

(H. B. 3711)  
(Conference)

(No. 40-2012)

(Approved February 2, 2012)

## **AN ACT**

To create the “Puerto Rico Health Information Network Act”; to create the Puerto Rico Health Information Network; to create the office of the “State Health Information Technology Coordinator,” in order to comply with the public policy on health of the HITECH Act and the requirements of the Office of the National Coordinator for Health Information Technology in the U. S. Department of Health; and for other purposes.

### **STATEMENT OF MOTIVES**

Today, more than ever, information technology holds great potential to have an impact on the security, cost, and quality of healthcare services, due to the speedy advancement of the technology used to create, transfer, store, and manage the health information of individuals. Both the highest spheres of Government and the private sector have recognized the importance of exploiting information technology’s potential to face increasing costs and inefficient aspects of healthcare services. The use of information technology in the healthcare service industry allows for: i) improving patient care coordination by promoting the exchange of information among physicians, while applying the necessary confidentiality safeguards; ii) improving community healthcare services by using aggregate data for research, public health issues, emergency preparations, and quality improvement efforts; and iii) providing individuals with electronic access to their health information, thus placing opportunities to improve their health and well-being within closer reach.

Providing these benefits calls for an infrastructure capable of sustaining and promoting the use of health information for the patient's benefit. This is information that goes beyond the limitations of a specific provider or health plan. It is also necessary to institute a process that allows for the secure electronic sharing of this information in order to protect its confidentiality. Electronic Health Records (hereinafter, "EHRs") and the Health Information Exchange (hereinafter, "HIE") are the foundations for such infrastructure.

The Government of Puerto Rico recognizes the HIE's potential to improve the quality and efficiency of healthcare of the People of Puerto Rico and is therefore committed to supporting the implementation and exchange of EHRs for the benefit of our patients. The objective of the HIE is to facilitate access to and retrieval of patient care data in a more secure, timely, and efficient manner. Furthermore, the HIE is extremely useful as it enables public health authorities to conduct an ongoing analysis of the health of the People of Puerto Rico. The Government of Puerto Rico, vis-à-vis the reasons stated above, has great interest in promoting the adoption of a health information technology system so as to improve safety and quality in healthcare and protect information relative to the patient's health.

HIE systems make it easier for healthcare service providers to comply with healthcare standards by allowing them to participate through electronic media in the ongoing care of any one patient serviced by multiple healthcare providers. In addition, these systems benefit secondary healthcare service providers by reducing costs associated with duplicate testing; the time needed to recover lost patient information; the use of paper, ink, and office equipment; hand-printing, digitization and management of documents; mailing of patient information; telephone calls to confirm delivery of communications; referrals and test results.

To ensure that the benefits of health information technology will be available to our People, so as to promote greater participation of patients in decisions concerning their health care, the Government of Puerto Rico must provide the necessary structure for the HIE to operate securely and effectively. Likewise, the Government must encourage all components of the health industry to adopt health information technologies and the use of electronic health records among healthcare service providers and patients.

In February, 2009, President Barack Obama signed the American Recovery and Reinvestment Act (hereinafter, the “ARRA”). Title XIII of this Act, entitled “Health Information Technology for Economic and Clinical Health” (hereinafter, “HITECH Act”), had a significant impact on the healthcare landscape as to the rendering of services, health information exchange, and the legal framework that protects such information. The HITECH Act provides billions of dollars in incentives for the states and territories of the American nation to adopt and implement the technological infrastructure with the capacity to sustain EHR applications.

The financial incentives under the HITECH Act are granted through the Medicare and Medicaid Federal programs and shall be obtained by those eligible healthcare professionals who adopt EHRs and are able to accomplish their “Meaningful Use.” Eligible healthcare professionals could receive financial incentives of up to \$44,000 under the Medicare program and \$63,750 under Medicaid for the adoption and meaningful use of EHRs in their practice. As additional support to enable such providers to reach these goals, the Office of the National Coordinator for Health Information Technology (or the ONC), attached to the United States Department of Health and Human Services, granted budget funding for up to 21.2 million dollars for the establishment of a Regional

Extension Center in Puerto Rico in order to offer technical cooperation and education to providers in the adoption of EHR systems into their medical practice.

The creation of a statewide health information technology system shall be beneficial in various aspects, such as allowing for the general use of EHRs by healthcare providers and patients, thus ensuring that healthcare providers in Puerto Rico will achieve a meaningful use of EHRs, as defined by the Federal Act, as well as enabling them to fully participate in the available incentives offered by the Federal government under Medicaid and Medicare for health information technology.

In February, 2010, the Office of the National Coordinator also made a 7.7 million dollar grant to the Government of Puerto Rico destined to the planning, adoption, and implementation of the necessary infrastructure for health information networks. In concurrence with the acquisition and establishment of the technological infrastructure, it is necessary to develop the legal framework to meet security and privacy standards in the management of health information as required by Federal law. These changes demand an in-depth and comprehensive revision process of the laws in effect and their ensuing amendments, as well as the promulgation of the necessary legislation to promote the participation of healthcare providers and the population, in order to carry out the exchange of health information in a secure and effective manner.

This legislation shall allow for the establishment of such legal framework for the development of a health information technology system in Puerto Rico that enables us to meet the requirements set forth by the Federal Act and thus bring about a significant improvement in the healthcare services received by all Puerto Ricans. To accomplish the foregoing, a non-profit corporation shall be created pursuant to Federal law requirements to be the state designated entity that shall

establish and implement the plans for health information exchange throughout Puerto Rico and abroad. Such plans shall establish adequate policies and service networks within the broadest national scope in order to achieve the speedy development of the capacity for connectivity among healthcare service providers. This corporation shall exercise its powers through a board of directors constituted by the Secretary of Health, the Executive Director of the Puerto Rico Health Insurance Administration, the President of the Government Development Bank, and four representatives from the various sectors of the health industry. The Board shall be responsible for creating several expert committees to serve as Board advisors on specialized matters, such as technological infrastructure, public health, and finance. The Board shall also be empowered to create any other expert committee as it may deem necessary.

Furthermore, this Act creates the office of the State Health Information Technology Coordinator (hereinafter, the “Coordinator”). The State Health Information Technology Coordinator shall be in charge of promoting and establishing a HIE Strategic and Operational Plan, in order to guarantee the secure transfer of health information as required under Federal and Commonwealth regulations.

In this day and age, the social development of individuals entails an interdependence with technical and scientific advancements and realities. The physical and mental well-being of all societies, as well as their social and economic development, has been irreversibly impinged upon by information technology and instant communication between nations. This administrative practice and its results have provided many nations with the ability to receive, gather, and analyze vital data of their citizens, and have consequently allowed for the design, implementation, and auditing of the effectiveness of their public health

policies. All this has rendered the access to healthcare services more effective and efficient for the benefit of individuals and communities alike. The synergy between health information exchange and social development is the driving force behind the advancements in scientific research pertaining to the field of medicine. The logical, necessary, and inescapable consequence is to insert information technology into our healthcare system for the benefit of patients and all the components of the health industry in Puerto Rico.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.—This Act shall be known as the “Puerto Rico Health Information Network Act.”

Section 2.—Definitions.—

For the purposes of this Act, the following terms and phrases shall have the meaning stated below:

a. “Coordinator”.—Means the “State Health Information Technology Coordinator,” which office is created under this Act.

b. “Network”.—Means the “Puerto Rico Health Information Network” or PRHIN, a nonprofit corporation created under this Act.

c. “Affiliated Entities”.—Means participating entities in the health sector that are legally distinct but which share a common administration of organizationally similar, albeit differentiable, activities (e.g., hospital chains). These entities may share a common owner or control so as to designate themselves or their healthcare components as one single covered entity. Common control exists when an entity has the direct or indirect power to significantly influence or direct the actions or policies of another entity. Common owners exist when one or several entities own an interest in another entity. Such organizations may jointly promulgate a single notice of information practices and consent forms.

d. “Nonaffiliated Entities”.—Means covered entities that are legally separate.

e. “Healthcare Facilities”.—Means the establishments that engage in rendering medical services, including hospitals (of any kind), health centers, public health units, diagnosis and treatment centers, nursing homes, long-term care centers, psychosocial rehabilitation centers, medical facilities for persons with mental retardation, and any other medical institution authorized by the Secretary of Health to provide medical services, as well as any facility in which healthcare providers offer healthcare services.

f. “United States Government”.—Means the Government of the United States of America, including its agencies and instrumentalities.

g. “Government of Puerto Rico”.—Means the Government of Puerto Rico, including its agencies, corporations, instrumentalities, and municipalities.

h. “HIE” (“Health Information Exchange”).—Means the management and exchange of health information or data accessible to all components of the health industry.

i. “Central Technological Infrastructure”.—Means all communications and information technologies required to enable the exchange of health information between and among Stakeholders.

j. “Board”.—Means the Board of Directors of the PRHIN.

k. “NHIN” (“Nationwide Health Information Network”).—Means the Nationwide Health Information Network of the United States, developed to provide the necessary infrastructure for interoperable nationwide health information systems that will connect providers, consumers, and other stakeholders in healthcare.

1. “ONC” (“Office of the National Coordinator for Health Information Technology”).—Means the Office of the National Coordinator for Health Information Technology, attached to the United States Department of Health and Human Services (HHS), entrusted with the task of establishing the NHIN.

m. “Stakeholder”.—Means any Person that meets the stakeholder requirements set forth by the Network, has been provided with digital credentials, and has executed a stakeholder agreement with the Network.

n. “Person”.—Means any natural or juridical person.

o. “Strategic and Operational Plan”.—Means the strategic and operational plans for the PRHIN approved by the ONC of the United States Department of Health.

p. “Healthcare Service Provider”.—Means any person or entity authorized under the laws of Puerto Rico to render or provide medical-hospital healthcare services in Puerto Rico.

Section 3.—Creation.—

The “Puerto Rico Health Information Network” is hereby created as a nonprofit corporation, independent and separate from any other agency or instrumentality of the Government of Puerto Rico.

The Network shall have administrative and fiscal autonomy, be independent from the Executive Branch, and be deemed to function with the highest public interest.

The Network is the entity designated by the Government of Puerto Rico (State Designated Entity) to operate the HIE within and outside the jurisdiction of Puerto Rico.

The Network may not be sued for damages caused by, related to, or arising from measures, determinations, and acts conducted when providing HIE-related services while exchanging health information if the Government of Puerto Rico determines that an illness, a health condition or a specific state or national emergency constitutes a public health emergency or threat.

Such immunity does not apply to acts or omissions that may constitute gross negligence.

#### Section 4.—Powers and Duties.—

The Network shall have the following powers and duties:

a. To adopt and implement exchange, security, and interoperability standards for electronic systems and health information, pursuant to Federal and Commonwealth requirements within and outside the jurisdiction of Puerto Rico.

b. To create and manage the Master Patient Index, Provider Indexes, and other centralized indexes or registers required for the electronic exchange of information within and outside the jurisdiction of Puerto Rico.

c. To integrate, through technology and operational processes, the health data of patients, aimed at accomplishing the exchange of health information between affiliated and nonaffiliated entities within and outside the jurisdiction of Puerto Rico.

d. To implement, together with the Department of Health of Puerto Rico and in coordination with the Government of Puerto Rico and the United States Government, the HIE-related public policies drafted by the Department of Health of Puerto Rico in an integrated and uniform manner.

e. To promote the active participation of healthcare service providers in Puerto Rico with regards to the secure and effective exchange of health information under health information standards.

f. To plan, acquire, and establish the Central Technological Infrastructure necessary to exchange patient health information.

g. To design and implement the organizational structure required to operate the HIE.

h. To develop and implement the regulations, norms, and procedures necessary for exchanging health information and operating the Network in compliance with the public policy drafted by the Department of Health and the applicable Federal and Commonwealth laws and regulations. Furthermore, the Network shall counsel the Puerto Rico Health Insurance Administration so that the latter may effectively oversee and manage the implementation of the government health plan.

i. To exercise such rights and powers as necessary or convenient to meet the aforementioned purposes, including, but not limited, to the following:

1. To legally maintain its corporate name, unless this Act is amended.

2. To adopt, alter, and use a corporate seal, of which judicial notice be taken.

3. To sue under its corporate name before any Court and be a party to any court, administrative or any other proceeding.

4. To execute contracts and documents as necessary or convenient to the exercise of any of its powers.

5. To acquire real or personal, tangible or intangible property.

6. To appoint staff as necessary for the operation of the Network.

7. To accept gifts or contributions of any kind, insofar as these do not represent a conflict of interests between the party making the gift and the public purpose set, managed, and sought by the Network.

j. To solicit and manage Federal and Commonwealth public funds to promote, adopt, and implement the Central Technological Infrastructure and HIE health information technology systems.

k. To assess, fix, alter, impose, and charge reasonable fees, except to patients, in order to guarantee its fiscal sustainability.

l. To determine access levels and controls for the exchange of health information.

m. To adopt and promulgate the procedure to address and settle any controversy in connection with services rendered by the Network pursuant to the provisions on claim and complaint resolution of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) or to alternate methods for the settlement of disputes.

n. To execute collaboration agreements with public and private institutions or organizations in order to improve the quality of healthcare services in Puerto Rico.

#### Section 5.—Rights of the Network.—

The Network shall have rights over the following:

a. HIE data ownership, which it may only share in compliance with the applicable laws and regulations of the Government of Puerto Rico and the United States Government.

b. Copyrights and patents on information system applications designed for the Network, as well as any work deriving from and any process designed for the HIE.

c. The right to access databases resulting from the exchange of data by stakeholders, in full compliance with the applicable laws and regulations of the Government of Puerto Rico and the United States Government.

Section 6.—Board of Directors.—

The Network shall exercise its powers through a Board of Directors, which shall draft the administrative and operational policy of the Network. Board members must be residing and domiciled in Puerto Rico and have an upstanding reputation. The Board of Directors, as a governing body, shall have the authority to exercise all the powers of the Network and adopt such norms, rules, regulations, and procedures as necessary to exercise the powers and meet the purposes of the Network.

The Board of Directors shall be composed of seven (7) members.

a. The Board shall be constituted by three *ex officio* voting members, and four voting members who shall be initially and randomly designated as follows: two (2) members shall be appointed for a term of two (2) years, and two (2) members shall be appointed for a term of four (4) years each. The subsequent appointment of members other than *ex officio* members shall be made for a term of three (3) years each.

b. Board members other than *ex officio* members shall be appointed by the Governor with the advice and consent of the Senate. The Governor may remove or request the resignation of any Board member for just cause.

c. Board members shall hold office until their successor is appointed and takes office. Should any vacancy arise, a substitute shall be appointed, who shall discharge his/her functions for the remainder of the term of his/her predecessor.

d. Board members shall not receive any financial compensation whatsoever for discharging their functions. Any Board members who are not public officials shall be entitled to a per diem to be determined by the Board of Directors for each day they attend Board meetings.

e. Four (4) Board members shall constitute a quorum. However, a quorum shall require the attendance of at least one (1) *ex officio* member.

f. The Board shall convene at least three (3) times a year in regular meetings. The Board may convene in special meetings as many times as it may deem necessary or convenient, after the Chair of the Board of Directors has called such meeting.

g. The Board members shall be:

1. The Secretary of the Department of Health of Puerto Rico, or in his/her stead, the State Health Information Technology Coordinator;

2. The Executive Director of the Puerto Rico Health Insurance Administration, or at any time he/she is unable to attend, the person designated by him/her, provided that such designation shall fall on one single person for the duration of his/her tenure;

3. The Director of the Office of Management and Budget, or at any time he/she is unable to attend, the person designated by him/her, provided that such designation shall fall on one single person for the duration of his/her tenure;

4. One (1) representative of the clinical laboratory sector who holds a license in effect and is an active practitioner;

5. One (1) representative of the pharmacy sector who is a pharmacist and holds a license in effect;

6. One (1) representative of the physicians sector in Puerto Rico who holds a license in effect as is an active practitioner;

7. One (1) representative of the healthcare facility sector who is a health facility administration professional, holds a license in effect, and is an active practitioner.

The Chair, the Vice Chair, and the Secretary of the Board shall be selected by the vote of the Board members and their tenure shall never exceed two (2) years. The Chair shall represent the Network in any acts, discharge such duties, and have such responsibilities, powers, and authorities as delegated onto him/her by the Board of Directors of the Network.

The Board shall be empowered and authorized to make and enforce decisions and to exercise the rights and powers described in Section 4 of this Act.

As a governing body, the Board of Directors shall have the power and the duty to:

- a. Appear in representation of the interests of the Network before any forum, as necessary.
- b. Promulgate regulations and a code of ethics.
- c. Meet the goals of the HIE Strategic and Operational Plan for Puerto Rico.

Section 7.—Expert Committees.—

The Board of Directors of the Network shall create an Expert Committee on Finance, an Expert Committee on Technological Infrastructure, an Expert Committee on Public/Clinical Health, an Expert Committee on Healthcare Payors, and any other Committees it may deem necessary.

Committee members shall not receive any financial compensation whatsoever for discharging their duties.

Section 8.—State Health Information Technology Coordinator.—

The office of State Health Information Technology Coordinator is hereby created, to be attached to the Department of Health of Puerto Rico for a term of seven (7) years. Initially, the salary of the Coordinator shall be paid for by the Federal funding obtained. Thereafter, however, the Department of Health of Puerto

Rico shall include the necessary funding to pay for the salary and benefits pertaining to the office of Coordinator in the budget request submitted to the Office of Management and Budget.

The Governor of Puerto Rico shall make such appointment with the advice and consent of the Senate of Puerto Rico.

The Coordinator may only be removed after filing of charges or for just cause, in observance of the due process of law.

The Coordinator must be a person with education in health information technology.

The Coordinator shall have the following responsibilities:

- a. To promote the public policy of the Department of Health for the HIE.
- b. To develop, update, and direct, together with the Secretary of Health, the implementation in Puerto Rico of the HIE Strategic and Operational Plan for Puerto Rico.
- c. To coordinate the HIE within and outside the jurisdiction of Puerto Rico.
- d. To adopt, develop, and implement any necessary strategies required by the Government of Puerto Rico for the effective implementation of the HIE Strategic and Operational Plan for Puerto Rico. Furthermore, the Coordinator shall be under the obligation to oversee compliance with the provisions of subsection (h) of Section 4 of this Act.
- e. To coordinate the secure and effective integration of the Network as the entity designated by the Government of Puerto Rico to operate the HIE before the NHIN and with similar networks and technological infrastructures in other jurisdictions.

f. To promote active and effective collaboration between health-related sectors in Puerto Rico and any other jurisdictions.

g. To promote and execute alliances that inure to the benefit of the health and public health of the People of Puerto Rico.

h. To establish strategies, policies, and procedures for HIE risk management and mitigation within and outside the jurisdiction of Puerto Rico.

i. To represent Puerto Rico in any meeting, conference, hearing, and/or any other related event, which list shall not be constrictive, and the HIE outside Puerto Rico, in order to further the implementation of the public policy relative to health information technology exchange between Puerto Rico and other jurisdictions.

j. To oversee, together with the Department of Justice of Puerto Rico, compliance with policies and procedures in case of violations of Federal and Commonwealth laws and regulations related to health data and information security and confidentiality.

Section 9.—Limitation of Liability of the Board of Directors, Expert Committees, and Stakeholders.—

Any person who, in good faith, relays information or data provided by the HIE or renders services to a patient who sustains damages as a result of such services due to information provided by the HIE shall not be held civilly or criminally liable, depending on the case. This provision does not apply in cases of gross negligence or malicious intent.

Section 10.—Transfer of Property to the Network.—

The transfer to the Network of staff and of any and all real and personal, tangible and intangible property, rights, and obligations under the custody or administration of the Department of Health that were previously conferred for the purpose of creating the Network, is hereby authorized.

Section 11.—Protection of Information.—

If, for any reason, the Network should cease to be a State Designated Entity, be dissolved, become insolvent, or cease operations pursuant to this Act, all of its assets shall be transferred to the Department of Health of Puerto Rico.

Section 12.—Prohibition.—

The Network, the members of its Board of Directors or Committees, its employees, or any other representatives may not use the property or instruments of the Network to provide access to health information in violation of the Federal and Commonwealth laws and regulations that protect health-related or other information that could identify an individual [e.g. HIPAA, the Privacy Act of 1974, the Puerto Rico Mental Health Act, the Family Educational Rights and Privacy Act (or FERPA), etc.].

Section 13.—It is hereby provided that all regulations related to the Network's expenditures and generation of funds shall have the approval of the Office of the Inspector General of Puerto Rico. The Network shall be under the obligation to render an annual fiscal report to the Office of the Inspector General of Puerto Rico and to the Legislative Assembly of Puerto Rico.

Section 14.—Effectiveness.—

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 40-2012 (H. B. 3711) (Conference)** of the **Special Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to create the “Puerto Rico Health Information Network Act”; to create the Puerto Rico Health Information Network; to create the office of the “State Health Information Technology Coordinator,” in order to comply with the public policy on health of the HITECH Act and the requirements of the Office of the National Coordinator for Health Information Technology in the U. S. Department of Health; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on the 29<sup>th</sup> day of March, 2012.

María del Mar Ortiz Rivera