

## Health Information Exchange (HIE) Oversight: Overview of Minnesota Law

On May 13, 2010, Minnesota enacted Chapter 336 (SF 2974) of the Laws of Minnesota establishing new certification requirements and state agency oversight for businesses conducting Health Information Exchange (HIE) in Minnesota.

Effective July 1, 2010, Minnesota law established a formal oversight process to ensure that entities involved in HIE in Minnesota are adhering to nationally recognized standards that will allow Minnesota providers and hospitals the opportunity to receive incentives for achieving “meaningful use” of electronic health records under federal law.

### Background

In 2009, Congress passed the Health Information Technology for Economic and Clinical Health Act (HITECH Act). As part of HITECH, the Office of the National Coordinator (ONC) established the State Health Information Exchange Cooperative Agreement Program under Section 3013 of the HITECH Act which provides funding to the states.

As directed by Minn. Stat. § 62J.495, the Commissioner of Health applied for this funding and was awarded \$9.6 million. **MDH is now charged with enabling health information exchange and ensuring appropriate governance and accountability.**

The HITECH Act also authorizes financial Medicare and Medicaid incentives for hospitals and health care providers that demonstrate meaningful use of electronic health records.

Minnesota health care providers and hospitals could access \$450-\$800 million in incentives if they successfully demonstrate “meaningful use” of an EHR system. Congress established three core elements for demonstrating meaningful use:

- Use of nationally certified EHR systems
- Submission of clinical quality measures
- Electronic exchange of health information

### Developing the Minnesota Approach

Changes to Minnesota’s e-health laws were necessary to enable Minnesota providers to achieve meaningful use and advance health reform goals.

Between October 2009 and January 2010, the Minnesota e-Health Advisory Committee convened a public workgroup to develop recommendations on health information exchange as well as sound practices in the following five critical domains identified by the ONC:

- Governance
- Finance
- Legal/Policy
- Technical Infrastructure
- Business and Technical Operations

These recommendations became the basis of the 2010 legislation, establishing a mechanism to oversee health information exchange activities. The recommendations were intended to:

- **Ensure that information follows the patient** across the full continuum of care.
- **Prevent the fragmentation of health information** that can occur when there is a lack of interoperability or cooperation between health information exchange service providers.
- **Ensure that organizations** engaged in health information exchange **are adhering to nationally recognized standards.**
- **Ensure** that health information exchange service providers properly protect **patient privacy and security.**
- **Ensure that Minnesota has** a reliable health information exchange **infrastructure** in place **to allow Minnesota providers and hospitals to achieve meaningful use incentives.**



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## Provisions in the HIE Oversight Law

Minnesota Statutes §§ 62J.495-62J.4982

### Clarifies Expectations for “Interoperable Electronic Health Records” [Minn Stat §62J.495]

1. **Updates interoperable electronic health records requirements.** The law clarifies expectations for Minnesota’s 2015 EHR mandate. These modifications make Minnesota law more consistent with Federal regulations.

### Establishes the Commissioner’s Responsibilities for Health Information Exchange (HIE) Oversight [Minn Stat §62J.498]

1. **Defines terms related to health information exchange.** [Minn Stat §62J.498 sub. 1] The law defines terms and incorporates definitions established by the Office of the National Coordinator.
2. **Specifies the Commissioner’s responsibilities for health information exchange oversight:** [Minn Stat §62J.498 sub. 2 (a)]
  - Take action on applications for certificates of authority to operate as a HIE service provider.
  - Provide on-going compliance monitoring.
  - Respond to public complaints.
  - Take enforcement action as necessary.
  - Report annually on key topics.
3. **Sets the process for public review of HIE service providers’ applications:** [M.S. §62J.498 sub. 2(b)]
  - Requires public hearings for input.
  - Clarifies requirements for making applications available.
  - Requires feedback and recommendations to be made public.
  - Requires consultations with impacted health care providers.

### Sets Requirements for Health Information Exchange Service Providers [Minn Stat §62J.4981]

1. **Requires HIE service providers to apply for a certificate of authority.** The law requires HIE service providers operating in Minnesota to have a certificate of authority and to meet various requirements.
2. **Defines requirements for HIE service providers.** The law identifies the minimum criteria for certification as an HIE service provider, such as:
  - Maintain strategic and operational plans that support health care providers in achieving meaningful use.
  - Meet national standards for exchanging health information.
  - Demonstrate compliance with all privacy and security requirements under state and federal law.

- Maintain a business plan that addresses the needs of community clinics, critical access hospitals, and free clinics in accessing health information exchange services.
- Interoperate with other HIE service providers.
- Submit a rate plan outlining fee structures for health information exchange services. The rate plan must:
  - Distribute costs equitably among users of health information services.
  - Provide predictable costs for health care providers.
  - Cover all costs associated with conducting the full range of meaningful use transactions.
  - Provide a predictable revenue stream for the HIE service provider to maintain operating costs and develop technical infrastructure.

### Defines a Compliance and Enforcement Framework

1. **Provides penalties and enforcement authority.** The law allows the Commissioner to levy administrative penalties, specifies considerations the Commissioner must take into account in determining the level of penalty applied, and establishes processes for carrying out the penalties. It also provides mechanisms for HIE service providers to contest the penalty.
2. **Allows for the suspension or revocation of certificates of authority.** The law provides the Commissioner the authority to suspend or revoke a certificate of authority under certain circumstances.
3. **Sets administrative procedures for a denial, suspension, or revocation of a certificate of authority.** The law specifies the administrative procedural requirements related to the denial, suspension, or revocation of a certificate of authority, including notification requirements, the right to a hearing, and the right to request a contested case proceeding.

### Other Provisions [Minn Stat §62J.4982 subs. 4 and 5]

1. **Requires Coordination.** The law requires the Commissioner to seek the advice of the e-Health Advisory Committee in updating certification criteria for HIE service providers. The law also requires the Commissioner to report to the Legislature on the status of health information exchange in Minnesota.
2. **Establishes fees to staff the HIE oversight.** The law establishes application fees and annual certificate fees for HIE service providers. The fees fund the commissioner’s HIE oversight activities.

### For more information:

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