

# SENATE NO. 263

## AN ACT TO PROMOTE THE USE OF HEALTH INFORMATION TECHNOLOGY

*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 1. e – HEALTH INSTITUTE

2 Chapter 40J of the general laws is hereby amended by inserting after section 6A, the following new  
3 section:-

4 Section 6B, The corporation shall establish an institute for health care innovation, technology  
5 and competitiveness, to be known as the Massachusetts e-Health Institute, and a fund to be known  
6 as the e-Health Institute Fund, to be held by the corporation separate and apart from its other funds,  
7 to finance the activities of said institute. The executive director of the corporation shall appoint a  
8 qualified individual as director to manage the affairs of said institute. The corporation, on  
9 recommendation of the executive director, shall appoint not less than 7 qualified individuals to a  
10 governing board to assist the corporation in matters related to said institute and said fund and in  
11 matters related to the research center matching fund established in section 4F, including a dean of a  
12 medical school, head of an emerging health technology company, a cio of a major teaching hospital,  
13 and a technology transfer officer or individual qualified in technology commercialization from a  
14 university in the commonwealth. The executive director, the director of the office of business and  
15 technology, and the president of the Massachusetts development finance agency shall serve as ex-  
16 officio members of said governing board. Said board shall consult with the joint committee on  
17 health care financing, the house and senate committees on science and technology and ways and  
18 means during the preparation of a detailed plan for the operation of said institute and the matching

19 fund. Upon approval of such detailed plan by the board of directors of the corporation, said board  
20 shall delegate such authority to the governing board of the institute as it deems appropriate to  
21 implement such plan. The members of said governing board shall be deemed to be directors for  
22 purposes of the fourth paragraph of section 3. The purpose of the institute shall be to serve as an  
23 agent of the commonwealth to create and maintain a more favorable and responsive environment in  
24 the commonwealth for the development, growth, attraction and retention of technology to improve  
25 patient safety and quality, and to lower costs in the state's health care system, with a particular  
26 attention paid to promoting deployment of health information technology in discrete and  
27 underserved regions of the commonwealth by harnessing local support and involvement in such  
28 development activities and by improving the health information technology infrastructure for such  
29 clusters. In furtherance of these public purposes, the institute shall endeavor to identify regions of  
30 the commonwealth in which compelling opportunities to make strategic investments appear to be  
31 present and develop strategies therefor. The institute may also provide development support more  
32 generally to organizations in regions across the commonwealth to assist the formation and growth  
33 of emerging health technology sectors in those regions and may provide support to departments,  
34 agencies, and quasi-public entities of the commonwealth for activities that are consistent with the  
35 purposes of the institute. The institute may make grants in support of Massachusetts-based public  
36 and private enterprises developing and deploying new technologies to significantly increase the  
37 efficiency, safety and quality of the health care system. The institute may work in collaboration  
38 with the Massachusetts technology collaborative, the New England Health Care Institute, the  
39 Massachusetts Hospital Association, the Massachusetts Association of Community Hospitals, other  
40 quasi-public and not-for-profit agencies. Successful grants should incorporate regional involvement  
41 through alliances among municipalities, colleges, hospitals, health centers, skilled nursing facilities,

42 business and industry, community based organizations, non-profits and labor unions. Insofar as apt,  
43 in the determination of the board, the provisions of this chapter that apply to centers and to the  
44 center fund shall apply to said institute and to the e-health institute fund, respectively. Without  
45 limiting the generality of the foregoing, the corporation may apply moneys in said fund to start-up  
46 expenses and project costs of said institute and related activities, grants or loans to nonprofit or  
47 other organizations to promote the use of electronic health records, computerized physician order  
48 entry systems, telemedicine, and to promote the adoption of promising, innovative technologies to  
49 create and test methods by which payers and providers can actively speed the uptake of selected  
50 innovations that are valuable to patients. The institute may also make grants to support health care  
51 workforce development including, but not limited to, providing funds for programs that provide  
52 education and training to enhance the skills of physicians and nurses, as well as low skilled  
53 workers, brokered business assistance services and marketing expenses, provided that written notice  
54 shall be given to the house and senate committees on ways and means at least 10 business days  
55 before any disbursement of funds amounting to \$250,000 or more. The institute shall also file an  
56 annual report of its activities with the joint committee on health care financing, the house and senate  
57 committees on science and technology and ways and means.

58 (b) No grant shall be awarded from the e-health institute fund without the corporation first having  
59 consulted with the public health council established pursuant to. The request for consultation shall  
60 be submitted not less than 15 business days prior to the execution of any grant award contract. All  
61 successful grant applications shall define specific goals and expected outcomes and contain  
62 corresponding accountability measures. Applicants that fail to meet these accountability measures  
63 shall be barred from pursuing any additional grants under this section for 5 years from the effective  
64 date of the grant. Notwithstanding any general or special law or rule or regulation to the contrary, in

65 order to support health care improvement throughout the commonwealth, any organization found to  
66 be eligible to receive financial assistance from the e-health institute fund in support of certain  
67 specified purposes and activities shall be deemed to be eligible as well to receive financial  
68 assistance for such specified purposes and activities as qualified investments of the emerging  
69 technology fund established pursuant to section 27 of chapter 23G of the General Laws and a  
70 portion of the emerging technology fund shall be allocated and reserved for such application.

71 (c) In making the initial round of grants from the innovation institute fund, no less than \$500,000  
72 shall be distributed over a 3 year period to each of the 5 geographic regions of the state, the central  
73 area, the greater Boston area, the north east area, the south east area and the western area, as those  
74 areas are defined generally as follows:

75 "Central Area", the Northern Worcester Service Delivery Area and the Southern Worcester  
76 Service Delivery Area as specified in 20 CFR 661.280;

77 "Greater Boston Area", the Boston Service Delivery Area, the Metropolitan North Service  
78 Delivery Area and the Metropolitan South/West Service Delivery Area as specified in 20 CFR  
79 section 661.280;

80 "North East Area", the Lower Merrimack Valley Service Delivery Area, the Northern Middlesex  
81 Service Delivery Area and the Southern Essex Service Delivery Area as specified in 20 CFR  
82 661.280;

83 "South East Area", the Bristol Service Delivery Area, the Brockton Service Delivery Area, the  
84 Cape and Islands Service Delivery Area, the New Bedford Service Delivery Area and the South  
85 Coastal Service Delivery Area as specified in 20 CFR 661.280; and

86 "Western Area", the Berkshire Service Delivery Area, Franklin/Hampshire Service Delivery Area  
87 and Hampden Service Delivery Area as specified in 20 CFR 661.280.

88 (d) The purpose of said initial round of grants shall be to spur deployment of electronic health  
89 records (EHR) and computerized physician order entry (CPOE) systems to every physician office in  
90 the Commonwealth and to develop and implement a statewide health information technology plan  
91 that provides for—

92 (1) a health information network that will serve a geographic area that—

93 (a) is located in 1 or more regions of the Commonwealth; and

94 (b) does not include any area to be served by the health information  
95 network of any other grantee under this section;

96 (2) a plan to finance acquisition and implementation of technology by health care providers  
97 as needed to allow participation by the providers in the network;

98 (3) to identify best practices for implementing these IT systems across the state and develop  
99 a plan to share this information with all health care providers in the state,

100 (4) a plan to use the network to improve patient safety, quality, and efficiency within the  
101 health care system through the establishment and implementation of electronic health  
102 records (EHR) and computerized physician order entry (CPOE), and

103 (5) the pursuit of facilitating adoption of advanced technologies in all of the state's  
104 hospitals, community health centers and doctors' offices with the circulation of its  
105 Readiness Roadmap, Draft CPOE Standards, and Readiness Scores.

106 (e) USE OF FUNDS- The Massachusetts e-Health Institute may not make a grant under this section  
107 unless the recipient organization agrees to use the grant—

108 (1) to develop and implement a electronic health records (EHR) or computerized physician  
109 order entry (CPOE) or both; and

110 (2) to begin implementation of the plan not later than the beginning of the second year of the  
111 grant.

112 (f) STATEWIDE HEALTH INFORMATION TECHNOLOGY PLAN-

113 (1) STATEWIDE HEALTH INFORMATION TECHNOLOGY PLAN- The institute shall  
114 prepare a statewide health information technology plan that shall provide for—

115 (a) the establishment and implementation throughout the Commonwealth of a statewide  
116 health information network

117 that—

- 118 i) allows the seamless, secure, electronic sharing of health information among  
119 health care providers, health plans, and other authorized users;
- 120 ii) provides consumers with secure, electronic access to their own health  
121 information;
- 122 iii) meets data standards for interoperability adopted by the Massachusetts  
123 Technology Collaborative, including any standards providing for  
124 interoperability among other health information networks, in cooperation  
125 with the Massachusetts e-Health Initiative, the Massachusetts Health Data  
126 Consortium, MA-SHARE and other appropriate organizations;
- 127 iv) provides for interoperability with any health information technology product  
128 certified by the certification entity described in section 4(a);
- 129 v) meets the privacy requirements of subsection (b);
- 130 vi) gives patients the option of allowing only designated health care providers to  
131 access their individually identifiable information concerning diagnosis and  
132 treatment of sexually transmitted diseases, addiction, and mental illnesses;

- 133                   vii)    provides such public health reporting capability as the Secretary of Health  
134   and Human Services requires;
- 135                   viii)   allows for such reporting of, and access to, health information for purposes of  
136   research (other than individually identifiable patient health information) as  
137   the Secretary of Health and Human Services requires; and
- 138                   ix)    allows for the reporting of provider-specific health information (other than  
139   individually identifiable patient health information) required for the  
140   calculation of any voluntary consensus standard endorsed by the National  
141   Quality Forum;

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- 143                   (b) the financing and technical assistance required to allow health care providers, especially  
144   small physician groups, to acquire and implement electronic medical records,  
145   computerized physician order entry, or other technology necessary to participate in the  
146   statewide health information network; and

- 147                   (c) agreements among health care stakeholders regarding data reporting, reimbursement  
148   practices, or other mechanisms to use the statewide health information network to  
149   improve patient safety, quality, and efficiency within the health care system.

150                   (2) CONTENTS- A statewide health information technology plan shall--

- 151                   a) be developed with the participation and widespread support of all health care  
152   stakeholders of the Commonwealth, including but not limited to hospitals, practicing  
153   physicians (including those from small physician groups), nursing facilities and skilled  
154   nursing facilities, other health care providers, health plans, employers, and patient  
155   groups;

- 156 b) describe the governance structure of the statewide health information network;
- 157 c) describe the technologies and systems, including interoperability data standards, that  
158 will be used to establish a health information network consistent with paragraph (A)(i);
- 159 d) explain what information will be able to be accessed, transferred, or exchanged through  
160 the health information network and what capabilities the network will have to include  
161 other types of information in the future;
- 162 e) describe plans to ensure network reliability, expected frequency of network  
163 interruptions, and backup procedures in the event of network interruptions;
- 164 f) describe sources of initial financing for the development of the health information  
165 network and a financing model for long-term sustainability of the network;
- 166 g) describe sources of financing the acquisition, implementation, and maintenance of  
167 technology necessary to allow health care providers, especially small physician groups,  
168 to participate in the health information network;
- 169 h) describe how the health information network will be used to improve health care quality  
170 and the health outcomes of patients;
- 171 i) establish how administrative and clinical savings resulting from widespread use of the  
172 new health information network will be accounted for and allocated;
- 173 j) explain how the statewide health information organization involved will ensure  
174 widespread participation by health care providers (especially small physician groups) in  
175 the health information network and what support and assistance will be available to  
176 physicians seeking to integrate health information technologies into their practices;
- 177 k) describe how patients and caregivers who are not health care providers will be able to  
178 access and utilize the health information network;

- 179 l) explain how the statewide health information network will protect patient privacy and  
180 maintain security; and
- 181 m) explain how the statewide health information network will ensure the participation of  
182 health care providers serving minority communities, including communities in which  
183 English is not the primary language spoken.

184 (3) SELECTION- In selecting grant or loan recipients under this section, the e-health institute  
185 shall take into account—

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- 187 (a) existing technological and organizational infrastructure upon which the health  
188 information network can build;
- 189 (b) the extent of stakeholder participation;
- 190 (c) health care provider participation commitments;
- 191 (d) capacity to measure quality and efficiency improvements;
- 192 (e) replicability;
- 193 (f) the extent of the opportunity for a plan to improve health care quality and the health  
194 outcomes of patients in the region to be served;
- 195 (g) such other factors as the Collaborative considers relevant.

196 (4) Privacy Protections-

- 197 (a) Any health information network funded in whole or in part under this section shall--  
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- 199 i) comply with the privacy protections of regulations promulgated  
200 pursuant to section 264(c) of the Health Insurance Portability and

201 Accountability Act of 1996 (Public Law 104-191; 110 Stat. 2033);

202 and

- 203 ii) (ii) allow patients to exclude their health information from the  
204 health information network.

205 (b) UNAUTHORIZED DISCLOSURE- In the event of the unauthorized access to or  
206 disclosure of individually identifiable patient health information by or through the  
207 statewide health information network, or by or through any technology grantees funded  
208 in whole or in part under this section, the operator of such network or grantee shall—

- 209 i) report the conditions of such unauthorized access or disclosure to  
210 the Collaborative in such manner as the Collaborative requires; and  
211 ii) (ii) provide notice to any individuals whose patient health  
212 information may have been compromised in violation of this  
213 subsection as a result of such unauthorized access or disclosure.

214 (c) Application- To seek a grant under this section, an applicant shall submit an application  
215 to the Collaborative in such form, in such manner, and containing such information and  
216 assurances as the Collaborative may require.

217 (d) Technical Assistance-

- 218 i) The Collaborative shall provide to the statewide health information  
219 technology network and to individual technology grantees such  
220 technical assistance as the Collaborative deems appropriate to carry  
221 out this section, including assistance relating to questions of  
222 governance, financing, and technological approaches to the creation  
223 of health information networks.

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- ii) STATEWIDE TECHNICAL ASSISTANCE CENTER-
  - (A) ESTABLISHMENT- The e-health institute shall by contract or grant establish and maintain a statewide technical assistance center to provide assistance to physicians to facilitate successful adoption of health information technologies and participation in the development and implementation of the statewide health information technology plan by such physicians.
  - (B) PHYSICIANS- The statewide technical assistance center shall provide assistance to physicians in all geographical areas served by a health information network.
  - (C) PRIORITY- In providing assistance to physicians under this paragraph, the statewide technical assistance centers shall--
    - i) give priority to physicians in small physician groups;
    - and
    - ii) (ii) as resources allow, provide assistance to physicians in larger groups.
  - (D) REQUIREMENTS- Technical assistance provided under this paragraph shall, at a minimum, include the following:
    - i) A clearinghouse of best practices, guidelines, and implementation strategies directed at the small medical practices that plan to adopt electronic medical records, electronic prescribing, and other health information technologies.

247 ii) A change management tool kit to enable physicians  
248 and their office staffs to successfully prepare practice  
249 workflows for adoption of electronic medical records  
250 and electronic prescribing, to receive guidance in the  
251 selection of vendors of health information technology  
252 products and services that are appropriate within the  
253 context of the individual practice and the community  
254 setting, to implement health information technology  
255 solutions and manage the project at the practice level,  
256 and to address the ongoing need for upgrades,  
257 maintenance, and security of office-based health  
258 information technologies.

259 iii) (iii) The capability to provide consultations and advice  
260 to small medical practices to facilitate adoption of  
261 health information technologies.

262 (iii) Prohibition- No funds under this section may be used for the  
263 establishment of a database of individually identifiable patient health  
264 information.

265 (e) Not later than 4 years after the date of the enactment of this Act, the e-health institute  
266 shall submit a report to the joint committee on health care financing and the senate and  
267 house committees on ways and means on the progress in realizing the purposes of this  
268 Act, with particular attention to the following:

- 269 (1) The capacity to exchange health information between and among components of the  
270 health system.
- 271 (2) Rates of health information technology usage and provider participation in electronic  
272 health records and computerized physician order entry systems.
- 273 (3) The security and privacy of health information technology supported by this Act.
- 274 (4) The impact of health information technology on health care quality, health outcomes  
275 of patients, and health care costs.

276 (f) INTEROPERABILITY.

277 No state funds may be made available to any entity under this Act for the purchase of a health  
278 information technology product, unless—

- 279 (1) the product is certified by the appropriate entity; or
- 280 (2) if a certification process has not yet been developed for the product by an appropriate  
281 entity, the Federal department or agency involved has determined that the product  
282 incorporates, to the extent feasible, appropriate interoperability data standards and  
283 compliance criteria adopted by the entity for another product;