the normal course
14 of business.

15 “Health information exchange”, transmission of health care-related data among health
16 care entities of personal health records aligning with national standards; the reliable and secure
17 transfer of data among diverse systems and access to and retrieval of data.

18 “Office of the National Coordinator” or “ONC”, the Office of the National Coordinator
19 for Health Information Technology within the United States Department of Health and Human
20 Services.

21 “Payer”, any entity, other than an individual, that pays providers for the provision of
22 health care services; provided, that “payer” shall include both governmental and private entities;
23 provided further, that “payer” shall not include ERISA plans.

24 “Provider organization”, any corporation, partnership, business trust, association or
25 organized group of persons, which is in the business of health care delivery or management,
26 whether incorporated or not that represents 1 or more health care providers in contracting with
27 carriers for the payments of health care services; provided, that “provider organization” shall
28 include, but not be limited to, physician organizations, physician-hospital organizations,
29 independent practice associations, provider networks, accountable care organizations and any
30 other organization that contracts with carriers for payment for health care services.

31 “Statewide health information exchange”, health information exchange established,
32 operated, facilitated or funded by a governmental entity or entities in the commonwealth.

33 Section 2. (a) There shall be a health information technology council within the executive
34 office of health and human services. The council shall advise the executive office on design,
35 implementation, operation and use of statewide health information exchange.

36 (b) The council shall consist of the following 21 members: the secretary of health and
37 human services or a designee, who shall serve as the chair; the secretary of administration and
38 finance or designee; the executive director of the health policy commission or a designee; the
39 executive director of the center for health information analysis or a designee; the director of the
40 Massachusetts eHealth Institute or a designee; the director of the office of Medicaid or a
41 designee; and 14 members who shall be appointed by the governor, of whom at least 1 shall be
42 an expert in health information technology; 1 shall be an expert in law and health policy; 1 shall
43 be an expert in health information privacy and security; 1 shall be from an academic medical
44 center; 1 shall be from a community hospital; 1 shall be from a community health center; 1 shall
45 be from a long term care facility; 1 shall be a from large physician group practice; 1 shall be
46 from a small physician group practice; 1 shall be a registered nurse; 1 shall be from a behavioral
47 health, substance abuse disorder or mental health services organization; 1 shall be from the
48 Massachusetts Association of Health Plans or a designee, 1 shall be from Blue Cross Blue Shield
49 of Massachusetts, 1 shall be from a business group; and 2 additional members shall have
50 experience or expertise in health information technology. The council may consult with all
51 relevant parties, public or private, in exercising its duties under this section, including persons
52 with expertise and experience in the development and dissemination of electronic health records
53 systems, and the implementation of electronic health record systems by small physician groups
54 or ambulatory care providers, as well as persons representing organizations within the
55 commonwealth interested in and affected by the development of networks and electronic health

56 records systems, including, but not limited to, persons representing local public health agencies,
57 licensed hospitals and other licensed facilities and providers, private purchasers, the medical and
58 nursing professions, physicians and health insurers, the state quality improvement organization,
59 academic and research institutions, consumer advisory organizations with expertise in health
60 information technology and other stakeholders as identified by the secretary of health and human
61 services. Appointed members of the council shall serve for terms of 2 years or until a successor
62 is appointed. Members shall be eligible to be reappointed and shall serve without compensation.

63 (c) Chapter 268A shall apply to all council members, except that the council may
64 purchase from, sell to, borrow from, contract with or otherwise deal with any organization in
65 which any council member is in anyway interested or involved; provided, however, that such
66 interest or involvement shall be disclosed in advance to the council and recorded in the minutes
67 of the proceedings of the council; and provided, further, that no member shall be considered to
68 have violated section 4 of said chapter 268A because of the member's receipt of usual and
69 regular compensation from such member's employer during the time in which the member
70 participates in the activities of the council.

71 Section 3. (a) The executive office shall establish, operate, facilitate, or fund statewide
72 health information exchange among health care entities, including, but not limited to, improving
73 interoperability among health care entities and requiring the exchange of minimum standardized
74 health data requirements.

75 (b) The executive office may:

76 (i) conduct procurements and enter into contracts for the purchase, dissemination,
77 development of hardware and software, in connection with the implementation of statewide
78 health information exchange; and

79 (ii) in consultation with the council, oversee the development, dissemination,
80 implementation and operation of statewide health information exchange including any modules,
81 applications, interfaces or other technology infrastructure for statewide health information
82 exchange.

83 (c) In carrying out this chapter, the executive office may undertake any activities
84 necessary to implement the powers and duties under this chapter, which may include issuing
85 implementing regulations and the adoption of policies consistent with those adopted by the
86 Office of the National Coordinator for Health Information Technology of the United States
87 Department of Health and Human Services; provided, however, that nothing herein shall be
88 construed to limit the executive office's ability to advance interoperability and other health
89 information technology beyond such federal standards, including without limitation any
90 applicable meaningful use standards.

91 Section 4. Every patient shall have electronic access to such patient's health records. The
92 executive office shall ensure that each patient will have secure electronic access to such patient's
93 electronic health records with each of such patient's health care providers.

94 Section 5. All health care entities in the commonwealth shall participate in statewide
95 health information exchange; provided that all health care providers shall implement fully
96 interoperable electronic records systems necessary to participate in statewide health information
97 exchange activities, as defined by the executive office. The executive office shall issue

98 regulations requiring that statewide health information exchange, the associated electronic
99 records systems, comply with all state and federal privacy requirements, including those imposed
100 by the Health Insurance Portability and Accountability Act of 1996, P.L. 104–191, the American
101 Recovery and Reinvestment Act of 2009, P.L. 111–5, 42 C.F.R. §§ 2.11 et seq. and 45 C.F.R. §§
102 160, 162 and 164.

103 Section 6. The executive office shall prescribe by regulation penalties for non-compliance
104 by health care entities with the requirements of this chapter provided, however, that the executive
105 office may waive penalties for good cause. Penalties collected under this section shall be
106 deposited into the Health Information Technology Trust Fund, established in section 10 of
107 chapter 35RR.

108 Section 7. In the event of an unauthorized access to or disclosure of individually
109 identifiable patient health information by or through a health care entity or a vendor contracted
110 through services of a health care entity as participants of statewide health information exchange,
111 the health care entity or vendor shall comply with the requirements of chapter 93H and in any
112 event shall: (i) report the conditions of such unauthorized access or disclosure as required by the
113 executive office; and (ii) provide notice, as defined in section 1 of chapter 93H, as soon as
114 practicable, but not later than 10 business days after such unauthorized access or disclosure, to
115 any person whose patient health information may have been compromised as a result of such
116 unauthorized access or disclosure, and shall report the conditions of such unauthorized access or
117 disclosure, and further shall concurrently provide a copy of such report to the executive office.
118 Any unauthorized access or disclosures shall be punishable by the civil penalties under section
119 10.

120 Section 8. Patients shall have the choice to opt-out of having their health data disclosed
121 for electronic health information exchange activities that are owned and operated or contracted
122 by the Commonwealth.

123 Section 9. The executive office shall pursue and maximize all opportunities to qualify for
124 federal financial participation.

125 Section 10. The executive office may require participant fees from health care entities
126 that use health information exchange services. Participant fees collected under this section shall
127 be deposited into the Health Information Technology Trust Fund, as established by section 35RR
128 of chapter 10, or its successor trust fund. Nonpayment or late payment of fees may subject health
129 care entities to fines or penalties as determined by the executive office. The executive office shall
130 promulgate regulations to assess fair and reasonable fines or penalties.

131 Section 11. The council shall file an annual report, not later than April 1, with the joint
132 committee on health care financing, the joint committee on economic development and emerging
133 technologies, the house and senate committees on ways and means and the clerks of the house
134 and senate concerning the activities of the council in general and, in particular, describing the
135 progress to date in developing statewide health information exchange and recommending such
136 further legislative action as it deems appropriate.

137 Section 12. Unauthorized access to or disclosure of individually identifiable patient
138 health information shall be subject to fines or penalties as determined by the executive office.
139 The executive office shall promulgate regulations to assess fair and reasonable fines or penalties.

140 Section 13. Cybersecurity-based documentation, including but not limited to security
141 audit reports, provided to the executive office shall be exempt from disclosure under clause
142 Twenty-sixth of section 7 of chapter 4 and chapter 66.