

**TESTIMONY BEFORE THE INTERIM ADMINISTRATIVE RULES  
COMMITTEE  
TITLE 113 – PAGES 231-239  
NORTH DAKOTA HEALTH INFORMATION NETWORK  
DECEMBER 12, 2013**

Good Afternoon, Mr. Chairman and members of the Administrative Rules Committee, my name is Sheldon Wolf, the North Dakota Health IT Director. I am here today to provide information on the new North Dakota Health Information Network's administrative rules – Article 113-02 on behalf of the Health Information Technology Office and the Health Information Technology Advisory Committee (HITAC). Below are our responses to the questions posed by Legislative Council.

1. Whether the rules resulted from 2013 statutory changes made by the Legislative Assembly.

*Senate Bill 2037, in 2011, required adoption of rules under North Dakota Century code 28-32 for the use of health information, use of the health information exchange and participation in the health information exchange. Additionally, Senate Bill 2250, in 2013, created laws regarding participation in the health information organization.*

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

*The Health Information Technology for Economic and Clinical Health Act (HITECH) portion of the American Reinvestment and Recovery Act of 2009 (Public Law 111-5) provided the Office of National Coordinator for Health Information Technology (ONC) with health information exchange funds to facilitate the development of health information networks. The ONC provided the funding to all states through cooperative agreements. North Dakota received approximately 5.3 million dollars.*

*Development of the statewide health information network is not required by federal law but the State of North Dakota's sixty-first legislative assembly created the Health Information Technology Office and required it to implement a statewide health information electronic infrastructure which is known as the North Dakota Health Information Network (NDHIN). Additionally, participants and the NDHIN as a business associate of the participants must follow the Health*

*Insurance Portability and Accountability Act (HIPAA) Privacy and Security Standards.*

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

*A Notice of Intent to Adopt Administrative Rules was sent to Legislative Council on July 16, 2013. Public notices on the administrative rules hearing were printed in the state's major newspapers in late July and early August of 2013. A public hearing was held on August 22, 2013, and written comments were accepted through September 3, 2013.*

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules

*Two individuals attended the public hearing but did not provide testimony. One written testimony was received. The comments related to aligning the rules with changes that were made in the HIPAA Omnibus Rule during the rule writing process and other suggested language changes. These were considered, and as determined necessary or appropriate, were incorporated into the final rule.*

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

*The approximate cost of giving the public notice and holding the hearing on the proposed rules was approximately \$1,707.*

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

*The rules related to the organization of the health information technology office, identifies individual participation in the network, individual rights, participant participation, the authorized users of the participant and the uses and disclosures of protected health information. The rules also provide enforcement and privacy and security protections participants must follow.*

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28 32-08 and whether that regulatory analysis was issued. Please provide a copy.

*The regulatory analysis for these proposed changes is included as Attachment A.*

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

*ITD is not exempt from North Dakota Century Code 28-32-08.1; therefore a small entity regulatory analysis was completed. See Attachment B.*

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

*Any revenue generated by the NDHIN will offset the costs of developing and maintaining the NDHIN. Funding for the NDHIN project was included in the ITD budget for the 2013 – 2015 biennium.*

10. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

*A constitutional takings assessment was not prepared as these rules will not limit the use of private real property.*

11. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

*These rules were not adopted as emergency rules under NDCC 28-32-03.*

I am happy to answer any questions you may have.

**Small Entity Regulatory Analysis for Proposed Administrative Rules,  
Article 113-02, North Dakota Health Information Network.**

July 16, 2013

**1. Is the proposed rule mandated by federal law?**

The Health Information Technology for Economic and Clinical Health Act (HITECH) portion of the American Reinvestment and Recovery Act of 2009 (Public Law 111-5) provided the Office of the National Coordinator for Health Information Technology with health information exchange funding. The ONC provided the funding to all states through cooperative agreements. North Dakota received approximately 5.3 million dollars.

Development of the statewide health information network is not required by federal law but the State of North Dakota's sixty-first legislative assembly created the Health Information Technology Office and required it to implement a statewide health information electronic infrastructure which is known as the North Dakota Health Information Network (NDHIN).

**2. Is the agency except from the requirement of a small entity impact statement?**

The Information Technology Department is not an agency exempt from N.D.C.C. § 28-32-08.1.

**The following items were considered for reducing the rule's impact on small entities**

**3. Establishment of less stringent compliance or reporting requirements and less stringent deadlines for small entities.**

NDHIN establishes standards and policies for all participants which are consistent with HIPAA Privacy and Security standards. Participants currently are required to comply with those standards. Additionally, participation in the NDHIN is voluntary.

**4. Consolidation or simplification of compliance or reporting requirements for small entities.**

- Use of NDHIN by health care providers will simplify their current mandatory reporting requirements. For example, required data may be sent directly from the provider's electronic health record to the state immunization registry and reportable disease data can be sent directly to the state Department of Health.

- Participation in the NDHIN is expected to decrease the number of interfaces a small entity would otherwise need in order to achieve the same functionality provided by NDHIN.
- Participation in the NDHIN is voluntary.
- Providers will be able to search for a patient's health information through NDHIN, saving both provider's time and resources.
- The infrastructure being built may assist health care providers in achieving the requirements of meeting Meaningful Use.

**5. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.**

NDHIN establishes standards and policies for all participants which are consistent with Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security standards. Participants currently are required to comply with those standards.

**6. Exemption of small entities from all or any part of the requirements contained in the proposed rule.**

There are no exemptions because participation is voluntary and participants must already comply with state and federal laws such as the HIPAA.

**Small Entity Economic Impact Statement for proposed Administrative Rules,  
Article 113-02 , Information Technology North Dakota Health Information Network.**

July 16, 2013

**1. Is the proposed rule mandated by federal law?**

The Health Information Technology for Economic and Clinical Health Act (HITECH) portion of the American Reinvestment and Recovery Act of 2009 (Public Law 111-5) provided the Office of the National Coordinator for Health Information Technology with health information exchange funding. The ONC provided the funding to all states through cooperative agreements. North Dakota received approximately 5.3 million dollars.

Development of the statewide health information network is not required by federal law but the State of North Dakota's sixty-first legislative assembly created the Health Information Technology Office and required it to implement a statewide health information electronic infrastructure which is known as the North Dakota Health Information Network (NDHIN).

**2. Is the agency except from the requirement of a small entity impact statement?**

The Information Technology Department is not an agency exempt from N.D.C.C. § 28-32-08.1.

**The following items were considered for reducing the rule's impact on small entities**

**1. Small entities are subject to the proposed rule.**

Small businesses electing to participate in NDHIN could include but are not limited to ambulatory and specialty care clinics, hospitals, long term care facilities, public health units, emergency medical services and pharmacies.

**2. Administrative and other costs required for compliance with the proposed rule.**

The usage of the NDHIN is optional and voluntary for participants. Currently there are no costs being incurred by participants as a result of the new Administrative Rules or associated with participation in NDHIN. However, there may be fees assessed in the future.

A provider may incur expenses up to \$30,000 or more to develop interfaces between its electronic health record system and NDHIN. It is not possible to accurately anticipate those computer programming requirements or costs. The

North Dakota Health Information Technology Advisory Committee established a grant program to assist health care providers with those costs. Eligible providers may apply for and be awarded between \$10,000 and \$30,000 to assist with developing interfaces.

**3. The probable cost and benefit to private persons and consumers who are affected by the proposed rule.**

The benefits include better coordination of patient care, reduction in duplicate medical tests, safer administration of prescription medications, and immediate access to health information during a medical emergency or disaster. The probable cost to private persons and consumers is unknown at this time.

**4. The probable effect of the proposed rule on state revenues.**

Any revenue generated by NDHIN will offset the cost of developing and maintaining the North Dakota Health Information Network. Funding for the NDHIN project was included in the ITD budget for the 2013-2015 biennium.

**5. Consideration of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.**

NDHIN is a state wide system which ultimately should be a less intrusive or less costly method to achieve state-wide health care connectivity. The only alternate method to achieve the same result would involve building multiple exchanges within the state at a much higher cost to participants.

# The Choice is Yours

Participation is completely voluntary.

- By default, your health information may be searched for through the NDHIN.
- If at any time you do not want to participate or if you only want your information available in a medical emergency, complete and submit the Opt Out/Revoke Opt Out form with your doctor or directly with the NDHIN or online at [www.ndhin.org/consumers/opt-out-participation](http://www.ndhin.org/consumers/opt-out-participation).
- You may choose to make your information searchable again at any time by completing and submitting the Opt Out/Revoke Opt Out form with your doctor or directly with the NDHIN or online.
- You will NOT be denied medical care if you decide not to have your health records searchable through the NDHIN. However, if you decide not to make your health information available, emergency room doctors and other medical professionals may not have access to your health information when needed, which could be critical to saving your life.
- Even if you choose not to participate in the NDHIN, a treating doctor will still be able to select the NDHIN as a way to receive your lab results, radiology reports, and other information previously received by fax, mail, or other electronic communications.

# You Can Request a Change

- To request a change or correction to the information in your health record, contact your doctor.

# Your Rights Notice of Privacy and Data Practices

- You have the right to receive the NDHIN's Notice of Privacy and Data Practices in a timely manner.
- You have the right to opt out of participation in the NDHIN.
- Your doctor may NOT withhold coverage or care from you, nor may a health insurer deny you a health insurance benefit based solely on your choice to opt out of participation in the NDHIN.
- You have the right to request restrictions on certain uses and disclosures of your health information.
- You have the right to request an amendment or a change to your health information that you feel is incorrect.
- You have the right to request an accounting of disclosures, or to know who your health information was shared with, as defined by the Health Insurance Portability and Accountability Act Privacy Rule and the Health Information Technology for Economic and Clinical Health Act (HIPAA).
- You have the right to request an electronic copy of your health information that is available through the NDHIN. The NDHIN may provide the health information directly to you, or may require your doctor, participating in the NDHIN, to provide access or an electronic copy to you.
- You have a right to request restrictions on marketing and fundraising.
- You have the right to be notified of a breach that affects your health information.
- You have the right to file a complaint, as defined in the NDHIN policies and procedures.

To review the complete NDHIN Privacy and Data Practices, refer to the website below:

Contact us toll free at:  
(855) 761-0534  
[www.ndhin.org/consumers](http://www.ndhin.org/consumers)

North Dakota Health Information Network  
600 East Boulevard Avenue Dept. 112  
Bismarck, ND 58505-0100



Improving Healthcare.  
Empowering You.



# What is the NDHIN?

The North Dakota Health Information Network (NDHIN) is a system created to securely share your health information by connecting your doctors' electronic health record systems. Doctors need all of your health information to accurately diagnose and treat you. If they can view a more complete record of your health information, they can provide you with better care.

## How will NDHIN help you?

- Improve coordination of your care by increasing availability of your health records.
- Create safer administration of your prescription medications by allowing your doctor to see your complete medication list.
- Reduce duplicate medical tests by granting your doctor access to your updated health information.
- Empower your doctor to make more informed decisions.
- Avoid loss of key pieces of your health record during unexpected events and disasters.

## What information is shared with doctors?

- Your demographics, *such as* age, gender, or address.
- Your reports, *such as* labs, x-rays, hospital admissions, discharges or transfers.
- Your medications, allergies, immunizations and health conditions.
- Your insurance information.
- Your advance directives.

## We protect your information.

The NDHIN has security features in place to protect your health information. Only authorized individuals will be able to search for information from your health records.

## We Have Your Best Interests at Heart

Your health information may only be used for:

Treatment, payment, and healthcare operations, or as required by law.

The permitted uses as described in the NDHIN Policies and Procedures and the Participation Network Agreement.

As allowed under the HIPAA Rules and state law.

