

TRANSCRIPT:

House of Representatives Floor Session  
Friday May 8, 2015  
House File 1535  
Bill Author: Representative Tara Mack

For Video go to:

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Transcribed by: Matt Flanders - Citizens' Council for Health Freedom

**Floor Discussion for HF 1535 Begins at 28:30**

**EHR Floor Discussion: 32:30-59:40**

**Representative Mack – 32:37**

So members, speaking to the A10-1 amendment:

This is mostly some technical cleanup to the underlying amendment. We have a couple provisions in there dealing with childcare and how records are kept and training is done- some issues that Representative Franson worked on. There's also a piece in here that deals with our federally qualified health centers making sure that this part of it has come forward to us from the federally qualified health centers[FQHC]. Members we know that these particular providers are able to serve some of the people who need our help the most- the under-served, where a lot of the health care disparities particularly come to light and we're able to address them. And so as we continue to try to support the FQHC's, this amendment, would direct DHS and the MNACHC to mutually develop a recalculation the of the FQHC rates to reflect the changes in the service delivery model from the past 16 years. This will kind of bring them up to speed on what they need to make sure that their rates are reflective of the work that they're doing. So that is what that part of the amendment is doing.

**33:50**

Members there is also a part in the A10-1 amendment, something that many of you have probably been getting emails on, and that has to do with the issue of electronic health records. This has been an ongoing conversation this session. The bill in front of you, has, as it is, has language in it – language that would exempt any provider that has 7 practitioners from having to comply with the electronic health record. **What the A10-1 amendment does is it takes in language that Representative Pinto had, that would basically exempt solo practitioners or providers that only accept cash to be exempted from our**

EHR records. And so members that's what that does. And then it also specifies, when it comes to electronic health records, basically explains what is already in practice by the department, that no penalty shall be imposed on providers if they do not have an electronic health record in place. And I'm sure we'll have a discussion on this. Members, we have found and many of you have heard, from your constituents, particularly for smaller providers, the electronic health record mandate is incredibly burdensome for small practices. And we are the only state in the country that has a mandate for all providers to have to put in an electronic health record. This mandate went effective January 1 of 2015 and as a result, we have been contacted – I know I have been contacted by providers from all over the state who have significant concerns about the burden that this is placing on them – Many of them looking at retiring early or moving out of the state because they can't put up with the burden of a 15-20 thousand dollar investment into an electronic health record system. And so we're trying to send a message to those providers that the state is trying to work with them – that while we think that electronic health records provide a great benefit to their business, we're not trying to push them out of their state. We're not trying to put a burden on their shoulders that they can't bear. So that's what we are trying to accomplish with this amendment members. And for that, Mr. Speaker, I would appreciate member's support and any questions.

**Speaker – 35:50**

There is an amendment to the amendment. The clerk will report the amendment to the amendment.

**Chief Clerk – 36:05**

Norton moves to amend the Mack amendment to HF 1535 the 2<sup>nd</sup> Engrossment and the amendment to the amendment is coded A-11.

**Speaker – 36:15**

The member from Olmstead, Representative Norton, to your amendment to the amendment.

**Representative Norton – 36:20**

Thank you Mr. Speaker. I'm going to read the portion of the amendment that Representative Mack just talked about to you so that you can hear what I'm leaving in place, before I tell you what I've removed. This portion of the bill will say:

“Individual health care providers in private practice with no other providers and health care providers that do not accept

reimbursement from a group purchaser, as defined in law, 'and it cites it', are excluded from the requirements of this section."

So members I'm leaving that in place. So the description that you just heard about the concern raised by some sole providers, I am not affecting at all and they are being exempted. What I am removing is one sentence that follows that - that says:

"The commissioner shall not issue a penalty to a health care provider for failure to meet the requirements of this subdivision."

Members I'm removing it because I believe that the terminology of this subdivision is directing the department, to not be allowed, should they so choose - and they don't at this time, let me be clear - issue some penalty to a provider in the state who chooses not to comply with our law. This could be a large provider, any provider. And I'm concerned about the message we send in this state by passing a law and then saying we're not going to enforce it. I think that's a rather dangerous precedent. So members, I know many of you received emails. I know I did. What I found in those emails is that there is a lot of misinformation being shared across the state. And so I'm going to take this opportunity, and it's going to take a few minutes, to explain what's in the law and what is not in the law so that we are clear and on the record.

**38:15**

And I've talked with Representative Mack ahead of time, and she knows I'm going to do this, and I hope you will allow me the time. Members, in 2007, in 2007, this legislature adopted the electronic health record requirement. It was done to accelerate the adoption and use of health information technology in order to improve health care quality, increase patient safety, reduce health care costs, and improve public health. We were moving ahead on e-health, and yes, Minnesota led the nation. So just to let you know what's happened since that 2007 decision, 93 percent of Minnesota clinics and 99 percent of our hospitals have electronic health records. 97 percent of our local health departments have adopted public health- electronic health records. Work needs to be done with regard to the effective use of health information technology and I believe that[s] some of the concerns the committee has dealt with this year. So what do we know about the use of electronic health records? A thousand clinics were surveyed by the department of health. 95 percent of those surveyed said electronic health records enhances[sic] patient care. 92 percent said electronic health records alerted them to potential medication errors. 81 percent said electronic health records help them provide care that meets clinical guidelines for patients with chronic diseases. And 72 percent offer the opportunity for patients to

access their personal health information to help them better take control of their own health. Some of you, like me, may have access to your health records online and I do find it extremely beneficial.

**40:15**

So what about that misinformation? I would like to clarify just a couple things and I hope folks are paying attention out in the halls and across the state, but also in this body. Can a patient opt out of having their information shared between providers? Absolutely the answer is yes. Minnesota law recognizes the importance of patient choice when it comes to care delivery and information flow and allows patients to choose who their information is shared with. We've created a standard consent form and I have a copy of that and for those of you that have been receiving information from folks in the mental health field, you should be relieved to hear that on this consent form, that there is special permission needed by folks dealing within the mental health area in order to release any information. In fact, it says, "There are certain types of health information that require special consent by law: chemical dependency programs and psychotherapy notes." So I want you to listen to this, 'cause this is information that I've heard time and time again in the last 24 hours. "Psychotherapy notes are kept by your psychiatrist, psychologist, or other mental health provider in a separate filing system in their office and not with your other health information." You must complete a separate form noting the release of that information. So members there's a lot of misinformation out there about this – and we need to make sure that our practitioners understand the truth. Secondly, does the electronic health record mandate that patient records or notes be put online. The Minnesota 2015 requirement that is being put into law right now does not require that patient information be placed online. The majority of electronic health records used by providers are not linked to the internet. The use of electronic health records is to be treated just like paper records.

**42:30**

Thank you Mr. Speaker. And those safeguards are protected by HIPAA and other laws that we have in the state of Minnesota. And then with regard to my amendment and why I am proposing it today. **Does the department penalize providers? No, Minnesota Department of Health does not issue fines or sanctions against providers that have not met the mandate required.** Instead, members should know that the Department of Health has worked since 2007 when this law was put in place and has been available to help providers comply with the law. In fact, there have been grant monies available, which are now depleted which have helped folks be able to buy the product to put their records on a secure system. Right now, as I mentioned, those are depleted. I'm disappointed that that account was not rejuvenated, but there are loans available for those that want them. The Minnesota

Department of Health requires that some providers may not be able to exceed this and has been a resource, and will continue to be.

**43:55**

The department will continue to provide assistance for those providers in our state. Members, I think it's unwise to put something in law that says Minnesota doesn't care about electronic health records and is not going to enforce them. I think the Department of Health has been very clear – it's online; any provider can find it – that they are there to provide assistance to help those providers that are having financial difficulties. But members, the electronic health records are important to increase the efficiency and quality outcomes of patient care in this state, to help improve ability to avoid adverse events, and have timely access to information for patients by other providers. Members, with that I'm just going to sit down, I do think I just want to reiterate, my amendment does not change what Representative Mack is putting in place at all. It is going to allow exemptions for providers. It just simply says that we're going to remove the language that says that the commissioner may not issue a penalty if they so chose, at some time, for any provider in the state of Minnesota. Thank you.

**Speaker - 45:10**

Discussion to the amendment to the amendment. The member from Wright, Representative Lucero.

**Representative Lucero - 45:20**

Thank you Mr. Speaker. I stand in opposition to the amendment and I would hope members would vote red. Mr. Speaker, small clinic practitioners serve segments of our population that are most in need. The lack of certainty to small businesses creates instability and hardship. And that's what many of these small clinic practitioners are – small businesses. They are indeed small businesses. And when there are mandates in the law that create uncertainty, it's simply a disservice to the small businesses. I spent years, Mr. Speaker, securing technology infrastructure with controls and protections in the medical industry. It is very expensive to do so. And to ask these small businesses to implement technologies, it simply drives up costs. And what it does, the hardship creates consolidation. We want small businesses. We want these clinics to be able to serve the segments of the population that are in most need. But when there are mandates like this, that creates uncertainty, they simply will sell out and consolidate to larger organizations and that is exactly what we don't want. So Mr. Speaker, again I urge everybody to vote red, members to vote red on this amendment, simply because we want to make it very clear that we do not want to create a hardship to our small clinic practitioners. Thank you.

**Speaker - 47:05**

The member from Dakota, Representative Mack.

**Representative Mack - 47:08**

Thank you Mr. Speaker and members. And thank you Representative Norton for the amendment. And I understand what you're trying to accomplish. And members I understand kind of the awkward situation that we are in with electronic health records and the fact that there is this law in the books. However, the department has been clear that they do not impose penalties for not complying and they don't intend to impose penalties and I appreciate that they have been working since 2010 as Representative Norton pointed out to work with providers. However, the fact is, is that we still have, I think Rep Norton said we have like 93% of our providers now have electronic health records. And that's phenomenal. I think we've gotten a long ways down the road to what we're trying to accomplish, but the fact is, is that the ones that are remaining outside of compliance in not having electronic health records are the ones that can least afford to put them in and in addition that we can least afford to lose in our health care system. And so members I understand that putting in language that stipulates that there wont be a penalty is awkward for some members but I think its a message that we need to send to providers - that we're trying to work with them that we want to keep them here in the state, that we don't want them to close their doors early. And unfortunately the message hasn't gotten to them fast enough from the department. And I understand the department wants to continue to do work to get that message out there to them, that there's not going to be a penalty, that the state wants to work with them. But members, I'll just say again we're five months in to a mandate requirement and some of the providers, many of which you guys have heard from are panicking. And I will also argue, members, that these providers, they don't want to be outside of the law. They're very uncomfortable with that in and of themselves. So just the fact that there's not a penalty, I don't think that's just going to make them shrug this off. When I've had providers contact me, and I said to them, there won't be a penalty imposed. They'll still say to me, but isn't this the law? And I'll say yes, it is the law that you are supposed to have an electronic health record. So there's already this heartburn of living outside the law. And I believe that these are good, hardworking providers, who truly want to comply and because of the burden of - mostly what I'm concerned about is the cost, of what they're looking at- and so by saying this in law and putting this in this amendment, I'm trying to send a message over the bow to those providers understanding so that they know that there's not going to be an

additional financial penalty for not complying. And I truly think that they will continue to seek how they can come into conformity with the law. And in addition members, there are some loan forgiveness programs that the department has. There's a grant program that hasn't been funded or re-funded I should say. And I think it's something, I know Senator Sheran interested in looking at, I'm interested in looking at that would help offset the costs of putting in an electronic health records. But until some of those things come into place, I realize that there's a bit of a gauche, an awkwardness, to putting something like this, that there's not going to be a penalty, but the fact is, that is the practice of the department. I think that message needs to be sent to the providers. And I think that we need to make it clear that we are supporting them, trying to keep them in this state, and appreciate the good work that they do and not add a burden to them that's going to drive them out. And I think that this is the best way to do that. So I would respectfully ask for members to vote against the Norton amendment. Thank you Mr. Speaker.

**Speaker - 50:18**

The member from Olmsted, Representative Liebling.

**Representative Liebling - 50:21**

Thank you Mr. Speaker and members. Well, thank you Representative Mack. And Representative Mack, I do support what you are trying to do here in terms of exempting the very small providers and the rest of your amendment. I think the problem, Representative Mack, the problem with this last sentence, the one that Representative Norton is trying to remove, is that it's way too broad. It isn't only about the small providers. If it was, I would support that language. It's a very broad statement. It says the commissioner may not issue a penalty to a health care provider for failure to meet the requirements of this subdivision. That's everybody. That's everybody. And that's a bridge too far. I would say if Representative Lucero really is concerned about a burden on providers, he should offer a bill to remove that requirement - not say, we'll never penalize you for failing to meet the law - then change the law. And I know that's what you're doing in your underlying amendment, in the amendment here. And that's fine. As I say I'm fine with exempting those individual health care providers in private practice and those who accept cash. I'm fine with that, I do think there should be some exemption. But that last sentence is poorly crafted. It doesn't do what it's supposed to do. It's very, very broad. And again it's really unfortunate that here on the house floor, because of the pre-file rule, we can't go and fix things - it's either yes or no. And once again we're in that bad position where it's got to be either up or down on something; we can't fix it. But we should be fixing

this language. It is really a bad practice, even if they don't impose a penalty, it's really a bad practice to say 'Yeah we've got a law, but just ignore it. Nothing will happen to you.' You know, what if we said that with the speeding laws? 'Yeah, there's a law, but just don't comply, it's okay, what the heck. We made the law, but never mind – doesn't apply to you cause we'll never enforce it.' I just think that's a really bad practice and I don't think we should be doing that here. At the same time that you're exempting certain people – good, fine. You're exempting them, they don't have to worry about a penalty. Why put in a line that says everybody is exempt from a penalty? That just doesn't make sense to me Representative Mack. And I really think it breeds disrespect for the law, and there's a different way to do that. If you really want to exempt more providers from this requirement, then exempt them. Don't pass your amendment. But I don't think this is a good thing to do, and members please support the Norton amendment to the amendment.

**Speaker-53:22**

The member from Dakota, Representative Mack.

**Representative Mack – 53:24**

Thank you Mr. Speaker and members. Just a final point in terms of the language that's in front of you, we've been going back and forth, a lot of advocates were not necessarily happy with the solo practitioner language that we put in here. The bill that, as it came to the floor today, allowed for an exemption with up to seven practitioners; however, that made the department very uncomfortable. And in a good faith effort of trying to work with the Senate, trying to work with Senator Sheran as we've agreed to work closely together on this and not have anything in there that was kind of a non-starter for either one of us. I've been trying to work with the department and I will tell you that the department does not love the idea of having "no-penalty" language put in place. However, I originally brought them language, they did not care for the "no-penalty" language I brought forward and so this is the language that they sent back to me – saying we don't love this idea, but if you're going to do it, this is the language we would have you put in. And I said okay, I will take that language. And so this is what the department brought to me, in terms of a concession on this point. Again, I'm not going to leave the impression that the department likes this, but members we're kind of in a position here where, again, we have providers reacting. And I think the onus has been put on the provider to kind of follow through on an onerous government mandate. And their other option is to cease doing what they're doing – the very important service that we need them to continue doing. And so it's not an ideal situation, but again members, I think that this is the best way that we can make sure to allow for just an exemption for one solo



practitioner, as Representative Pinto worked to do, it doesn't capture all the providers out there within the 7 percent who have not yet been able to put in EHRs. That language does not help all of those folks. So by putting in this language, just ensuring that the practice of the department already is and is continuing to be and they intend to continue to be to not impose a penalty because they realize the burden that this is on the providers that we can least afford to lose. And so by putting this language in, we're just specifying what the department's intentions are, what the practice already is, and making that clear to providers that we're going to continue to work with them – these small providers. And again, members, I understand that this says that there shall not be a penalty to any provider, but again, 93 percent of the providers and I believe all of the large providers – large systems – already have this in place. So we are really trying to come to the aid of the smaller practices. Some in my district, the ones that have a family practice of, you know, the dad is a dentist, and now the two sons are in practice. It's a small practice, but there's three practitioners, so under this language, they're not exempted. They are scrambling to try to figure out how they're going to comply, and they are in process to comply. But I think we need to give the assurance that while they're trying to figure that out, they're not going to have a penalty slapped on them. So again members, with that, I ask that you vote against the amendment. Thank you Mr. Speaker.

**Speaker – 56:24**

The member from Olmsted, Representative Norton.

**Representative Norton – 56:27**

Thank you Mr. Speaker. And Representative Mack, perhaps the writing is on the wall here. I hope I've made my point, I think I have, I think you understand what I'm trying to do and the concern. I also do want to clarify though, 93 percent of the clinics, 99 percent of the hospitals, and 97 percent of health departments, 69 percent of nursing homes, my data doesn't go down as far as individual practitioners – so I don't know the percent of those. I just want to be clear about that. So what I'm going to ask, Representative Mack and others, I would like a vote on this. And I'd ask you to support it. If my amendment fails, which unfortunately I think might happen. I'm going to ask Representative Mack if she would consider going in to conference to have a really robust discussion about this particular sentence, being as we do know the department of health isn't comfortable with it. I think there are some members that are uncomfortable with it. If you would have that conversation please, moving ahead. And even consider something like a phase out time. Because for the larger providers, I don't think it sets a good precedence, and it's been mentioned, to say we're not going to enforce

Minnesota laws. So if we are going to delay the implementation, or the enforcement of the implementation, a delay and a time certain might be more appropriate – rather than just a blanket ‘we’re not going to follow the law here in Minnesota’. So I’d like you to consider that moving ahead. And members, with that, I do hope for your green vote on this particular amendment, and thank you so much.

**Speaker – 57:55**

Seeing no further discussion, all those in favor of the amendment signify by saying aye... those opposed nay... the motion does not prevail; the amendment is not adopted. To the underlying amendment, the Mack amendment: discussion? The member from Ramsey, Representative Pinto.

**Representative Pinto – 58:18**

Thank you Mr. Speaker, members. I put together this language regarding solo providers that Representative Mack referred to. Members should know that the department of health did express concern about any change in the mandate at all – and for good reason. Electronic health records, as Representative Norton has said, contribute to patient confidentiality and safety and a number of things. But they did recognize that those benefits increased as the size of the practice increases. The reason I’m standing up right now is just to point out, from my own perspective, a lot of the misinformation that’s been spread about this, and just for members and the folks who contact us to recognize again, these records are not being placed online, there’s no requirement that they be placed online. And this is in fact an exemption for solo providers. And finally, there is quite a bit of confusion about even the language of the amendment that’s now contained in the Mack amendment. **Just to confirm, we all are clear on this: that if you’re a solo provider, you will be exempted from the mandate under this amendment.** There’s folks that have contacted me about some type of ambiguity or confusion about that. As far as I’m aware, there’s none, if members are concerned about that please let us know. But otherwise my understanding is that no confusion about that. If you’re a solo provider, this would exempt you from the mandate. Thank you Representative Mack for bringing this forward, and I ask members to support this amendment.

**Speaker – 59:37**

Seeing no further discussion, all those in favor of the A10-1 amendment signify by saying aye... those opposed? The motion prevails and the amendment is adopted.

**Clerk Takes Roll for HF 1535 at 1:05:30**