

CHAPTER 30

(SB 2)

AN ACT relating to health information and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *The University of Kentucky and the University of Louisville shall jointly establish and operate a Kentucky Health Care Infrastructure Authority. The purposes of the authority are to improve the quality of health care and reduce the cost of health care.*
- (2) *The responsibilities of the authority include but are not limited to:*
 - (a) *Providing leadership in the redesign of the health care delivery system using information technology to ensure that all Kentuckians receive care that is safe, effective, patient-centered, timely, efficient, and equitable;*
 - (b) *Serving as a forum for the exchange of ideas and consensus building regarding the advancement of health information infrastructure and health care applications;*
 - (c) *Conducting research to identify innovative health care applications using information technology and systems to improve patient care and reduce cost of care, including applications to support electronic disease management and evidence-based medicine;*
 - (d) *Implementing pilot projects to determine the impact of various health care applications using information technology and systems on the quality of patient care and the cost of health care;*
 - (e) *Facilitating the transfer of the authority's research findings into clinical practice;*
 - (f) *Facilitating the development of the Kentucky e-Health Network created under Section 4 of this Act;*
 - (g) *Supporting the development of the Kentucky e-Health Network created under Section 4 of this Act as a framework for the National health information infrastructure;*
 - (h) *Facilitating the integration of the health information infrastructure with other information infrastructure development;*
 - (i) *Recommending policies and practices to ensure the security and confidentiality of health information;*
 - (j) *Providing recommendations on standards for software and communication among networks;*
 - (k) *Seeking funding from federal and private foundation for research, pilot projects conducted by the authority, development of health information capacity, and administrative and faculty expenses incurred by the authority;*
 - (l) *Collaborating with federal agencies and seek funding for the implementation of pilot projects that can serve as models for the national electronic health information infrastructure;*

- (m) *Serving as a national resource for health information science; and*
- (n) *Providing educational programs and stimulate interest in health information science.*
- (3) *The authority may receive state appropriations, gifts, grants, revolving funds, fees for services, federal funds, and any other public and private funds.*
- (4) *The authority shall submit an annual report of its activities to the Governor, secretary of the Cabinet for Health Services, Legislative Research Commission, Interim Joint Committee on Health and Welfare, and Interim Joint Committee on Banking and Insurance.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 of this Act:

- (1) *"Board" means the Kentucky e-Health Network Board;*
- (2) *"Electronic health network" means a network that allows for secure exchange of needed information among authorized health care providers, third-party payors, and patients, with information being exchanged in real time when feasible;*
- (3) *"Health care provider" has the same meaning as provided in KRS 311.621 and includes optometrists licensed under KRS Chapter 320;*
- (4) *"HIPAA" means the Federal Health Insurance Portability and Accountability Act of 1996;*
- (5) *"Insurer" has the same meaning as provided in KRS 304.17A-005; and*
- (6) *"Ke-HN" means the Kentucky e-Health Network.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky e-Health Network Board is created and is attached to the Cabinet for Health Services for administrative and technical support purposes.*
- (2) *The board shall consist of the following voting members:*
 - (a) *President, or a designee, of the University of Kentucky, who shall serve as co-chair of the board;*
 - (b) *President, or a designee, of the University of Louisville, who shall serve as co-chair of the board;*
 - (c) *Commissioner, or a designee, of the Department for Public Health;*
 - (d) *Commissioner, or a designee, of the Department for Medicaid Services;*
 - (e) *Chief information officer, or a designee, of the Governor's Office for Technology; and*
 - (f) *Nine (9) at-large members appointed by the Governor as follows:*
 - 1. *One (1) member engaged in the business of large-scale e-strategy and computer information technology;*

2. *One (1) member engaged in the business of health insurance who is employed by a company that has its headquarters in Kentucky;*
 3. *Two (2) members from a list of four (4) individuals recommended by the Kentucky Hospital Association, one (1) representing rural hospitals, and one (1) representing urban hospitals;*
 4. *Two (2) physicians actively engaged in the practice of medicine in the Commonwealth from a list of four (4) physicians recommended by the Kentucky Medical Association, or self-nominated;*
 5. *One (1) member from a company with at least one thousand (1,000) employees selected from a list of four (4) individuals submitted by the Associated Industries of Kentucky;*
 6. *One (1) member with experience as a physician practice manager; and*
 7. *One (1) member at large.*
- (3) *The board shall consist of the following ex officio members who may vote, but shall not be counted toward a quorum:*
- (a) *Commissioner, or a designee, of the Office for the New Economy;*
 - (b) *President, or a designee, of the Council on Postsecondary Education;*
 - (c) *Secretary, or a designee, of the Cabinet for Health Services;*
 - (d) *Commissioner, or a designee, of the Department of Insurance;*
 - (e) *Two (2) members of the Senate who are members of the Interim Joint Committee on Health and Welfare or the Interim Joint Committee on Banking and Insurance, appointed by the President of the Senate; and*
 - (f) *Two (2) members of the House of Representatives who are members of the Interim Joint Committee on Health and Welfare or the Interim Joint Committee on Banking and Insurance, appointed by the Speaker of the House.*
- (4) *Members of the board shall serve a term of four (4) years and may serve two (2) consecutive terms.*
- (5) *At the end of a term, a member of the board shall continue to serve until a successor is appointed. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed. A member of the board who serves two (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms. Members designated in paragraphs (a) to (e) of subsection (2) of this section and members designated in subsection (3) of this section shall serve on the board only while holding their respective titles.*
- (6) *A majority of the full membership of the board shall constitute a quorum.*
- (7) *The board may employ staff or contract with consultants necessary for the performance of the duties of the board, subject to the appropriation of funds;*
- (8) *No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.*
- (9) *Members of the board and all committees, except the advisory group created in subsection (2) of Section 4 of this Act, shall be entitled to reimbursement for actual and necessary*

expenses when carrying out official duties of the board in accordance with state administrative regulations relating to travel reimbursements. The board shall meet at least monthly.

- (10) *The board may appoint committees or subcommittees with the charge of investigating and making recommendations to the board on specific aspects of the Ke-HN, including but not limited to evidence-based clinical decision support, security of protected information, electronic data interchange, and clinical practice software packages, including the feasibility of developing a software purchasing alliance to decrease the cost of software and tax incentives to encourage members of the network to purchase software deemed by the board to meet the standards under Section 4 of this Act. The board may appoint the following committees:*
- (a) *Clinical Decision Support Committee;*
 - (b) *Privacy and Security of Protected Health Information Committee;*
 - (c) *Electronic Data Interchange Committee; and*
 - (d) *Clinical Software Review Committee.*
- (11) *The members of committees or subcommittees appointed by the board do not need to be members of the board. The chairs of committees or subcommittees shall be appointed by the board. The frequency of committee or subcommittee meetings shall be established by the board.*
- (12) *The Clinical Decision Support Committee membership shall include at least the following members:*
- (a) *One (1) physician with expertise in health informatics;*
 - (b) *Two (2) physicians actively engaged in the practice of medicine in this Commonwealth from a list of four (4) physicians recommended by the Kentucky Medical Association, or self-nominated;*
 - (c) *One (1) representative of a rural hospital and one (1) representative of an urban hospital;*
 - (d) *One (1) pharmacist;*
 - (e) *One (1) representative engaged in the business of health care information technology;*
 - (f) *Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice; and*
 - (g) *One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated.*
- (13) *The Privacy and Security of Protected Health Information Committee shall include at least the following members:*
- (a) *One (1) physician actively engaged in the practice of medicine in this Commonwealth;*
 - (b) *Two (2) members with expertise in HIPAA regulations;*
 - (c) *Two (2) members engaged in the business of large-scale e-strategy and computer information technology;*

- (d) *One (1) member who serves as a computer information officer within the health care industry;*
 - (e) *Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice;*
 - (f) *One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated; and*
 - (g) *One (1) representative of a hospital.*
- (14) *The Electronic Data Interchange Committee shall include at least the following members:*
- (a) *Two (2) members engaged in the business of large-scale e-strategy and computer information technology;*
 - (b) *Two (2) members engaged in the business of health insurance who are recommended by the Kentucky Association of Health Plans, Incorporated;*
 - (c) *Chief information officer, or a designee, of the Cabinet for Health Services;*
 - (d) *Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice; and*
 - (e) *One (1) representative of a hospital.*
- (15) *The Clinical Software Review Committee shall include at least the following members:*
- (a) *One (1) member from a company that develops computer software for physician practices;*
 - (b) *One (1) member engaged in the business of large-scale e-strategy and computer information technology;*
 - (c) *Three (3) physicians, with one (1) having experience in electronic information technology;*
 - (d) *Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice;*
 - (e) *One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated or employed by a company which has its headquarters in Kentucky; and*
 - (f) *One (1) representative of a hospital.*
- (16) *The Governor of the Commonwealth of Kentucky may reorganize the Kentucky e-Health Network Board to include the Kentucky Telehealth Board and to reorganize the Telehealth Board under the Cabinet for Health Services. If the Governor deems it appropriate, the reorganization shall create a new Telehealth Committee of the Ke-HN board with the membership and responsibilities as described under KRS 11.550 and shall be subject to confirmation by the General Assembly under the requirements of KRS 12.028.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *The duties and responsibilities of the board shall be to implement and oversee the operation of an electronic health network in this Commonwealth, to be known as the Ke-HN.*
- (2) *The board shall:*
 - (a) *Exercise all of the administrative functions of the board;*
 - (b) *Appoint an advisory group that shall meet at least quarterly for the purpose of collaborating with health care providers and payors, computer technology companies, telecommunication companies, and other affected entities to ensure input into the implementation of the Ke-HN;*
 - (c) *Review models for an electronic health network;*
 - (d) *Oversee the development of comparative business cases for the models reviewed and choose a model to be implemented in this Commonwealth. In selecting a model for implementation, the board shall consider the following elements:*
 1. *Various models and configurations for Ke-HN, either as developed from the board's research or as recommended by public and private experts. Each model or configuration shall be capable of supporting administrative and clinical functions listed in subsection (4) of this section, including the capability to integrate with an electronic Medicaid management information system, provide immediate health alerts to health care providers across the state, and support health care provider education related to the identification and treatment of rare and unusual diseases. The model chosen may be implemented in phases, as determined by the board;*
 2. *Projected costs of the network, indicating those which would be allocated to state government, health care providers, insurers, or others;*
 3. *Options for financing the start-up, administrative and maintenance costs, projected returns on investments, a timetable for realizing those returns, and any proposed subscription or transaction fees associated with the Ke-HN;*
 4. *Procedures intended to secure protected health information in accordance with HIPAA;*
 5. *Timetables for implementation of the Ke-HN, whether as a fully established network, in phases, or through the use of a pilot project or regional approach to the Ke-HN;*
 6. *Suggested incentives to promote the use of Ke-HN by health care providers and payors, and the Medicaid program; and*
 7. *Incentives, including but not limited to tax credits, low-interest loans, and grants, under Subchapters 22, 23, 24, 26, and 28 of KRS Chapter 154 for a company that develops or manufactures software necessary for the development of the Ke-HN, if the company meets all the eligibility requirements under the respective subchapter in KRS Chapter 154;*
 - (e) *Receive comments from the advisory group created in paragraph (b) of this subsection;*
 - (f) *Submit a description of the model chosen for implementation to the Legislative Research Commission for the opportunity for any comments;*

- (g) *If state funds are required for implementation of the model chosen, seek funding through the appropriations process;*
- (h) *Oversee the implementation of the model chosen subject to the appropriation of funds. Oversight shall include the following:*
 - 1. *Developing any central interchange, including any central server and software;*
 - 2. *Developing the Ke-HN of providers and payors who participate in the network, which shall be on a voluntary basis;*
 - 3. *Making recommendations regarding the features and functions which shall be included in the distributed components of the network; and*
 - 4. *Performing an outcomes assessment of the benefits achieved by the network;*
- (i) *Identify and adopt standards for all computer systems communicating with the Ke-HN, including but not limited to:*
 - 1. *The HIPAA standards for electronic transactions as the federal regulations become final, or more stringent standards for content and networking as determined by the board;*
 - 2. *Medical lexicon for administrative billing and clinical purposes;*
 - 3. *Procedure and billing codes; and*
 - 4. *Prevalent health care industry standards for software and networking that ensure that applications work on all types of computer systems and equipment;*
- (j) *Establish procedures to ensure that Ke-HN transactions are in compliance with HIPAA guidelines;*
- (k) *Facilitate the implementation of the federal HIPAA guidelines, and identify any additional variables specific to Kentucky that are required to be in transactions within the HIPAA guidelines;*
- (l) *Oversee the operations of the Ke-HN, including but not limited to making recommendations for financing the central interchange for the network and making recommendations to organizations about implementing the network in their respective organizations;*
- (m) *Oversee the development of the central interchange that supports communication between components of the Medicaid management information system;*
- (n) *Implement educational efforts about the Ke-HN;*
- (o) *Develop incentives for providers and payors to use the Ke-HN;*
- (p) *Identify options for, adopt, and implement approaches to various aspects of the Ke-HN necessary for its creation and operation, including but not limited to technology architecture, governance and oversight, development and implementation plans, and other areas identified by the board relating to its charge;*
- (q) *Facilitate the development of private and public partnerships to build the Ke-HN;*
- (r) *Assign priority in phasing in the network to geographical locations that are critical to homeland security and protection of the Commonwealth's energy production;*

- (s) *Collaborate with federal agencies in the development and implementation of the Ke-HN as a demonstration model for the nation;*
 - (t) *Collaborate with the Kentucky Health Care Infrastructure Authority created under Section 1 of this Act;*
 - (u) *Assist with the securing of state, federal, or private funding for the Kentucky Health Care Infrastructure Authority created under Section 1 of this Act;*
 - (v) *Stimulate the development of state and local population health information capacities;*
 - (w) *Promulgate administrative regulations in accordance with KRS Chapter 13A necessary to carry out the responsibilities of the board;*
 - (x) *Receive and dispense funds appropriated for its use by the General Assembly or may solicit, apply for, and receive any funds, property, or services from any person, governmental agency, or organization to carry out its statutory responsibilities;*
 - (y) *Report to the Governor, secretary of the Cabinet for Health Services, commissioner of the Office for the New Economy, Legislative Research Commission, Interim Joint Committee on Health and Welfare, and Interim Joint Committee on Banking and Insurance annually on the development of the Ke-HN and the impact on quality and cost of health care; and*
 - (z) *Collaborate with the Telehealth Board to link functions of the telehealth network to the Ke-HN, as determined by the Telehealth Board.*
- (3) *The board may:*
- (a) *Use any software program or expand any Medicaid management information system or electronic provider and payor network developed by the Medicaid program to support electronic health transactions between payors, insurers, health care providers, and patients that are not Medicaid-related, unless prohibited by federal law or regulation;*
 - (b) *Contract, in accordance with KRS Chapter 45A, with an independent third party for any service necessary to carry out the responsibilities of the board subject to the appropriation of funds;*
 - (c) *Award grants to health care providers and payors to implement projects related to health informatics, with highest priority given to health care providers and payors that serve rural and inner-city areas of this Commonwealth; and*
 - (d) *Enter into an agreement with the University of Kentucky or the University of Louisville to develop comparative business models or implement any phase of the Ke-HN, using private or federal funds received by the university for the purpose designated in the agreement.*
- (4) *In its fully implemented form, the Kentucky e-Health Network is envisioned to support or encourage the following types of electronic transactions or activities that would be phased in over time:*
- (a) *Automatic drug-drug interaction and allergy alerts;*
 - (b) *Automatic preventive medicine alerts;*

- (c) *Electronic access to the results of laboratory, x-ray, or other diagnostic examinations;*
- (d) *Disease management;*
- (e) *Disease surveillance and reporting;*
- (f) *Educational offerings for health care providers;*
- (g) *Health alert system and other applications related to homeland security;*
- (h) *Links to drug formularies and cost information;*
- (i) *Links to evidence-based medical practice;*
- (j) *Links to patient educational materials;*
- (k) *Medical record information transfer to other providers with the patient's consent;*
- (l) *Physician order entry;*
- (m) *Prescription drug tracking;*
- (n) *Registries for vital statistics, cancer, case management, immunizations, and other public health registries;*
- (o) *Secured electronic consultations between providers and patients;*
- (p) *A single-source insurance credentialing system for health care providers; and*
- (q) *The following transactions covered by HIPAA:*
 - 1. *Electronic health care claims submission;*
 - 2. *Electronic payment;*
 - 3. *Coordination of benefits;*
 - 4. *Health care claim status;*
 - 5. *Enrollment and disenrollment in a health plan;*
 - 6. *Eligibility for a health plan;*
 - 7. *Health plan premium payments;*
 - 8. *Referral certification and authorization;*
 - 9. *First report of injury; and*
 - 10. *Health claims attachments.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established and created in the State Treasury a fund entitled the "Ke-HN fund." The fund may receive:*
 - (a) *State appropriations;*
 - (b) *Gifts;*
 - (c) *Grants;*
 - (d) *Revolving funds;*

- (e) *Transaction, service, or other fees set by the board;*
 - (f) *Federal funds; and*
 - (g) *Any other public and private funds.*
- (2) *Moneys deposited in the Ke-HN fund shall be disbursed by the State Treasurer upon the warrant of the board. This fund shall be used solely for purposes related to the Ke-HN as approved by the board. The fund shall not lapse, and funds not expended during any fiscal year shall carry forward to the next fiscal year.*

Section 6. KRS 45A.605 is amended to read as follows:

- (1) As used in this section:
 - (a) "Information highway" means a communication network for voice, data, and video communications technologies; and
 - (b) "Agencies of the Commonwealth of Kentucky" includes all authorities; boards; commissions; councils; departments; program cabinets; the Kentucky Lottery Corporation; vocational schools; the Kentucky School for the Deaf; the Kentucky School for the Blind; upon written request of the Chief Justice, the Court of Justice; upon written request of the co-chairmen of the Legislative Research Commission, the General Assembly and the Legislative Research Commission; and upon written request of presidents, state institutions of higher education.
- (2) The provisions of any other law notwithstanding, the Finance and Administration Cabinet may enter into one (1) or more contracts, on behalf of agencies of the Commonwealth of Kentucky, with any person, partnership, or corporation that operates an information highway. The information highway shall enable the Commonwealth to benefit from cost-effective telecommunications technologies and shall provide opportunities for the private sector. These opportunities shall include~~[-]~~ but not be limited to ***the implementation of transactions and activities associated with the Kentucky e-Health Network created under Section 4 of this Act and***~~[-]~~ the provision of telehealth by licensed health-care providers as provided in KRS Chapters 205, 211, 304.17A, 310, 311, 312, 313, 314, 314A, 315, 319, 319A, 320, 327, 334A, and 335.
- (3) Upon implementation, all agencies of the Commonwealth of Kentucky shall obtain all available communications services under contracts executed pursuant to subsection (2) of this section, except as provided under subsection (4) of this section.
- (4) The secretary of the Finance and Administration Cabinet may grant exceptions to the mandatory use of the information highway upon good cause shown. ***The Kentucky e-Health Network Board may use the information highway to implement the network, but shall not be limited to its use for communication services.***
- (5) Any contract awarded under subsection (2) of this section shall be deemed, for purposes of KRS 45A.050, a state agency price contract to which all political subdivisions and state-licensed nonprofit institutions of higher education may have access and use on the same terms as agencies of the Commonwealth of Kentucky. In addition, nonprofit schools providing elementary or secondary education and nonprofit health care organizations shall be allowed to have access and use the contract on the same terms as agencies of the Commonwealth of Kentucky. "Nonprofit schools" and "nonprofit health care organizations"

mean those schools and health care organizations which have been granted tax-exempt status under the United States Internal Revenue Code.

- (6) Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which any entity that has been approved for economic development incentives under programs approved and administered by the Kentucky Economic Development Finance Authority may have access and use on the same terms as agencies of the Commonwealth of Kentucky.
- (7) Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which nonprofit organizations whose exclusive purpose is the delivery of services related to education, economic development, or cultural arts and humanities, may have access and use on the same terms as agencies of the Commonwealth of Kentucky. For the purposes of this section, "nonprofit organizations" means those organizations which have been granted tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code or those existing education based entities whose purpose is the delivery of services to state school systems, their employees, or their governing organizations and which have been granted tax-exempt status under Section 501(c)(6) of the United States Internal Revenue Code.

Section 7. The members of the Kentucky e-Health Network Board created in Section 3 of this Act shall be appointed upon the appropriation of federal or state funds or upon the availability of other funds to finance the administrative costs of the board.

Section 8. Whereas an electronic health network and the creation of an Kentucky Health Care Infrastructure Authority could result in significant savings and improved quality of care, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 8, 2005.