

Assessment of State Laws Related to Electronic Health Information: Scoping Statement and Protocol

Scope

Scoping Preamble

The US health system is undergoing a digital revolution that has already resulted in significant changes in its efficiency, capacity, and function.¹ This digital revolution has also produced innumerable distinct databases of electronic health information (EHI). This assessment relies on the assumption that EHI databases—discrete or interconnected through health information technology—are inherently useful to the various entities responsible for protecting and promoting the population’s health. Therefore, laws relating to EHI were considered within the scope of this assessment regardless of the format or content of the EHI referenced in those laws.

Scoping Statement

This assessment organizes all laws related to access, collection, maintenance, or use of EHI in effect on January 17, 2014.² The laws are organized into *primary use* categories, which include laws related to the patient-provider relationship and treatment setting, and *secondary use* categories, which include laws that consider sharing patient data for public health, reimbursement, and other categories. This assessment does not address laws associated with rules of evidence or laws concerning only the validity of electronic signatures.³

Scope Determinations

A law must satisfy three elements to be considered within the scope of the meta-assessment: 1) the law must have an electronic element, 2) the law must have a health element, and 3) the health element and the electronic element must refer to the same datum or data. These elements are described in detail below.

1. The Electronic Element

For the electronic element to be present, the text of the law must sufficiently suggest that data are in an electronic or digital format that is more than transitory. For example, telecommunications, such as an unrecorded phone conversation or a fax, would not satisfy the electronic element where there is not sufficient evidence to suggest that these calls or faxes are saved, stored, or recorded for longer than it takes to transmit the information. In some cases, the electronic element can be inferred from the context. For example, if a law discusses a “print-out” of a record, it can be inferred that a non-transitory

electronic version exists. Similarly, if a law discusses an automated database, it can be inferred that the database is automated by electronic versus mechanical means.

2. The Health Element

For the health element to be present, there must be sufficient information to suggest that a piece of information relates to the health of a person or group. For example, copies of a facility's patient privacy policy posted on the facility's website would not satisfy the health component because they do not relate to a particular person's (or group's) health status.

3. Both Elements Refer to Same Information or Data

The final element is a determination that the electronic element and the health element refer to the same piece of information or data. In other words, the information must be *both* electronic information and health information. Context is considered when making this determination. In some cases, the association between the two elements might be ambiguous from the context.

This ambiguity sometimes occurs in laws that list definitions, where one definition implies electronic information (e.g., a definition for records that includes electronic information) and another definition implies health information (e.g., definition of anatomical gifts). An association between the two elements was generally assumed if the law is in a traditionally health-focused code section (e.g., vital records). An association was generally not assumed where the code section was not traditionally health-focused (e.g., education or transportation).

The association between the health and electronic elements was also ambiguous in some laws where the health and electronic elements did not appear next to one another in the law's text. Coders used the following contextual factors to determine whether the two elements referred to the same information: the language used in the law, the distance between the two components, and the hierarchical numbering of sections within the law. If an association was still ambiguous after weighing contextual factors, the law would be included with the intent of erring on the side of over-inclusion.⁴

Methods - Protocol for the Collection of Laws

Collection Resources and Tools

Attorney researchers (hereafter "researchers") used WestlawNext® to search for legal provisions in statutes and regulations in 50 states, the US territories, and the District of Columbia.

Search Terms

adv: SD((digital electronic computer internet web-based automated) /50 (health medical) /50 (record database) ehr hie hio rhio hit "health information technology" "health information exchange" "health information organization")⁵

Limitations of Collection Resources discovered

While validating the search terms, it was discovered that many laws that should have been "hits" according to the search terms were not picked up using the WestlawNext search tools. Specifically, sets

of laws with the terms “health information technology,” “health information exchange,” and “health information organization” were missed by early legal data collection iterations. When this limitation was discovered, these search terms were each executed individually, and the laws collected were limited to those effective in the scope timeframe. Researchers were unable to determine why laws related to these phrases were not retrieved by the existing search string in WestlawNext.

Coding Category Determinations

Researchers distinguished legal provisions by use category. The use categories of EHI can be divided into primary and secondary uses. “Primary use” relates to uses directly tied to a specific patient’s care. “Secondary uses” include all uses not directly tied to a patient’s treatment.⁶ Three primary use categories and 25 secondary use categories were established.⁷ Researchers developed this rigorous coding criteria for each use category from a literature review collected from a PubMed search of scholarly articles published since 2009. Terms were differentiated according to the initial literature review.

Coding Methods

Two to three researchers blind-coded legal provisions within each jurisdiction. For each jurisdiction, researchers interpreted and classified legal provisions related to the selected use categories. The research was recorded on a custom Microsoft® Access database. Blind coding was conducted with two or more coders for each state.

After each blind coding session, coding discrepancies were analyzed and corrected in peer-review meetings. The consensus codes for each law determined by peer review were recorded in the master database. Whenever only two researchers were available for blind coding, a third, impartial arbiter attended coding meetings to help make final determinations.

Coding criteria

Main Codes and Cross-References

Two types of codes are assigned in this assessment: main codes and cross-references. Main codes were assigned for every law within the scope of the assessment. The main code of a law reflects the general purpose of the EHI use reflected in the law or the general activity that comprises the focus of the law. Laws that primarily relate to another topic but discuss the relevant category were also assigned cross-reference codes. For example, a law implementing a health information exchange (HIE) that contains legal provisions addressing sharing information with immunization information systems (IIS) would be given an HIE main code and an IIS cross-reference code. While every law contains a main code, not every law has a cross-reference code.

Primary Use of EHI

EHR: Treatment

Laws with this code relate to individual providers’ use of EHI in their patients’ treatment. As a primary use category, laws in this category must relate to the use of information in the treatment of patients.

This include laws that place requirements on electronic health records (EHRs) used to treat patients, such as laws that require privacy, security, maintenance, or technical standards for providers that use EHR systems to treat patients.

The “EHR: Treatment” category contains a broad range of providers, including physicians, nurses, pharmacists, clinical laboratories, hospitals, long-term nursing facilities, adult-daycare facilities, mental health institutions, and substance abuse treatment facilities among others. Laws related to coroner or medical examiner services were sometimes included in this category when the law did not primarily relate to creation of vital statistics.

“EHR: Treatment” also includes laws addressing electronic information that affects treatment relationships, e.g., continuing education requirements for training and education in the use of EHR systems. Laws with this code impact the treatment relationship between providers and patients by increasing EHR technical skills among providers. Similarly, the “EHR: Treatment” category also applied where a law encourages providers to use EHRs.

[Encouraging EHR Adoption and Use with Financial Incentives](#)

State laws implementing the Health Information Technology for Economic and Clinical Health Act meaningful use incentive program are common examples of laws that encourage EHR use by providers. For many of these laws, the state’s Medicaid program, a payer, is incentivizing the adoption and use of EHRs. Because these laws relate to the treatment relationship they are given an [EHR: Treatment](#) cross-reference in addition to a [Payer](#) code.

EHI in this category can take the form of electronic diagnostic images, telemedicine, electronic messages between providers regarding patient care, electronic prescriptions, records generated by automated pharmacy dispensing systems, EHRs, and documents found within EHRs, such as electronic records of a patient’s privacy preferences or advance directives for medical treatment.⁸ Other types of treatment-related health information laws that fall under the EHR: Treatment code include

- Consumer rights for patients and mental health and substance abuse services consumers
- Prenatal care
- Early childhood intervention services
- Access to health records in declared emergencies

This category does not include the use of treatment records for other purposes, such as for example, using treatment records to audit payer reimbursements, which is a secondary use of the treatment records.

Some use categories inherently related to a patient’s treatment but were categorically excluded from the EHR: Treatment category to reduce duplicative coding. The following are a few examples of this:

- Laws with the [Health Information Exchange/Health Information Organization \(HIE/HIO\)](#) main code were generally not given “EHR: Treatment” as a cross-reference. One of the primary

purposes of an HIE is to transfer information between providers if a patient receives treatment at different facilities. In many cases, the EHR: Treatment cross-reference would be redundant because it would reflect only one of an HIE's purposes. However, if a law with an HIE main code contained a legal provision that could impact the treatment given to a patient or the treatment relationship beyond the exchange of medical records, an EHR: Treatment cross reference may be appropriate. For example, if the law refers to an HIE system that sends automated clinical alerts to physicians related to potential medication interactions or allergies, an EHR: Treatment cross-reference would be warranted.

- Laws with the [Accountable Care Organizations \(ACO\)](#) main code were not given an "EHR: Treatment" cross-reference. ACOs provide treatment to patients, but they are based on reimbursement systems that try to improve health outcomes by re-aligning financial incentives. Because patient treatment is inherent in ACOs, giving these laws an "EHR: Treatment" code would be duplicative.
- Laws with the [Workers' Compensation](#) main code were not given an EHR: Treatment cross-reference. Worker's Compensation systems aim to help employees injured on the job by providing them with financial and medical assistance. Because treatment is inherent in all Workers' Compensation systems, giving these laws an "EHR: Treatment" code would be duplicative.

Correctional Patient Records

Laws with this code relate to inmate health information created, stored, or owned by correctional or detention facilities. The location of a law within a statutory or regulatory code was highly persuasive to coding for this category. A law located in a corrections or detention section of the legal code would be coded "Correctional Patient Records" even if the EHI referenced in the law is created or maintained in a facility where ingress and egress is not strictly regulated (e.g., halfway houses, or juvenile group homes).

Correctional Patient Records Code Example

If correctional patient records were used for a purpose other than the treatment of the individual in the correctional facility, this code would be used as a cross-reference, with the main use tagged as the primary code. A common example of this is correctional patient records used to determine paternity for custody or child support claims (in this instance, this code would be a cross reference).

Education Patient Records

Laws with this code relate to student health information created or stored by education-oriented entities such as schools, school districts, universities, university systems, or children's daycare facilities.

Code Contrast: Education Patient Records and Immunization Information Systems

Laws that primarily relate to education patient records that specifically mention immunization records are given [Education Patient Records](#) as a main code. The [Immunization Information System](#) code is not appropriate for these laws without reference to a centralized IIS.

Secondary Uses

Accountable Care Organization

Laws with this code relate to multi-provider healthcare organizations that share two characteristics: 1) coordination of patient health care between different providers and 2) reimbursement systems that incentivize positive healthcare outcomes, i.e., payments based on outcomes rather than payments based on the services provided. Organizations called ACOs or “coordinated care organizations” are assumed to have these two characteristics for the purposes of this code.

Administrative Investigations

Laws with this code authorize government entities, such as health authority licensure departments, to access and analyze EHI to investigate allegations of abuse, neglect, or other adverse events of patients or residents of facilities.

Advance Directive Information System

Laws with this code relate to reporting, submitting, or collecting advance directives information for a centralized system or database holding advanced directive information. Existence of a centralized database is assumed where a law refers to the reporting advance directives or submission of data specifically related to patients’ advance directives. These systems are generally assumed to be electronic unless explicitly described otherwise. Advance directives under this code means any of the following:

- Patient declarations about treatment preferences when the patient does not have the capacity to make informed treatment decisions
- Patient declarations about criteria or decision-making guidelines to be used to determine a course of treatment for situations when the patient does not have the capacity to make informed treatment decisions
- Patient declarations about the disposition of the patient’s body or body parts
- Patient delegations of authority for making treatment decisions when the patient does not have the capacity to make informed treatment decisions
- Patient declarations creating a durable power of attorney

The “Advance Directive Information System” code does not include laws that discuss provider records that include advance directive records unless the law also relates to submitting those records to an advanced directive information system.

Code Contrast: Advance Directive Information Systems and EHR: Treatment

Laws that relate to using advanced directives in the treatment relationship without mention of a centralized information system are coded [EHR: Treatment](#) because they are documents created to advance the treatment relationship between providers and patients.

Anatomical Gifts

Laws with this code relate to information associated with human tissue, including blood, semen, and other bodily fluids, either living or dead, to be donated for purposes such as transplant, education, or research.

Birth Defects Information System

Laws with this code refer to a database or other collection of information about confirmed cases of birth defects, congenital disorders, neonatal diseases, and adverse birth outcomes.

Existence of a centralized database is assumed where a law refers to the reporting birth defect cases or submission of data specifically about patients with birth defects. These laws may be specific to certain types of birth defects or congenital disorders. Other types of registries that fall under the “Birth Defects Information System” code include

- Adverse pregnancy outcomes reporting systems
- Maternal mortality and morbidity databases
- Birth-related neurological injury compensation programs
- Perinatal reporting systems
- Adverse pregnancy outcomes registries

Birth Defect Information System Code Example

A law that requires creating a statewide program that monitors the occurrence of a birth defect or other specified perinatal condition that can adversely affect a child’s health and development

Birth-Related Neurological Injury Compensation

Laws with this code relate to systems states establish to provide remedies, such as financial compensation, to infants, parents, legal guardians, or any other party that might otherwise have a claim for medical malpractice for a birth-related neurological injury.

Code Contrast: Birth Defects Information System and Birth-Related Neurological Injury Compensation

Laws about collecting or submitting information related to birth-related disorders, including lasting neurological injuries, are coded [Birth Defect Information System](#) and not Birth-Related Neurological Injury Compensation if the law does not relate to a system of compensation or other remedies for parties affected by the injury.

Cancer Information System

Laws with this code refer to a database or other collection of information relating to confirmed cases of cancer. Existence of a centralized database is assumed where a law refers to the reporting cancer cases or submission of data specifically related to cancer patients. These laws may be specific to particular types of cancer (e.g., a reference to a brain tumor information system).

Cancer Information System Code Example

A cancer information system would be assumed in a law that requires doctors to report any occurrence positive cancer test results to a health authority.

Child Blood Level Data

Laws with this code require healthcare providers to record and report the presence of lead in a child's blood to a health authority or a centralized database. These systems are sometimes referred to as registries, reporting, or information databases.

Child Support, Child Welfare, and Foster Care

Laws with this code relate to using EHI in the child support, welfare, and foster care systems. This code includes EHI about

- Adoption records and registries
- Guardianship proceedings
- Reports of abuse and neglect
- Foster care healthcare passports or systems that promote continuity of children's health records across the foster care system

- EHI used in secure childcare facilities

Child Support, Child Welfare, and Foster Care Example

A law that relates to using correctional patient records to determine paternity for custody or child support claims. The law would also be coded with a [Correctional Patient Records](#) cross-reference to reflect the use of correctional patient records to determine paternity for child support payments.

Chronic Disease Information System

Laws with this code relate to reporting or collecting chronic disease-related information for a centralized system or database. The “Chronic Disease Information System” code does not include laws addressing provider records that include chronic disease information unless the law also relates to submitting those records to a separate chronic disease information system.

Controlled Substances

Laws with this code are substance or drug specific and explicitly use the phrase “controlled substance,” refer to a specific schedule of drugs, or relate to drug pedigree requirements. Opioid treatment registries would also fall under the “Controlled Substances Code” because their primary purpose is to regulate a substance rather than a patient’s treatment.

Code Contrast: Controlled Substances, Prescription Drug Monitoring Programs (PDMP), and EHR: Treatment

Laws with a [Controlled Substances](#) main code refer primarily to regulation of the substance rather than use of the substance in the delivery of healthcare services. In contrast, a law that primarily relates to electronic prescriptions of controlled substances would be given [EHR: Treatment](#) as a main code because the law primarily relates to EHI created to advance the treatment relationship. Additionally, it would be given a [Controlled Substances](#) cross-reference code to reflect the specific substance prescription requirements. Similarly, if a law that primarily relates to administration of a [PDMP](#) specifically mentions electronic information relating to controlled substances, it would be given a [Controlled Substances](#) cross-reference.

Dental Identification Records

Laws with this code relate to using electronic dental records to identify living or deceased individuals. Laws with this code may relate to an electronic dental identification system that acts as a repository for dental examination records. They may also relate to systems that compare new and existing dental records to identify possible matches or determine the likelihood of a match.

Disease Investigation

Laws with this code relate to active data collection by a health authority (a “pull” mechanism) in response to a disease or condition of public health significance. This code includes laws that authorize a health authority to access healthcare providers’ record systems during outbreaks or public health emergencies.

Disease Reporting

Laws with this code relate to passive data collection (a “push” mechanism) relating to reportable or notifiable conditions (including HIV) by a health authority or similar government entity. This code is limited to laws that relate to reporting contagious or infectious diseases defined by law.

There are many conditions that may be reportable under state law that nonetheless fall *outside* of the scope of the “Disease Reporting” code. These conditions include

- Cancers
- Congenital or birth defects
- Adverse healthcare events
- Occupational illness or injury
- Conditions affecting mental or behavioral health
- Traumatic injury

Disease Reporting Code Example

A law requiring doctors, laboratories, and school nurses to report any suspected case of a communicable disease to a health authority

Emergency Medical Services (EMS) Data Reporting

Laws with this code relate to EMS providers reporting or submitting EMS data to a health authority. This data can include patient information such as age and gender, the reason given in the call for EMS services, observed patient condition, care provided on the way to the healthcare facility, and the disposition of the patient upon arrival.

Family Planning Reporting

Laws with this code relate to reporting or submitting data about maternal and child health program services to a health authority or other government health authority.

Government Held Breath Testing Records

Laws with this code relate to maintaining or using electronic records of breath test results by government agencies, including law enforcement agencies or the department of health services. This code relates to information the government obtains to determine compliance with the law (e.g., blood alcohol tests performed to determine whether a driver is driving while intoxicated). This code does not include laws relating to breath-test results used to treat a patient.

Government Records

Laws with this code govern the acquisition, storage, use, retention, and security of EHI held by the government. These laws apply broadly to all government agencies and entities and do not apply to any specific primary or secondary use of EHI.

Health and Hazardous Substance Registry

Laws with this code relate to systems that collect, compile, and correlate information on public health and hazardous substances. These systems can contain compilations of information from other registries, including

- Adverse pregnancy outcomes
- Cancer incidences
- Occupational diseases
- Location of, transportation of, and exposure to hazardous nuclear materials
- Company profiles
- Hazardous substances incidents

These laws relate to systems that differ from other registries and information systems because they focus on the broad range of effects caused by substances rather than the occurrence of specific injuries, diseases, or conditions.

Health Information Exchange/Health Information Organization (HIE/HIO)

Laws with this code relate to entities that facilitate access to identifiable health information. Such facilitation includes a specified technical infrastructure that exists to exchange or share health information or an entity that

- Acts as an intermediary between a custodian of health information and a third party seeking access to it
- Acts as a custodian of health information that was originally created by another entity, such as a healthcare provider, that is authorized to share or grant access to information to certain interested third parties, such as other healthcare providers, healthcare payers, or public health authorities
- Acts as a record locator service that helps third parties identify the custodian of identifiable health information
- Helps healthcare providers, payers, or schools satisfy legal requirements for submitting or reporting identifiable health information, including reporting diseases of public health concern, reporting immunizations, submitting vital statistics, etc.

The “HIE/HIO” code is not used for

- Entities that transfer information only between entities within the same organizational umbrella (e.g., healthcare providers within the same hospital system)

- Requirements on EHR software or HIT hardware

Code Contrast: HIE-HIO and EHR: Treatment

A law that states “EHR systems must be interoperable” relates to the specifications and technical standards of EHR systems and would be coded [EHR: Treatment](#); it would not be coded [HIE/HIO](#) because it does not relate to a facilitating entity.

Health Information in Driver’s License Records

Laws with this code relate to a state’s motor vehicle department maintaining or using EHI. This code includes EHI controlled by the department of motor vehicles that is pertinent to individuals’ driving activities (i.e., health conditions related to driving safety).

Health Information Technology Oversight

Laws with this code broadly relate to state, tribal, local, and territorial governments’ efforts to oversee the transition from paper to electronic information in health systems. Laws in this category include

- Laws broadly addressing HIT
- Laws setting goals, benchmarks, objectives, or plans involving the incorporation of HIT in health systems
- Laws enabling authorities of agencies, boards, commissions, or other entities to oversee, advise, assist, or otherwise support implementation of HIT in health systems
- Laws that relate to the evaluation of the use of HIT in health systems generally
- HIT and certificates of need
- Criminal laws defining prohibited uses of HIT
- Jurisdiction-wide privacy, confidentiality, or security laws using broad language to indicate that the law covers many different classes of entities⁹

The following laws fall outside of the scope of the “HIT Oversight” code:

- Laws that address HIT use for a specific class of entities (e.g., a law that details HIT use for only healthcare providers would be coded [EHR: Treatment](#) and not coded HIT Oversight)
- Laws about HIT use evaluation within the context of a specific class of entity (e.g., a law that relates to a state Medicaid plan’s evaluation of HIT use among Medicaid providers would be coded [Payer](#) and not coded HIT Oversight)
- Laws that govern privacy, confidentiality, or security for specific classes of entities (e.g., a law related to privacy requirements of healthcare providers would be coded as [EHR: Treatment](#) and not HIT Oversight)

Healthcare Quality Monitoring

Laws with this code refer to using data to monitor, measure, or assess the quality of healthcare services by a public health authority. These laws may refer to reporting specific events that are used to assess healthcare quality, such as healthcare-associated infections, adverse healthcare events, or prescription error reporting. This code is also used for laws that refer to a public health authority collecting or using general health data unrelated to an adverse event to monitor, measure, or assess healthcare quality.

This code does not include activities by non-public health entities, such as activities by providers, ACOs, or healthcare payers, unless a public health authority is implicated. However, the “Healthcare Quality Monitoring” code is appropriate for laws concerning entities, such as healthcare providers, health information exchanges, etc. that facilitate collecting or using health data by public health authorities to monitor, measure, or assess healthcare quality.

Healthcare Quality Monitoring Code Example

A law that relates to a health authority collecting patient discharge data (including discharge data of patients with select conditions or services delivered) to assess providers’ healthcare quality

This code also does not include laws about things that are assumed to affect healthcare quality. For example, a law that says “healthcare providers that implement quality improvement initiatives, such as the adoption of electronic health records” assumes an effect between EHR adoption and quality improvement and does not relate to monitoring, measuring, or assessing healthcare quality. Consequently, the Healthcare Quality Monitoring code is not appropriate for this legal provision.

Healthcare Services Reporting

Laws with this code relate to reporting or submitting EHI, such as abstract, discharge, and billing data, to a health authority. The reporting or submitting requirements in this code affect healthcare providers such as ambulatory surgical centers and hospitals. Laws received this code if the specific use of the reported data was unclear. For example, a law addressing electronic reports of ambulatory surgical data to a health authority would receive the “Healthcare Services Reporting” code, and not the [Healthcare Quality Monitoring](#) code, if the law did not specify that the data would be used to measure or monitor the quality of services delivered.

Immunization Information System (IIS)

Laws with this code relate to reporting or collecting immunization information for a centralized system or database of immunization information. Existence of a centralized database is assumed where a law refers to reporting vaccinations or immunizations or submitting data specifically related to patients who receive immunizations or vaccinations. IISs are generally assumed to be electronic unless explicitly described otherwise. The “IIS” code does not include laws discussing provider records that include immunization records unless the law also relates to submitting those records to an IIS.

Code Contrast: Immunization Information Systems and EHR: Treatment

A law requiring a doctor to keep electronic immunization records would not be coded IIS because the records relate to the provider-patient treatment relationship; it would be coded [EHR: Treatment](#). However, if a law required those records to then be entered into an IIS, it would be given the [Immunization Information System](#) code because it is a use outside of the provider-patient treatment relationship.

Infectious Disease Epidemiology Data System

Laws with this code relate to electronic databases or systems used to monitor the spread of infectious diseases. These laws relate to systems that are not specific to a single secondary use, such as disease reporting. Instead, they integrate multiple secondary use purposes, such as disease reporting, laboratory reporting, and epidemiological investigations, all of which are about the control of infectious diseases and are conducted using a single data system.

Laboratory Reporting

Laws with this code relate to submitting laboratory data associated with a disease or condition of public health significance to a public health authority or similar government entity. Laws about laboratory data used for a patient's clinical diagnosis or treatment, such as laws allowing laboratory technicians to send diagnostic test results to healthcare providers via secure electronic messaging systems, do not implicate the "Laboratory Reporting" code without reference to submitting the data to a public health authority. Laws that primarily relate to disease reporting might have a Laboratory Reporting cross-reference code (in addition to the [Disease Reporting](#) main code), if the disease reporting law specifically mentions requirements for laboratories to report data to a health authority. Laws that primarily relate to laboratory reporting might also be given a [Disease Reporting](#) code if they relate to reportable conditions.

Code Contrast: Laboratory Reporting and EHR: Treatment

A law requiring a laboratory to electronically report a positive HIV test to a health authority would receive a laboratory reporting code, but a law requiring a laboratory to electronically report the results of a positive HIV test only to the patient or provider for clinical diagnosis or treatment would be coded as [EHR: Treatment](#), not [Laboratory Reporting](#).

Medical Malpractice Database

Laws with this code relate to an electronic database or information system containing information about medical malpractice claims owned or operated by a government entity, such as a state insurance authority. These laws include provisions that specify reporting or submitting requirements and permitted uses of medical malpractice claims data.

Medical Marijuana

Laws with this code govern the electronic storage of patient information for individuals who have either received prescriptions for medical marijuana or have received licenses permitting them to receive medical marijuana.

Mental and Behavioral Health Reporting

Laws with this code relate to submitting or collecting information associated with mental and behavioral health conditions to a health authority or other government entity. These laws may relate to the reporting or submitting mental health case data or data related to patients with mental health conditions. They may also relate to reporting or submitting behavioral health patient information or data, including information related to substance abuse and other behavioral health issues. Laws with the “Mental and Behavioral Health Reporting” code may be limited to specific types of mental or behavioral health conditions or disorders.

Mental Health Records Used for Gun Purchases

Laws with this code relate to using electronic mental health records to determine whether a prospective customer is eligible to purchase a firearm.

Methamphetamine Precursor Tracking

Laws with this code relate to programs that track the sale of methamphetamine precursors, such as ephedrine or pseudoephedrine, to patients or customers or retail pharmacies.

Methamphetamine Precursor Tracking Code Example

A law requiring the electronic storage of scanned drivers’ licenses of individuals who purchased methamphetamine precursors

Newborn Blood Screening

Laws with this code relate to information collected from newborn blood screenings.

Code Contrast: Newborn Blood Screening and Newborn Hearing Screening

Although both newborn blood spot screening and newborn hearing screening programs are targeted at infants, they were categorized separately primarily because newborn blood spot screening relates to collecting human tissue specimens, which could be used for genetic research.

Laws that relate to newborn health screenings that are unrelated to blood, such as newborn hearing screening, are outside the scope of this code.

Newborn Hearing Screening

Laws with this code relate to electronically collecting and reporting newborn hearing screening exams to a health authority or a centralized database.

Occupational Health

Laws with this code relate to electronic information regarding employee health. These laws include those related to employee exposure, reporting of occupational injuries, or maintaining employee health records.

Payer

Laws with this code relate to EHI and reimbursement for healthcare services. The “Payer” code includes laws addressing Healthcare Effectiveness Data and Information Set data and EHI

- Used by healthcare providers seeking reimbursement for services delivered
- Used by healthcare providers or payers to document claims or billing for healthcare services
- Retained or used by payers, including both private and public payers
- Used by healthcare providers as a requirement to obtain payment or reimbursement for services, including laws that relate to the adoption and meaningful use of EHR systems
- Used to determine eligibility for health plans or health insurance coverage
- Used to identify or prevent fraud related to healthcare charges and reimbursement
- Used by managed care organizations
- Analyzed by payers to validate or audit claims, detect fraud, or measure cost-effectiveness

This code is not used for laws related to claims or billing data used by non-payer entities that use healthcare claims or billing data for purposes unrelated to payment or reimbursement for healthcare services. For example, a law about billing and claims data used by a state health authority to monitor healthcare quality would be coded as a Payer.

Code Contrast: Payer and EHR: Treatment

Laws that primarily relate to EHI use requirements on providers in order to be eligible for payment or reimbursement that *also* impact the provider-patient treatment relationship as a result of the use EHI requirements are given an [EHR-Treatment](#) code in addition to the [Payer](#) code. For example, a [Payer](#) provision requiring use of electronic prescribing as a condition of reimbursement directly affects the manner in which treatment is provided to the patient. Accordingly, such a provision would be given an [EHR: Treatment](#) cross-reference code in addition to the [Payer](#) main code.

Prescription Drug Monitoring Program

Laws with this code relate to programs that collect information about specific prescription drugs dispensed to patients in the state. Prescription Drug Monitoring programs allow specific persons, typically healthcare practitioners, pharmacists, and others authorized by law, to access prescription drug histories of patients to identify patterns of prescription abuse or fraud, including “doctor-shopping.” This code is not used for

laws referring to an electronic record of a patient’s prescription history, without reference to it becoming part of a centralized prescription drug database.

Prescription Drug Monitoring Program Code Example

A law requiring pharmacists to check a patient’s name in the PDMP database prior to prescribing opioids would be given the PDMP code. Controlled substances monitoring programs are also considered PDMPs, even though they are specific to controlled substances and not all prescription drugs.

Code Contrast: PDMP and EHR: Treatment

References to electronic records of a patient’s prescription record history without reference to a centralized database are coded as [EHR: Treatment](#) because they are created, used, and stored as part of the treatment relationship between healthcare providers and patients and do not relate to a program to uncover patterns of abuse or fraud.

Property Tax

Laws with this code relate to EHI use (such as vital statistics) in property tax assessments. For example, a law authorizing a state or local tax assessor to use electronic death certificate information when assessing tax liability would be coded “Property Tax.”

Public Assistance

Laws with this code govern using EHI in administering public assistance programs, including food stamps, women, infants, and children (WIC) programs, welfare, unemployment benefits, and disability benefits. Laws with this code do not include provisions governing EHI in providing Medicare or Medicaid programs, which provide payment for medical services, and would thus be coded as [Payer](#).

Research and Public Use Data

Laws with this code relate to a set of health data that can be used by members of the public, including non-profits and universities, to conduct research. These laws may include provisions that specify approved sources of data, data collection procedures, privacy requirements, and rules governing access to data sets.

Syndromic Surveillance

Laws with this code address using patient-level data for ongoing, real-time disease monitoring and investigation. Specifically, these laws concern systems that require healthcare providers to submit data on individual patients (usually with personally identifiable information removed) to public health authorities when the patient presents or complains of certain symptoms that could indicate an outbreak during hospital or emergency department intake or preliminary examination. Most commonly, these symptoms include influenza-like symptoms (which could indicate an influenza outbreak) or gastrointestinal complaints (which could indicate a foodborne outbreak).

This code does not include reporting a doctor's diagnosis of a specific illness or laboratory test results because they exceed the basic disease indicator level of information contained in syndromic surveillance reports. Systems for reporting non-outbreak related illness, such as blood lead screening, are also not given the "Syndromic Surveillance" code.

Trauma Information Systems

Laws with this code relate to requirements for healthcare providers to submit data to a health authority on patients who have suffered a traumatic injury. These laws reference specific injuries, such as brain, head, and spinal cord injuries, as well as general injury reporting requirements.

Code Contrast: Trauma Information Systems and EHR: Treatment

Laws that address treatment records of traumatic injuries and do not have provisions requiring submission of the traumatic injury records to a health authority or a centralized database are coded as [EHR: Treatment](#).

Vital Statistics

Laws with this code relate to systematically collecting population-wide information or a system that maintains population-wide information, specifically statistics and records on births, adoptions, deaths, and marriages. The "Vital Records" code is used for laws about providers creating vital records, such as birth certificates and death certificates, and submitting those records to the vital records system. The code is also used for non-provider entities that use the vital records system for other purposes. Specialized death record systems for certain events, such as catastrophic health emergencies death records or the disposition of human remains in a public health emergency, would also receive the Vital Statistics code.

Vital Statistics Code Example

A law that allows a Medicaid program to use official death records to check for potential fraud

Voter Registration

Laws with this code relate to using EHI (such as vital statistics) to inform voter registration rolls. For example, a law that authorizes using electronic death records to automatically remove deceased individuals from voter registration rolls would be coded “Voter Registration.”

Vulnerable Population Registry

Laws with this code relate to a centralized system or collection of information of reports or allegations of incidents, such as abuse or neglect, involving vulnerable populations or persons with special needs who receive services in licensed facilities or provider agencies. These laws may also address systems that refer reports alleging crimes to appropriate law enforcement authorities, notify appropriate persons and officials of received and accepted reports, and maintain an electronic database of each report and the findings associated with each report.

Workers’ Compensation

Laws with this code relate to using EHI in state workers’ compensation systems. The “Workers’ Compensation” code refers to EHI used by

- Medical professionals to evaluate workers’ compensation claims
- Healthcare providers to treat workers’ compensation claimants
- Workers’ compensation officials to process, arbitrate, or adjudicate workers’ compensation claims

¹ Ramanathan, T., Schmit, C., Menon, A. and Fox, C. (2015), The Role of Law in Supporting Secondary Uses of Electronic Health Information. *The Journal of Law, Medicine & Ethics*, 43: 48–51.

² Plans for updating the collected laws will be added at a later date.

³ Rules of evidence relating to EHI govern the admissibility or authentication of EHR in court. Laws that address only the validity of electronic signatures apply to electronic authentication of health records but do not relate to the information contained in those records. These rules do not relate to the collection, storage, contents, or public health use of EHI and are therefore not relevant to this meta-assessment.

⁴ These factors were weighed individually by the researchers, and discrepancies between the researchers’ evaluations of the factors were resolved through group discussion.

⁵ In WestlawNext™, ‘adv’ is used to indicate that the user wishes to use advanced search features; ‘SD’ is used to limit the search to the substantive portions of statutes and regulations (i.e. skipping annotations); and ‘/50’ retrieves results that contain both the preceding and subsequent terms within 50 words.

⁶ The [American Medical Informatics Association](#) recently defined secondary use data as the “non-direct care use of personal health information including but not limited to analysis, research, quality/safety measurement, public health, payment, provider certification or accreditation, and marketing and other business including strictly commercial activities.”

⁷ Not counting 44 “Other” categories identified by researchers

⁸ Advance Directive Information Systems were coded as a distinct category from advanced directives contained within an EHR.

⁹ Privacy and security are not “uses” of EHI; they are requirements that can be placed on EHI for any use. Because privacy and security are not uses of EHI, they were not given their own use category code. Nevertheless, privacy and security are important for all uses of EHI, so broad, jurisdiction-wide privacy laws that cover many different classes of entities (i.e. not restricted to a specific class of entity like healthcare providers or insurance companies) were assigned “tags” for quick identification and reference.