North Carolina Health Information Exchange Authority Advisory Board

Response to NC Session Law 2022-74
An update to the comprehensive report submitted in March 2022

NC HealthConnex
Powering Health Care Outcomes

February 20, 2023

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In response to the legislative directive in NC Session Law 2022-74, the North Carolina Health Information Exchange Authority (NC HIEA) Advisory Board is submitting this update to the "*Recommendations to Support Enforcement of the Statewide Health Information Exchange Act and a Summary Report on Provider Connectivity and Recent Outreach Efforts"* provided to the Joint Legislative Oversight Committee in March 2022.

As discussed in detail in the previous report, the State has made considerable progress implementing and delivering the North Carolina General Assembly's vision for statewide health information exchange. The HIE Network, now called NC HealthConnex, has seen tremendous growth and is well positioned for continued maturity and widespread adoption. Since January 1, 2022, the NC HIEA grew its connected base of submitting organizations by 48% percent (see Connectivity Update on page 2 for additional information) and was recognized as a finalist in the NC Technology Association's annual awards in the Tech for Good category.

However, for the NC HIEA to remain on a successful trajectory, certain legislative changes are necessary, especially regarding enforcement of the HIE Act and the scope of its mandate. Moreover, the NC HIEA and its Advisory Board agree that continuous improvement of participating health care organizations' experience with NC HealthConnex, patient education on access to and use of patient health information, and defense against cybersecurity incidents should remain among the highest priorities.

The recommendations described in the March 2022 report are a product of significant efforts across multiple stakeholder groups with a variety of critical constituencies. From this process, strong support by stakeholders has been voiced for legislative action to create an enforcement and compliance framework. Draft legislation to address these recommendations is attached.

In early 2022, three recommendations were submitted by the NC HIEA Advisory Board. The first two recommendations seek the establishment of clear enforcement articles for the HIE Act and the revision of "mandatory" and "voluntary" status under the Act for certain providers. These proposals recognize that an enforcement framework is critical to the success of the HIE Act and that, at the same time, the scope of providers and entities subject to mandatory connection and data submission requirements should be adjusted.

Justification of these adjustments were covered in detail in the original submission. The third recommendation proposed that two seats be added to the Advisory Board: one to be filled by a State-funded payer and the other to be filled by a representative from a provider-led accountable care organization. Adding broader perspective to the Advisory Board will enable the NC HIEA to effectively support provider participants and payers working collaboratively in their pursuit and implementation of value-based care.

In summary, our goals have not changed. The NC HIEA Advisory Board urges legislative action that will create certainty for the provider community, protect patients and their access to care, develop a compliance program that minimizes the cost to the State and that does not impose excessive burden on providers, maintain the NC HIEA's momentum in

building statewide connectivity, and expand the utilization of valuable NC HealthConnex services.

We remain available to advise and support the NC HIEA and the General Assembly as the State seeks to fulfill the promise and potential of the HIE Act to deliver better health outcomes for North Carolina patients.

Respectfully submitted on behalf of the NC HIEA Advisory Board,

Dr. William G. Way, Chair

NC HealthConnex Connectivity Update

Background:

Per the HIE Act, providers of state-funded health care services are currently required to connect to the HIE network and share data as a condition of receiving state funds, with the exceptions of those designated as voluntary in N.C. Gen. Stat. § 90-414.4.(e) and of ambulatory surgical centers pursuant to an exemption implemented in N.C. Session Law 2021-26. The State's focus on individual providers and entities across all practice areas, coupled with the condition-of-payment statutory provision, makes the HIE Act one of the most extensive connectivity mandates among HIEs in the United States.[1]

As currently written, the HIE mandate requires subject "entities," including individual providers, to connect to NC HealthConnex and submit the required data as a "condition of receiving state funds."

Potentially enforcing the HIE Act against individual providers subject to the mandate does not align with the reality that organizations—not individual practitioners—maintain patient health records and connect to the HIE. This mismatch renders HIE Act enforcement challenging for two reasons:

i. Provider employment/affiliation arrangements are dynamic, and there is no single source of truth tying individual providers to the EHR systems they use to store patient data (see Assessing Individual-Level Connectivity Without an Existing Source of Truth), rendering consistent, accurate enforcement improbable and unnecessarily costly; and

ii. Individual health care providers stand to be penalized for EHR-related business decisions potentially outside their expertise or control.

What's more, as noted in the Connectivity Analysis of the March 2022 report, the effort to produce the connectivity report was the first of its kind ever undertaken. Previously, no single list of individual providers and health care entities subject to the HIE Act existed, nor did individual-to-organization affiliation information related to governance of electronic patient health records.

For further context:

- The NC HIEA builds interfaces with EHRs that are almost universally managed by organizations, or entities, rather than by individual providers. The reality of health information technology today is that organizations, both large and small—and not individual providers—maintain the EHRs that connect to NC HealthConnex. Thus, typically, an individual provider's employer(s)/organization(s) contracts with the NC HIEA, connects to NC HealthConnex, and shares patient data on the individual provider's behalf.
- NC DHB and the State Health Plan both manage dynamic provider rosters and individual-to-organization affiliation information for billing purposes. These lists were used as a starting point in the analysis because they offered the best available affiliation information for large-

[1] In the marketplace, most HIEs are independent non-profits and not enabled by statute. A handful are state-owned (Alabama, Florida, Maryland, Kentucky, and New Jersey, among others), and fewer have legislation requiring connectivity (either generally or for specific uses/users). Massachusetts requires connection by specified entities, CRISP in Maryland requires use of CRISP to register for and access the MD Prescription Drug Monitoring Program, and New Jersey requires participation in its HIE for anyone receiving charity care funding.

scale analytics. However, billing relationships do not always mirror the relationship between an individual provider and the entity or entities that maintain the EHR containing the individual provider's patient records, which is the pertinent relationship for determining HIE connectivity and, thus, HIE Act compliance status. Furthermore, claims are paid at the individual level, whereas connection to NC HealthConnex is performed at the facility level.

- Some state-funded health care programs (e.g., grant-funded programs through the N.C. Office of Rural Health and adult corrections) exist outside the NC DHB and State Health Plan and do not have readily available provider rosters.
- Employment arrangements and organizational affiliations change over time, and this information is not always reported to or updated with payers or licensing boards. The dynamic nature of clinician employment and the absence of data on those relationships further complicate the question of HIE Act compliance at an individual level. For example, a physician may work for a connected organization in 2022 but move to (or provide some care at) an unconnected organization in 2023.

For these reasons, pairing individual providers with their connected and/or unconnected organization(s) is administratively burdensome, expensive, and imperfect. The analysis could not be automated and required manual resolution of data to create and apply business rules to associate individual health care providers with related entities. Note: Replication or future automation of this analysis would be administratively burdensome and require significant expenditure of state funds.

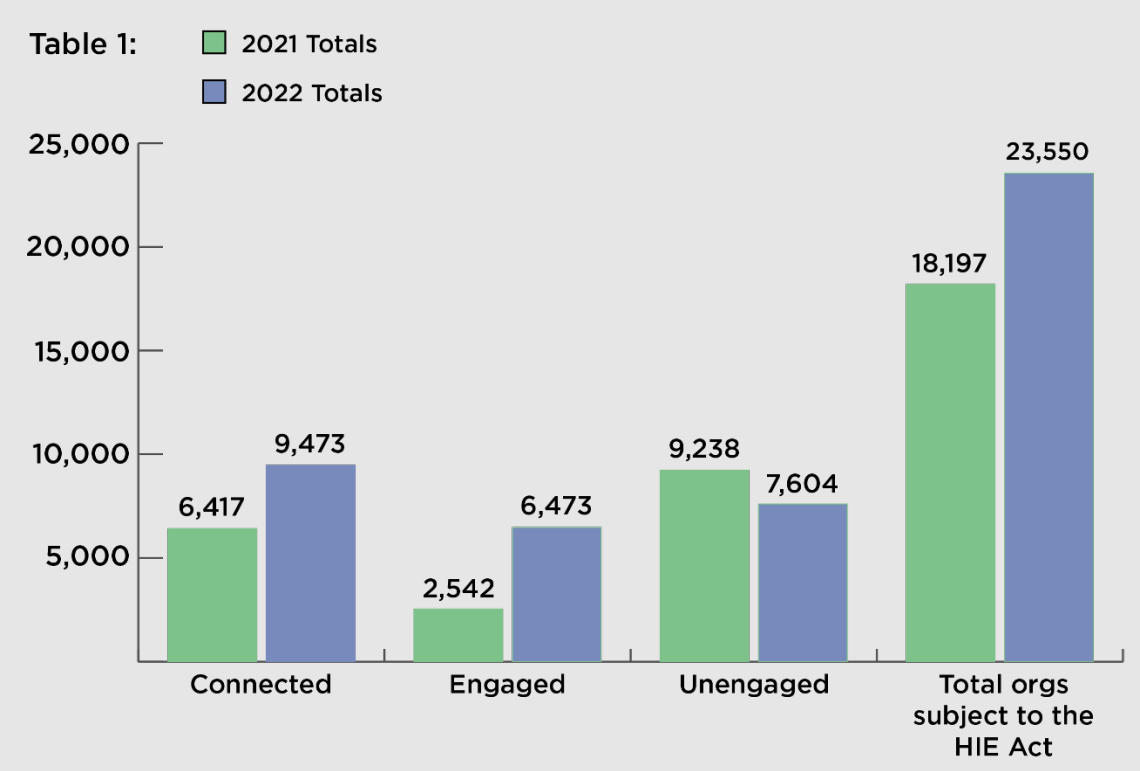
As a result of these well-documented challenges, the NC HIEA and its Advisory Board made the decision to limit the connectivity update in this submission to organizations subject to the HIE Act that can be identified by an organizational NPI (national provider identifier). Individual providers identified by individual NPI were out of scope for this update.

Provider Connection Status:

Connected organizations are those that have completed the technical connection process to NC HealthConnex.

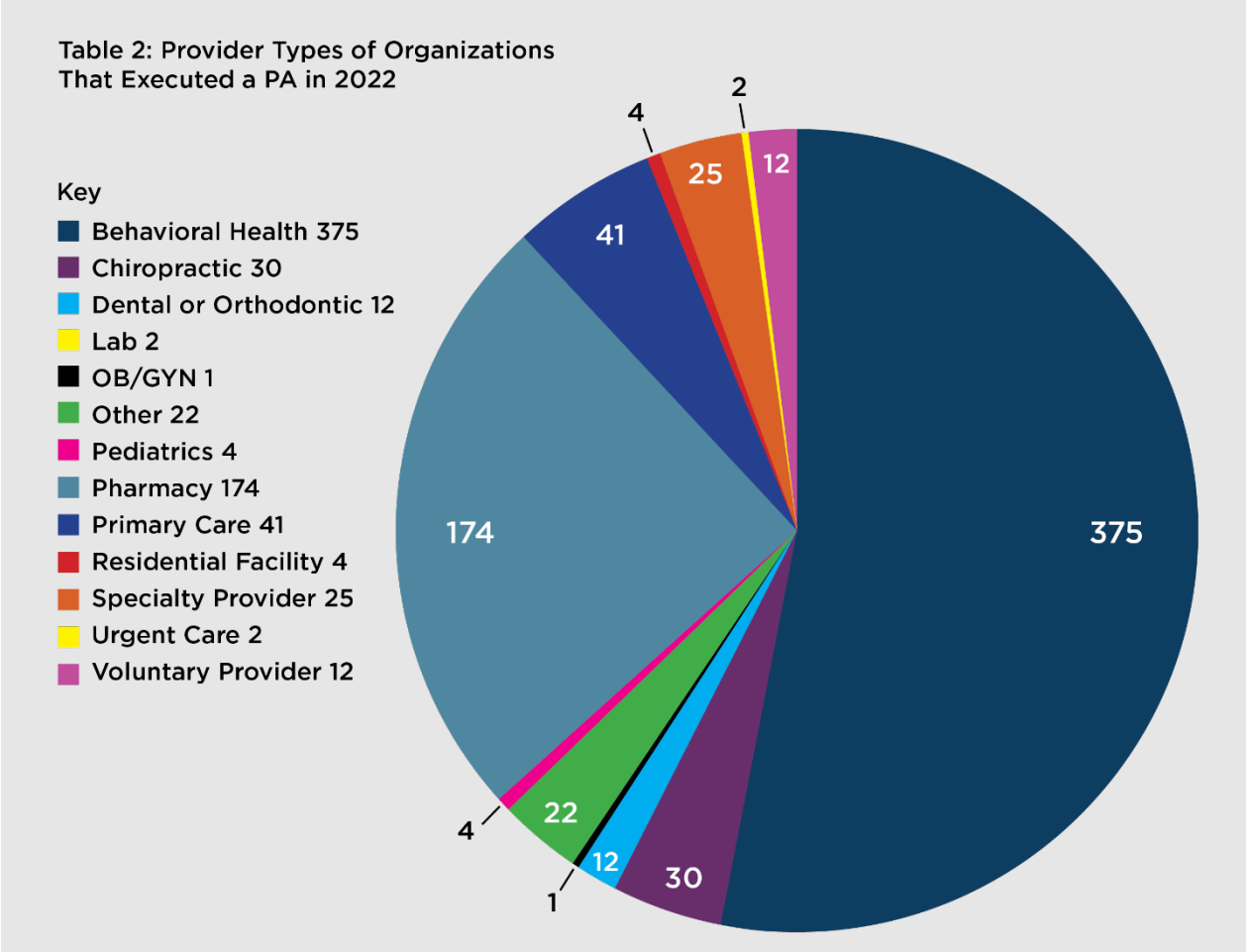
Engaged organizations are those that have executed a Data Sharing Agreement or Participation Agreement with the NC HIEA and have been added to the onboarding queue. *Note: the onboarding queue is significant. It is projected to take an additional four to five years to complete all connections as currently required by state law.*

Unengaged organizations are those have not completed the initial governance “good faith” effort to connect.



As evidenced in Table 1, the NC HIEA has seen positive movement for "Connected," "Engaged" and "Unengaged" categories. Connected organizations grew by 48% percent or 3,056 facilities. This growth can be attributed to both "net new" data connections and increases in health system growth where practices affiliated with a health system are added to an existing data feed.

Additionally, the number of engaged organizations grew in the last 12 months. Between February 14 and March 7, 2022, approximately 28,395 letters and emails were distributed to unconnected and unengaged individuals and entities subject to the State Health Information Exchange Act. Since that time, the NC HIEA outreach team completed 97 trainings, 16 webinars, and 11 conference presentations educating providers about the requirements for connectivity, the benefits of the health information exchange, and the use of value-added features of NC HealthConnex. Also, over the 2022 calendar year, the NC HIEA provider relations team executed 665 Participation Agreements representing an additional 2,120 facilities. As illustrated in Table 2 below, the NC HIEA has advanced engagement significantly among behavioral health and pharmacy providers in the last year.



Finally, the NC HIEA produced a video promoting NC HealthConnex that has been shared with participating health care providers and stakeholders via NCDIT social media channels and the NC HIEA website.

By the Numbers:

Summary of Organization Connectivity as of November 2021:

- 18,197 organizational entities found to be subject to the requirement to connect and submit data.
    - 35% (6,417) organizations were connected,
    - 14% (2,542) organizations were under contract and engaged with the NC HIEA with connections in process, and
    - 51% (9,238) organizations remained unengaged with the NC HIEA.

Summary of Organization Connectivity as of November 2022:

- 23,550 entities found to be subject to the requirement to connect and submit data.[2]
    - 40% (9,473) organizations were connected
    - 27% (6,473) organizations were under contract and engaged with the NC HIEA with connections in process, and
    - 32% (7,604) organizations remained unengaged with the NC HIEA.

Looking Ahead:

With additional funding provided by the NCGA in NC Session Law 2022-74, the NC HIEA has added resources to its data connections and outreach teams to continue building technical integrations between provider organization EMR/EHRs as well as provide critical education and training to providers on requirements and benefits of participation. However, additional funding will be needed to maintain this level of resourcing for the next four to five years to maintain connectivity momentum and build out the statewide data sharing infrastructure.

As stated previously, another important component to maintaining connectivity momentum is legislative action to name an agency to lead enforcement of the HIE Act and development of a compliance and enforcement framework. Without such action, provider engagement may stall.

The NC HIEA and its Advisory Board assert that with increased funding levels between now and 2028 and the establishment of a formal compliance and enforcement framework, the State will realize its vision of connected communities of care statewide via a centralized health information sharing network that will aid in the improvement of quality of care provided and the patient experience as well as contribute to lowering the total cost of care provided.

[2] The number of organizations that are required to connect and submit data increased from 18,197 to 23,550 based on additional "connected" and "engaged" NPI data housed within the NC HIEA's participant onboarding system.

NC DIT-NC HIEA Legislative Proposals regarding the Enforcement of the Statewide Health Information Exchange Act

Version Date: February 6, 2023

Please Note: This document includes DIT's legislative proposal to establish an enforcement framework for the HIE Network and includes changes suggested by stakeholders such as the NC HIEA Advisory Board, NC DHHS, and NC SHP. This document does **not** include technical corrections and updates also being proposed by DIT. Those proposals are included in another legislative proposal document that is being shared with NCGA members. A combined version can be made available upon request.

CHAPTER 90. MEDICINE AND ALLIED OCCUPATIONS > ARTICLE 29B. STATEWIDE HEALTH INFORMATION EXCHANGE ACT

§ 90-414.1. Title

This act shall be known and may be cited as the "Statewide Health Information Exchange Act."

§ 90-414.2. Purpose

This Article is intended to improve the quality of health care delivery within this State by facilitating and regulating the use of a voluntary, statewide health information exchange network for the secure electronic transmission of individually identifiable health information among health care providers, health plans, ~~and~~ health care ~~clearinghouses~~ clearinghouses, and the State in a manner that is consistent with the Health Insurance Portability and Accountability Act, Privacy Rule and Security Rule, 45 C.F.R. §§ 160, 164.

§ 90-414.3. Definitions

The following definitions apply in this Article:

(1) Annual Compliance Report. -- A report to be submitted no less than annually by each covered entity that is subject to the Statewide Health Information Exchange Act and that maintains, controls, directs or licenses a Data Transfer System. The report will provide attestations as to the status of technical connection and data submission, participation in the State Health Plan and/or Medicaid, and other representations as detailed in G.S. 90-414.13.

~~(1)~~ **(1a) Business associate. --** As defined in 45 C.F.R. § 160.103.

(2) Business associate contract. -- The documentation required by 45 C.F.R. § 164.502(e)(2) that meets the applicable requirements of 45 C.F.R. § 164.504(e).

(3) Covered entity. -- Any entity described in 45 C.F.R. § 160.103 or any other facility or practitioner licensed by the State to provide health care services.

(4) Department. -- North Carolina Department of Health and Human Services.

(4a) Data Transfer System. – Electronic systems or platforms that (i) facilitate the submission of clinical, demographic, and/or claims data to the HIE Network, and (ii) are maintained, controlled, directed, or licensed by, or on behalf of, a covered or hybrid

entity subject to this Act. Data Transfer Systems may be comprised of health information technology and/or claims processing technology, including hardware, software, integrated technologies and related licenses, and/or packaged solutions sold as services. Data Transfer Systems include but are not limited to electronic systems or platforms related to electronic health/medical records; pharmacy benefits and claims; claims processing; or care management. Data Transfer Systems do not include any information technology systems directly maintained, controlled, or licensed by the State Health Plan for Teachers and State Employees.

(5) Disclose or disclosure. -- The release, transfer, provision of access to, or divulging in any other manner an individual's protected health information through the HIE Network.

(6) Repealed by Session Laws 2017-57, s. 11A.5(f) , effective July 1, 2017.

(7) GDAC. -- The North Carolina Government Data Analytics Center.

(8) HIE Network. -- The voluntary, statewide health information exchange network overseen and administered by the Authority.

(9) HIPAA. -- Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended, and any federal regulations adopted to implement these sections, as amended.

(10) Individual. -- As defined in 45 C.F.R. § 160.103.

(11) North Carolina Health Information Exchange Advisory Board or Advisory Board. -- The Advisory Board established under G.S. 90-414.8.

(12) North Carolina Health Information Exchange Authority or Authority. -- The entity established pursuant to G.S. 90-414.7.

(13) Opt out. -- An individual's affirmative decision communicated to the Authority in writing to disallow his or her protected health information from being disclosed by the Authority to covered entities or other persons or entities through the HIE Network.

(13a) Organization National Provider Identifier or Organization NPI – The HIPAA Administrative Simplification Standard that utilizes a 10-position all-numeric identification number assigned by the federal National Provider System to uniquely identify a health care provider that is an entity other than an individual human being that furnishes health care.

(14) Protected health information. -- As defined in 45 C.F.R. § 160.103.

(15) Public health purposes. -- The public health activities and purposes described in 45 C.F.R. § 164.512(b).

(16) Qualified organization. -- An entity with which the Authority has contracted for the sole purpose of facilitating the exchange of data with or through the HIE Network.

(17) Research purposes. -- Research purposes referenced in and subject to the standards described in 45 C.F.R. § 164.512(i).

(18) State CIO. -- The State Chief Information Officer.

(19) State-Funded Health Care. – The following constitute State-Funded Health Care: Medicaid; the State Health Plan for Teachers and State Employees; North Carolina Health Choice Health Insurance Program for Children; and health care

facilities and health care programs administered or operated by the following state agencies, their grantees, or their agents: the North Carolina Department of Health and Human Services, the Department of Public Safety, and the Department of Adult Correction.

(20) State Health Care Funds –Monies paid to providers or entities for their provision of health care to individuals who receive State-Funded Health Care. State Health Care Funds include both (i) direct payments from the State to providers and entities and (ii) payments that providers and entities receive from third parties (or the agents of such third parties) retained by the State for the administration and/or delivery of State-Funded Health Care, including but not limited to Prepaid Health Plans as defined in G.S. 108D-1 and Claims Processors, as defined in G.S. 135-48.1(3).

§ 90-414.4. Required participation in HIE Network for some providers

(a) Findings. -- The General Assembly makes the following findings:

(1) That controlling escalating health care costs of the Medicaid program and other State-funded health care services is of significant importance to the State, its taxpayers, its Medicaid recipients, and other recipients of State-funded health care services.

(2) That the State and covered entities in North Carolina need timely access to certain demographic and clinical information pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds in order to assess performance, improve health care outcomes, pinpoint medical expense trends, identify beneficiary health risks, and evaluate how the State is spending money on Medicaid and other State-funded health care services. The Department of Information Technology, the Department of State Treasurer, State Health Plan Division, and the Department of Health and Human Services, Division of Health Benefits, have an affirmative duty to facilitate and support participation by covered entities in the statewide health information exchange network.

(3) That making demographic and clinical information available to the State and covered entities in North Carolina by secure electronic means as set forth in subsection (b) of this section will improve care coordination within and across health systems, increase care quality for such beneficiaries, enable more effective population health management, reduce duplication of medical services, augment syndromic surveillance, allow more accurate measurement of care services and outcomes, increase strategic knowledge about the health of the population, and facilitate health care cost containment.

(a1) Mandatory Connection to HIE Network. -- Notwithstanding the voluntary nature of the HIE Network under G.S. 90-414.2, the following providers and entities shall be connected to the HIE Network and begin submitting data through the HIE Network pertaining to services rendered to ~~Medicaid beneficiaries and to other State-funded health care program~~ beneficiaries of State-Funded Health Care and paid for with ~~Medicaid or other State-funded health care funds~~ State Health Care Funds in accordance with the following time line:

(1) The following providers of Medicaid services licensed to operate in the State that have an electronic health record system shall begin submitting, at a minimum, demographic and clinical data by June 1, 2018:

a. Hospitals as defined in G.S. 131E-176(13).

b. Physicians licensed to practice under Article 1 of Chapter 90 of the General Statutes, except for licensed physicians whose primary area of practice is psychiatry.

c. Physician assistants as defined in 21 NCAC 32S.0201.

d. Nurse practitioners as defined in 21 NCAC 36.0801.

(2) Except as provided in subdivisions (3), (4), and (5) of this subsection, all other providers of Medicaid and State-funded health care services and their affiliated entities shall begin submitting demographic and clinical data by January 1, 2023.

(3) The following entities shall submit encounter and claims data, as appropriate, in accordance with the following time line:

a. Prepaid Health Plans, as defined in G.S. 108D-1, by the commencement date of a capitated contract with the Division of Health Benefits for the delivery of Medicaid and NC Health Choice services as specified in Article 4 of Chapter 108D of the General Statutes.

b. Local management entities/managed care organizations, as defined in G.S. 122C-3, by June 1, 2020.

If authorized by the Authority in accordance with this Article, the Department of Health and Human Services may submit the data required by this subsection on behalf of the entities specified in this subdivision.

(4) The following entities shall begin submitting demographic and clinical data by January 1, 2023:

a. ~~Physicians who perform procedures at ambulatory~~ Ambulatory surgical centers as defined in G.S. 131E-146.

~~**b.** Dentists licensed under Article 2 of Chapter 90 of the General Statutes~~. Repealed.

c. Licensed physicians whose primary area of practice is psychiatry.

d. The State Laboratory of Public Health operated by the Department of Health and Human Services.

(5) The following entities shall begin submitting claims data by January 1, 2023:

a. Pharmacies registered with the North Carolina Board of Pharmacy under Article 4A of Chapter 90 of the General Statutes.

b. State health care facilities operated under the jurisdiction of the Secretary of the Department of Health and Human Services, including State psychiatric hospitals, developmental centers, alcohol and drug treatment centers, neuro-medical treatment centers, and residential programs for children such as ~~the Wright School and~~ the Whitaker Psychiatric Residential Treatment Facility.

(a2) Repealed. ~~**Extensions of Time for Establishing Connection to the HIE Network.** -- The Department of Information Technology, in consultation with the Department of Health and Human Services and the State Health Plan for Teachers and State Employees, may establish a process to grant limited extensions of the time for providers and entities to connect to the HIE Network and begin submitting data as required by this section upon the request of a provider or entity that demonstrates an ongoing good-faith effort to take necessary steps to establish such connection and begin data submission as required by this section. The process for granting an extension of time must include a presentation by the provider or entity to the Department of Information Technology, the Department of Health and Human Services, and the State Health Plan for Teachers and State Employees on the expected time line for connecting to the HIE Network and commencing data submission as required by this section. Neither the Department of Information Technology, the Department of Health and Human Services, nor the State Health Plan for Teachers and State Employees shall grant an extension of time (i) to any provider or entity that fails to provide this information to both Departments, and the State Health Plan for Teachers and State Employees, (ii) that would result in the provider or entity connecting to the HIE Network and commencing data submission as required by this section later than January 1, 2023. The Department of Information Technology shall consult with the Department of Health and Human Services and the State Health Plan for Teachers and State Employees to review and decide upon a request for an extension of time under this section within 30 days after receiving a request for an extension.~~

(a3) Repealed. ~~**Exemptions from Connecting to the HIE Network.** -- The Secretary of Health and Human Services, or the Secretary's designee, shall have the authority to grant exemptions to classes of providers of Medicaid and other State-funded health care services for whom acquiring and implementing an electronic health record system and connecting to the HIE Network as required by this section would constitute an undue hardship. The Secretary, or the Secretary's designee, shall promptly notify the Department of Information Technology of classes of providers granted hardship exemptions under this subsection. Neither the Secretary nor the Secretary's designee shall grant any hardship exemption that would result in any class of provider connecting to the HIE Network and submitting data later than December 31, 2022.~~

(a4) **Connected Status.**

(1) A provider or entity identified in G.S. 90-414.4(a1) is deemed “connected” to the HIE Network when the covered entity that maintains, controls, directs, or licenses the provider’s or entity’s Data Transfer System has:

(a) established an operable technical connection with the HIE Network approved by the Authority that supports the submission of required patient data generated by providers or entities;

(b) provided its Organization NPI to the Authority;

(c) executed with the Authority a valid, written agreement established by the Authority pursuant to G.S. 90-414.7(b)(6); and

(d) identified in writing for the Authority the providers and entities on whose behalf it maintains Data Transfer System.

(2) The NC HIEA, in consultation with the Advisory Board, may determine alternative criteria that a provider or entity identified in G.S. 90-414.4(a1) may fulfill in order to establish "connected" status.

(b) Mandatory Submission of Demographic and Clinical Data. -- Notwithstanding the voluntary nature of the HIE Network under G.S. 90-414.2 and, except as otherwise provided in subsection (c) of this section, ~~as a condition of receiving State funds, including Medicaid funds~~, the following entities shall submit at least twice daily, through the HIE network, demographic and clinical information pertaining to services rendered to ~~Medicaid and other State-funded health care program~~ beneficiaries of State-Funded Health Care and paid for with ~~Medicaid or other State-funded health care funds~~ State Health Care Funds, solely for the purposes set forth in subsection (a) of this section:

(1) Each hospital, as defined in G.S. 131E-176(13) that has an electronic health record system.

(2) Each Medicaid provider~~, unless the provider is an ambulatory surgical center as defined in G.S. 131E-146; however, a physician who performs a procedure at the ambulatory surgical center must be connected to the HIE Network.~~

(3) Each provider that receives ~~State funds~~ State Health Care Funds for the provision of health services, ~~unless the provider is an ambulatory surgical center as defined in G.S. 131E-146; however, a physician who performs a procedure at the ambulatory surgical center must be connected to the HIE Network.~~

(4) Each local management entity/managed care organization, as defined in G.S. 122C-3.

(b1) Balance Billing Prohibition. -- An in-network provider or entity who renders health care services, including prescription drugs and durable medical equipment, under a contract with the State Health Plan for Teachers and State Employees and who is not connected to the HIE Network in accordance with this Article, is prohibited from billing the State Health Plan or a Plan member more than either party would be billed if the entity or provider was connected to the HIE Network. Balance billing because the provider or entity did not connect to the HIE Network is prohibited.

(c) Exemption for Certain Records. -- Providers with patient records that are subject to the disclosure restrictions of 42 C.F.R. § 2 are exempt from the requirements of subsection (b) of this section but only with respect to the patient records subject to these disclosure restrictions. Providers shall comply with the requirements of subsection (b) of this section with respect to all other patient records. A pharmacy shall only be required to submit claims data pertaining to services rendered to ~~Medicaid and other State-funded health care~~ State-Funded Health Care program beneficiaries and paid for with ~~Medicaid or other State-funded health care funds~~ State Health Care Funds.

(c1) Exemption from Twice Daily Submission. -- A pharmacy shall only be required to submit claims data once daily through the HIE Network using pharmacy industry standardized formats.

(d) Method of Data Submissions. -- The data submissions required under this section shall be by connection to the HIE Network periodic asynchronous secure structured file transfer or any other secure electronic means commonly used in the industry and consistent with document exchange and data submission standards established by the

Office of the National Coordinator for Information Technology within the U.S. Department of Health and Human Services.

(e) Voluntary Connection for Certain Providers. -- Notwithstanding the mandatory connection and data submission requirements in subsections (a1) and (b) of this section, the following providers of ~~Medicaid services or other State-funded health care services~~ State-Funded Health Care are not required to connect to the HIE Network or submit data but may connect to the HIE Network and submit data voluntarily:

(1) Community-based long-term services and supports providers, including personal care services, private duty nursing, home health, and hospice care providers.

(2) Intellectual and developmental disability services and supports providers, such as day supports and supported living providers.

(3) Community Alternatives Program waiver services (including CAP/DA, CAP/C, and Innovations) providers.

(4) Eye and vision services providers.

(5) Speech, language, and hearing services providers.

(6) Occupational and physical therapy providers.

(7) Durable medical equipment providers.

(8) Nonemergency medical transportation service providers.

(9) Ambulance (emergency medical transportation service) providers.

(10) Local education agencies ~~and~~ school-based health ~~providers.~~ providers, and student health centers designed to serve university and community college students.

(11) Dentists licensed under Article 2 of Chapter 90 of the General Statutes.

(12) Chiropractors.

A covered entity that maintains, controls, directs, or licenses a Data Transfer System on behalf of providers and entities subject to the HIE Act as well as on behalf of voluntary providers may elect not to submit through the HIE Network clinical, demographic, or claims data generated by voluntary providers; it shall, however, submit through the HIE Network such data for providers and entities that are subject to the HIE Act.

(f) Confidentiality of Data. -- All data submitted to or through the HIE Network containing protected health information, personally identifying information, or a combination of these, that are in the possession of the Department of Information Technology or any other agency of the State are confidential and shall not be defined as public records under G.S. 132-1. This subsection shall not be construed to prohibit the disclosure of any such data as otherwise permitted under federal law.

(g) Time-Limited Exceptions for Connecting to the HIE Network and Submitting Data

(1) A covered entity that maintains, controls, directs, or licenses a Data Transfer System on behalf of providers and/or entities identified in G.S. 90-414.4(a1) may seek to obtain from the Authority a time-limited exception for those providers and/or entities to connect to the HIE Network and submit required patient data.

(2) The Authority shall administer the process by which a covered entity seeks a time-limited exception for providers and/or entities to connect to the HIE Network and submit required patient data. The Authority shall make the final determination to grant or deny requests for a time-limited exception. Any exception authorized by the Authority may not exceed one year, though a covered entity may seek to renew the exception.

(3) In order for a covered entity to obtain a time-limited exception for the providers and entities on whose behalf it maintains, controls, directs, or licenses a Data Transfer System, the covered entity must demonstrate eligibility by fulfilling at least one of the following:

a. During the previous year, the covered entity and the providers and entities on whose behalf it maintains, controls, directs, or licenses a Data Transfer System, in aggregate received less than [$1,000,000.00] in State Health Care Funds for providing health care to individuals who received State Funded Health Care.

b. The covered entity and the providers and entities on whose behalf it maintains, controls, directs, or licenses a Data Transfer System, operate in whole or in part in a geographic area with limited or emergent broadband availability. Such geographic areas are identified by the North Carolina Department of Information Technology's Division of Broadband and shall be published on the NC HIEA's website. Alternatively, the NC HIEA, after consultation with the Division of Broadband, may in its discretion grant a time-limited exception after evaluating materials provided by a covered entity regarding its level of broadband connectivity.

c. The covered entity will close, dissolve, or be acquired by another entity within 12 months

d. The provider or entity has not yet implemented or is in the process of implementing a Data Transfer System.

(4) In support of its request, an eligible covered entity seeking the time-limited exception shall submit an application and attestation form, as well as other necessary materials identified by the Authority, including at least the following:

a. Date of request and application period;
b. Name, Organization NPI, and location;
c. Names of providers and entities on whose behalf the covered entity is applying, as well as their respective NPIs;
d. Technical information regarding its Data Transfer System and vendor, if applicable;
e. State Health Plan for Teachers and State Employees and/or Medicaid network information;
f. Identification of the bases for which it seeks a time-limited exception;
g. Supporting documents and/or materials necessary to substantiate the covered entity's eligibility for the exception, as determined by the Authority;

h. An individual authorized by the covered entity must execute an attestation regarding the validity, truth, and completeness of the submission to the NC HIEA.

(5) After consultation with Advisory Board, the Authority may develop (i) additional eligibility criteria for granting a time-limited exception; (ii) additional information or materials that a covered entity must submit as part of its application; and/or (iii) additional requirements or processes necessary to administer and review time-limited exception requests.

§ 90-414.5. State agency and legislative access to HIE Network data

(a) The Authority shall provide the Department and the State Health Plan for Teachers and State Employees secure, real-time access to data and information disclosed through the HIE Network, solely for the purposes set forth in G.S. 90-414.4(a) and in G.S. 90-414.2. The Authority shall limit access granted to the State Health Plan for Teachers and State Employees pursuant to this section to data and information disclosed through the HIE Network that pertains to services (i) rendered to teachers and State employees and (ii) paid for by the State Health Plan.

(b) At the written request of the Director of the Fiscal Research, Legislative Drafting, Legislative Analysis, or Program Evaluation Division of the General Assembly for an aggregate analysis of the data and information disclosed through the HIE Network, the Authority shall provide the professional staff of these Divisions with the aggregated analysis responsive to the Director's request. Prior to providing the Director or General Assembly's staff with any aggregate data or information submitted through the HIE Network or with any analysis of this aggregate data or information, the Authority shall redact any personal identifying information in a manner consistent with the standards specified for de-identification of health information under the HIPAA Privacy Rule, 45 C.F.R. § 164.514, as amended.

§ 90-414.6. State ownership of HIE Network data

Any data pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries submitted through and stored by the HIE Network pursuant to G.S. 90-414.4 or any other provision of this Article shall be and will remain the sole property of the State. Any data or product derived from the aggregated, de-identified data submitted to and stored by the HIE Network pursuant to G.S. 90-414.4 or any other provision of this Article, shall be and will remain the sole property of the State. The Authority shall not allow data it receives pursuant to G.S. 90-414.4 or any other provision of this Article to be used or disclosed by or to any person or entity for commercial purposes or for any other purpose other than those set forth in G.S. 90-414.4(a) or G.S. 90-414.2. To the extent the Authority receives requests for electronic health information as the term is defined in 45 C.F.R. § 171.102, or other medical records from an individual, an individual's personal representative, or an individual or entity purporting to act on an individual's behalf, the Authority (i) shall not fulfill the request and (ii) shall make available to the requester and the public, via the Authority's website, educational materials about how to access such information from other sources.

§ 90-414.7. North Carolina Health Information Exchange Authority

(a) Creation. -- There is hereby established the North Carolina Health Information Exchange Authority to oversee and administer the HIE Network in accordance with this Article. The Authority shall be located within the Department of Information Technology and shall be under the supervision, direction, and control of the State CIO. The State CIO shall employ an Authority Director and may delegate to the Authority Director all powers and duties associated with the daily operation of the Authority, its staff, and the performance of the powers and duties set forth in subsection (b) of this section. In making this delegation, however, the State CIO maintains the responsibility for the performance of these powers and duties.

(b) Powers and Duties. -- The Authority has the following powers and duties:

(1) Oversee and administer the HIE Network in a manner that ensures all of the following:

a. Compliance with this Article.

b. Compliance with HIPAA and any rules adopted under HIPAA, including the Privacy Rule and Security Rule.

c. Compliance with the terms of any participation agreement, business associate agreement, or other agreement the Authority or qualified organization or other person or entity enters into with a covered entity participating in submission of data through or accessing the HIE Network.

d. Notice to the patient by the healthcare provider or other person or entity about the HIE Network, including information and education about the right of individuals on a continuing basis to opt out or rescind a decision to opt out.

e. Opportunity for all individuals whose data has been submitted to the HIE Network to exercise on a continuing basis the right to opt out or rescind a decision to opt out.

f. Nondiscriminatory treatment by covered entities of individuals who exercise the right to opt out.

g. Facilitation of HIE Network interoperability with electronic health record systems of all covered entities listed in G.S. 90-414.4(b).

h. Minimization of the amount of data required to be submitted under G.S. 90-414.4(b) and any use or disclosure of such data to what is determined by the Authority to be required in order to advance the purposes set forth in G.S. 90-414.2 and G.S. 90-414.4(a).

(2) In consultation with the Advisory Board, set guiding principles for the development, implementation, and operation of the HIE Network.

(3) Employ staff necessary to carry out the provisions of this Article and determine the compensation, duties, and other terms and conditions of employment of hired staff.

(4) Enter into contracts pertaining to the oversight and administration of the HIE Network, including contracts of a consulting or advisory nature. G.S. 143-64.20 does not apply to this subdivision.

(5) Establish fees for participation in the HIE ~~Network~~ Network, for the Annual Health Data Assessment, and for other non-commercial, data-related services for which the NC HIEA seeks to recover costs and administrative expenses. The Authority shall establish such fees in a matter consistent with the Administrative Procedure Act and shall provide ~~report the established fees~~ to the General Assembly with an explanation of any new fees, as well as the underlying fee determination processes, in its annual report. ~~the fee determination process.~~

(6) Following consultation with the Advisory Board, develop, approve, and enter into, directly or through qualified organizations acting under the authority of the Authority, written participation agreements with persons or entities that participate in or are granted access or user rights to the HIE Network. The participation agreements shall set forth terms and conditions governing participation in, access to, or use of the HIE Network not less than those set forth in agreements already governing covered entities' participation in the federal eHealth Exchange. The agreement shall also require compliance with policies developed by the Authority pursuant to this Article or pursuant to applicable laws of the state of residence for entities located outside of North Carolina.

(7) Receive, access, add, and remove data submitted through and stored by the HIE Network in accordance with this Article.

(8) Following consultation with the Advisory Board, enter into, directly or through qualified organizations acting under the authority of the Authority, a HIPAA compliant business associate agreement with each of the persons or entities participating in or granted access or user rights to the HIE Network.

(9) Following consultation with the Advisory Board, grant user rights to the HIE Network to business associates of covered entities participating in the HIE Network (i) at the request of the covered entities and (ii) at the discretion of and subject to contractual, policy, and other requirements of the Authority upon consideration of and consistent with the business associates' legitimate need for utilizing the HIE Network and privacy and security concerns.

(10) Facilitate and promote use of the HIE Network by covered ~~entities.~~ entities and business associates acting on their behalf.

(11) Actively monitor compliance with this Article by the Department, covered entities, and any other persons or entities participating in or granted access or user rights to the HIE Network or any data submitted through or stored by the HIE Network.

(12) Collaborate with the State CIO to ensure that resources available through the GDAC are properly leveraged, assigned, or deployed to support the work of the Authority. The duty to collaborate under this subdivision includes collaboration on data hosting and development, implementation, operation, and maintenance of the HIE Network.

(13) Initiate or direct expansion of existing public-private partnerships within the GDAC as necessary to meet the requirements, duties, and obligations of the Authority. Notwithstanding any other provision of law and subject to the availability of funds, the State CIO, at the request of the Authority, shall assist and facilitate expansion of existing contracts related to the HIE Network, provided that such request is made in writing by the Authority to the State CIO with reference to specific requirements set forth in this Article.

(14) In consultation with the Advisory Board, develop a strategic plan for achieving statewide participation in the HIE Network by all hospitals and health care providers licensed in this State.

(15) In consultation with the Advisory Board, define the following with respect to operation of the HIE Network:

a. Business policy.

b. Protocols for data integrity, data sharing, data security, HIPAA compliance, and business intelligence as defined in G.S. 143B-1381. To the extent permitted by HIPAA, protocols for data sharing shall allow for the disclosure of data for academic research.

c. Qualitative and quantitative performance measures.

d. An operational budget and assumptions.

(16) Annually report to the Joint Legislative Oversight Committee on Health and Human Services and the Joint Legislative Oversight Committee on Information Technology on the following:

a. The operation of the HIE Network.

b. Any efforts or progress in expanding participation in the HIE Network.

c. Health care trends based on information disclosed through the HIE Network.

(17) Ensure that the HIE Network interfaces with the federal level HIE, the eHealth Exchange.

(18) Have and exercise full power and authority to administer and enforce the provisions of this Article, and to adopt and enforce reasonable and necessary rules pursuant to the Administrative Procedure Act, Chapter 150B of the General Statutes.

§ 90-414.8. North Carolina Health Information Exchange Advisory Board

(a) Creation and Membership. -- There is hereby established the North Carolina Health Information Exchange Advisory Board within the Department of Information Technology. The Advisory Board shall consist of the following 12 members:

(1) The following four members appointed by the President Pro Tempore of the Senate:

a. A licensed physician in good standing and actively practicing in this State.

b. A patient representative.

c. An individual with technical expertise in health data analytics.

d. A representative of a behavioral health provider.

(2) The following four members appointed by the Speaker of the House of Representatives:

a. A representative of a critical access hospital.

b. A representative of a federally qualified health center.

c. An individual with technical expertise in health information technology.

d. A representative of a health system or integrated delivery network.

(3) The following three ex officio, nonvoting members:

a. The State Chief Information Officer or a designee.

b. The Director of GDAC or a designee.

c. The Secretary of Health and Human Services, or a designee.

(4) The following ex officio, voting member:

a. The Executive Administrator of the State Health Plan for Teachers and State Employees, or a designee.

(b) Chairperson. -- A chairperson shall be elected from among the members. The chairperson shall organize and direct the work of the Advisory Board.

(c) Administrative Support. -- The Department of Information Technology shall provide necessary clerical and administrative support to the Advisory Board.

(d) Meetings. -- The Advisory Board shall meet at least quarterly and at the call of the chairperson. A majority of the Advisory Board constitutes a quorum for the transaction of business.

(e) Terms. -- In order to stagger terms, in making initial appointments, the President Pro Tempore of the Senate shall designate two of the members appointed under subdivision (1) of subsection (a) of this section to serve for a one-year period from the date of appointment and, the Speaker of the House of Representatives shall designate two members appointed under subdivision (2) of subsection (a) of this section to serve for a one-year period from the date of appointment. The remaining appointed voting members shall serve two-year periods. Future appointees who are voting members shall serve terms of two years, with staggered terms based on this subsection. Appointed voting members may serve up to two consecutive terms, not including the abbreviated two-year terms that establish staggered terms or terms of less than two years that result from the filling of a vacancy. Ex officio, nonvoting and voting members are not subject to these term limits. A vacancy other than by expiration of a term shall be filled by the appointing authority.

(f) Expenses. -- Members of the Advisory Board who are State officers or employees shall receive no compensation for serving on the Advisory Board but may be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Advisory Board who are full-time salaried public officers or employees other than State officers or employees shall receive no compensation for serving on the Advisory Board but may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Advisory Board may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

(g) Duties. -- The Advisory Board shall provide consultation to the Authority with respect to the advancement, administration, and operation of the HIE Network and on matters pertaining to health information technology and exchange, generally. In carrying out its responsibilities, the Advisory Board may form committees of the Advisory Board to examine particular issues related to the advancement, administration, or operation of the HIE Network.

§ 90-414.9. Participation by covered entities

(a) Each covered entity that participates in the HIE Network shall enter into a HIPAA compliant business associate agreement described in G.S. 90-414.7(b)(8) and a written participation agreement described in G.S. 90-414.7(b)(6) with the Authority or qualified organization prior to submitting data through or in the HIE Network.

(b) Each covered entity that participates in the HIE Network may authorize its business associates on behalf of the covered entity to submit data through, or access data stored in, the HIE Network in accordance with this Article and at the discretion of the Authority, as provided in G.S. 90-414.7(b)(8).

(c) Notwithstanding any federal or State law or regulation to the contrary, each covered entity that participates in the HIE Network may disclose an individual's protected health information through the HIE Network to other covered entities for any purpose permitted by HIPAA.

§ 90-414.10. Continuing right to opt out; effect of opt out

(a) Each individual has the right on a continuing basis to opt out or rescind a decision to opt out.

(b) The Authority or its designee shall enforce an individual's decision to opt out or rescind an opt out prospectively from the date the Authority or its designee receives written notice of the individual's decision to opt out or rescind an opt out in the manner prescribed by the Authority. An individual's decision to opt out or rescind an opt out does not affect any disclosures made by the Authority or covered entities through the HIE Network prior to receipt by the Authority or its designee of the individual's written notice to opt out or rescind an opt out.

(c) A covered entity shall not deny treatment, coverage, or benefits to an individual because of the individual's decision to opt out. However, nothing in this Article is intended to restrict a health care provider from otherwise appropriately terminating a relationship with an individual in accordance with applicable law and professional ethical standards.

(d) Except as otherwise permitted in G.S. 90-414.11(a)(3), or as required by law, the protected health information of an individual who has exercised the right to opt out may not be made accessible or disclosed to covered entities or any other person or entity through the HIE Network for any purpose.

(e) Repealed by Session Laws 2017-57, s. 11A.5(e) , effective July 1, 2017.

§ 90-414.11. Construction and applicability

(a) Nothing in this Article shall be construed to do any of the following:

(1) Impair any rights conferred upon an individual under HIPAA, including all of the following rights related to an individual's protected health information:

a. The right to receive a notice of privacy practices.

b. The right to request restriction of use and disclosure.

c. The right of access to inspect and obtain copies.

d. The right to request amendment.

e. The right to request confidential forms of communication.

f. The right to receive an accounting of disclosures.

(2) Authorize the disclosure of protected health information through the HIE Network to the extent that the disclosure is restricted by federal laws or regulations, including the federal drug and alcohol confidentiality regulations set forth in 42 C.F.R. Part 2.

(3) Restrict the disclosure of protected health information through the HIE Network for public health purposes or research purposes, so long as disclosure is permitted by both HIPAA and State law.

(4) Prohibit the Authority or any covered entity participating in the HIE Network from maintaining in the Authority's or qualified organization's computer system a copy of the protected health information of an individual who has exercised the right to opt out, as long as the Authority or the qualified organization does not access, use, or disclose the individual's protected health information for any purpose other than for necessary system maintenance or as required by federal or State law.

(b) This Article applies only to disclosures of protected health information made through the HIE Network, including disclosures made within qualified organizations. It does not apply to the use or disclosure of protected health information in any context outside of the HIE Network, including the redisclosure of protected health information obtained through the HIE Network.

§ 90-414.12. Penalties and remedies; immunity for covered entities and business associates for good faith participation

(a) Except as provided in subsection (b) of this section, a covered entity that discloses protected health information in violation of this Article is subject to the following:

(1) Any civil penalty or criminal penalty, or both, that may be imposed on the covered entity pursuant to the Health Information Technology for Economic and Clinical Health (HITECH) Act, P.L. 111-5, Div. A, Title XIII, section 13001, as amended, and any regulations adopted under the HITECH Act.

(2) Any civil remedy under the HITECH Act or any regulations adopted under the HITECH Act that is available to the Attorney General or to an individual who has been harmed by a violation of this Article, including damages, penalties, attorneys' fees, and costs.

(3) Disciplinary action by the respective licensing board or regulatory agency with jurisdiction over the covered entity.

(4) Any penalty authorized under Article 2A of Chapter 75 of the General Statutes if the violation of this Article is also a violation of Article 2A of Chapter 75 of the General Statutes.

(5) Any other civil or administrative remedy available to a plaintiff by State or federal law or equity.

(b) To the extent permitted under or consistent with federal law, a covered entity or its business associate that in good faith submits data through, accesses, uses, discloses, or

relies upon data submitted through the HIE Network shall not be subject to criminal prosecution or civil liability for damages caused by such submission, access, use, disclosure, or reliance.

(c) In connection with submission of an Annual Compliance Report it is unlawful for any individual or entity to knowingly present, or cause to be presented to the Authority a false record to avoid full payment of its State Health Data Assessment Fee obligation. A Court shall assess against any person or entity who violates this section a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000), plus three times the amount of damages that the Authority sustained because of the act of the individual or entity.

§ 90-414.13 Annual Compliance Report for Covered Entities that Maintain, Control, Direct, or License a Data Transfer System on Behalf or Providers and/or Entities that Provide State-Funded Health Care

(a) Beginning in 2025, each covered entity that maintains, controls, directs, or licenses the Data Transfer System of a provider or entity identified in G.S. 90-414.4(a1) that provides State-Funded Health Care shall submit an Annual Compliance Report to the Authority on a form created by the Authority.

(b) The Authority shall determine the required contents of the Annual Compliance Report, which it may update from time to time after consultation with the Advisory Board. At minimum, a covered entity submitting the Annual Compliance Report shall provide the following to the Authority:

(1) Name, location, and Organization NPI;
(2) Names of providers and entities on whose behalf the covered entity is applying, as well as their respective NPIs;
(3) Acknowledgement of participation in State Health Plan and/or Medicaid;
(4) Status of technical connection;
(5) Status of data submission;
(6) Representations regarding the following, as applicable:
    a. For a covered entity that has entered an agreement with the Authority, a representation regarding that entity's compliance with such agreement;
    b. For a covered entity that has received a time-limited exception from the Authority, a representation regarding its present intent to connect to the HIE Network and submit data;
    c. For a covered entity that elects to pay the State Health Data Assessment Fee in lieu of connecting to the HIE Network, a representation regarding the amount it owes to the State as contemplated in G.S. 90-414.14 and the basis for such amount;
    d. For a covered entity that asserts it is exempt from paying the annual State Health Data Assessment Fee, representations why it is eligible to claim the exemption under G.S. 90-414.14(e).
(7) Contemporaneous payment of State Health Data Assessment Fee, if applicable.
(8) Attestation to the completeness and validity of the Annual Compliance Report and all representations contained therein.

(c) The Authority shall determine the reporting period(s) and deadline(s) for the Annual Compliance Report and publish this information on its website. All reports, statements, documents, and payments required by this Article are to be submitted to the Authority in compliance with such deadlines. Timely filing shall be complete if postmarked or digitally time-stamped on or before the day the reports, statements or other documents are to be delivered to the Authority. If a report, statement or other document is not filed timely this Article, then the entity responsible for filing may be subject to civil penalty late fees established via administrative rule by the Authority.

(d) A covered entity that maintains, controls, directs, or licenses a Data Transfer System solely on behalf of voluntary providers identified in G.S. 90-414.4(e) is not required to submit an Annual Compliance Report. State agencies such as the Department of Health and Human Services, the Department of Public Safety, and the Department of Adult Correction will be required to submit an abbreviated Annual Compliance Report solely available to State Agencies.

(e) The Authority, in its discretion, may waive the requirement that a covered entity submit an Annual Compliance Report.

(f) The Department's Division of Health Benefits shall assist the Authority in administering the Annual Compliance Report processes, as needed. At minimum, the Department shall timely provide the Authority with network rosters of providers and entities; assist with communicating reporting deadlines; and provide information necessary for the Authority to audit or verify covered entities' Annual Compliance Reports and related materials submitted to the Authority. At minimum, the Department shall timely provide the Authority with network rosters of providers and entities and provide information necessary for the Authority to audit or verify covered entities' Annual Compliance Reports and related materials submitted to the Authority.

§ 90-414.14 State Health Data Assessment Fee

(a) Beginning in 2025 each covered entity that maintains, controls, directs, or licenses the Data Transfer System of providers and / or entities subject to data connection and data submission requirements in this Article may be subject to a State Health Data Assessment Fee. The State Health Data Assessment Fee shall be assessed against a covered entity responsible for the Data Transfer System of providers and / or entities subject to data connection and data submission requirements, if that covered entity:

a. Is not connected to the HIE Network; or
b. Is connected to the HIE Network but is not submitting required data to the HIE Network.

(b) By administrative rule the Authority shall set the annual cost of the State Health Data Assessment Fee. The Authority may implement a tiered assessment structure that takes into account relevant factors such as (but not limited to): provider type, the size of an organization, the amount of State Health Care Funds used to reimburse or pay a provider, market factors, previous state and federal investment in the HIE Network, the diminished utility of the HIE Network in the absence of provider data, and prevailing market costs to facilitate and maintain secure data connections.

(c) Payment of the State Health Data Assessment Fee, if applicable to a covered entity, shall be made contemporaneously with the submission of the Annual Compliance Report.

(d) Use of Proceeds. – A special fund NC HIEA State Health Data and Participation Fee Fund is created. The fees collected pursuant to this section and all other funds received by the Authority pursuant to this Article, except for the clear proceeds of civil penalties collected pursuant to G.S. 90-414.12 shall be deposited in this Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent to support the operations of the Authority. The State Health Data and Participation Fee Fund shall be subject to the provisions of the State Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the State Health Data and Participation Fee Fund shall be used only to pay the expenses of the Authority in operating the HIE Network in the interest of the public as provided by this Chapter. The clear proceeds of civil penalties collected pursuant to 90-414.12 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e) A covered entity that maintains, controls, directs, or licenses the Data Transfer System for providers and / or entities subject to data connection and data submission requirements in this Article may establish that it is exempt from being assessed a State Health Data Assessment Fee during the applicable reporting period. An exemption is available to a subject covered entity under the following circumstances:

1.The covered entity has secured a time-limited exception from the Authority for the applicable State Health Data Assessment Fee reporting period.

2. The covered entity provides an attestation that it and the providers and entities on whose behalf it maintains, controls, directs, or licenses a Data Transfer System received less than $500,000.00 in State Health Care Funds for providing health care to the individuals who receive or participate in State-Funded Health Care.

3. The covered entity establishes that it is acting in good faith to comply with the Statewide Health Information Exchange Act by:

i. Entering into a participation agreement with the Authority;
ii. Maintaining a point of contact with the Authority; and
iii. Timely responding to direct communications from the Authority regarding matters such as connection status, onboarding, training, and data submission.

4. The covered entity establishes that it is in its first year of existence, as evidenced by filings in the North Carolina Office of the Secretary of State.

5. The covered entity provides an attestation that it is actively transitioning between Data Transfer Systems.

(f) The Authority may revoke a covered entity's exemption to payment of the State Health Data Assessment Fee if the entity is unresponsive to communications from the

Authority or if the entity fails to maintain a point of contact with the Authority. The Authority has the power to revoke exempt status for good cause after attempting to provide the covered entity with written notice and providing a 30-day cure period.

90-414.15: Appeal of Authority's Determinations

(a) The Authority is empowered to make determinations regarding providers' and entities' obligations under G.S. 90-414.4, G.S. 90-414.13, and G.S. 90-414.14. Such determinations shall be sent to the provider or entity via certified mail, return receipt requested and via email, if known to the Authority. If a provider or entity disagrees with the Authority's determination, it shall deliver a petition for appeal to the NC Department of Information Technology Registered Agent via certified mail, return receipt requested, within 30 calendar days of receipt of the Authority's written determination.
    1) The petition for appeal must include specific reasons disputing the Authority's determination along with any supporting documentation for review by the State CIO or designee. The petition for appeal form shall be developed by the Authority and made available on its website.
    2) Petitioner's failure to submit a timely petition for appeal shall result in the dismissal of the appeal with prejudice. The Department of Information Technology shall notify the provider or entity of such dismissal in writing.
    3) If the State CIO or designee determines that a meeting would serve no purpose, the State CIO or their designee may deny the petition for appeal and notify the provider or entity in writing within 30 calendar days from the date of receipt of the petition.
    4) If the appeal is granted, the State CIO or designee shall attempt to schedule an appeal meeting within 30 calendar days of receipt of the petition unless a later date is agreed upon by the petitioner and the State CIO or designee. The petitioner's appeal shall be supported by any and all documentation and affidavits regarding the petitioner's compliance with this Article.
    5) Within 30 calendar days from the date of the appeal meeting, the State CIO or their designee shall respond to the petitioner in writing with a decision.

(b) If the petitioner desires further review of action taken by the Department of Information Technology described in (a)(2), (a)(3), (a)(4), or (a)(5) of this section, then the provisions of Article 3A of Chapter 150B of the General Statutes shall govern administrative hearings. A petition for a contested case shall be filed within 30 calendar days after the Department of Information Technology mails or emails the State CIO's decision.

(c) Unless otherwise stated in this Article, any other disputes between the Authority and providers or entities, including but not limited to, disputes involving the performance, terms, or conditions of any agreements described in G.S. 90-414.7(b), are not subject to the contested case provisions of Chapter 150B of the General Statutes.

Non-Codified Legislative Directives via Session Law

1. State Health Data Assessment Fee. Notwithstanding G.S. 90-414.14 and the North Carolina Health Information Exchange Authority's ability to set the annual cost of the State Health Data Assessment Fee via administrative rule, the General Assembly establishes the following initial State Health Data Assessment Fee schedules, which shall be assessed beginning in 2025.

a. For the NC HIEA's Annual Compliance Report period beginning in 2025:

Amount of State Health Care Funds received in 2024	**State Health Data Assessment Fee: Amount Due**
$1,000,000 +	1.2% of State Health Care Funds Received in 2024
$750,001 - $1,000,000	$9,000
$500,001 - $750,000	$6,000
$250,001 - $500,000	$3,000
Less than $250,000	(No fee)

b. For the NC HIEA's Annual Compliance Report period beginning in 2026:

Amount of State Health Care Funds received in 2025	**State Health Data Assessment Fee: Amount Due**
$1,000,000 +	1.6% of State Health Care Funds Received in 2025
$750,001 - $1,000,000	$12,000
$500,001 - $750,000	$8,000
$250,001 - $500,000	$4,000
Less than $250,000	(No fee)

c. For the NC HIEA's Annual Compliance Report period beginning in 2027 and thereafter:

Amount of State Health Care Funds received in 2026	**State Health Data Assessment Fee: Amount Due**
$1,000,000 +	2% of State Health Care Funds Received in 2026
$750,001 - $1,000,000	$15,000
$500,001 - $750,000	$9,000
$250,001 - $500,000	$4,500
Less than $250,000	(No fee)