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Florida's New Prohibition on Offshoring Patient Information

Article By:

Jennifer J. Hennessy

Aaron T. Maguregui

Kate L. Pamperin

Florida health care providers and digital health technology platforms should be on alert that a newly passed law requires providers using certified electronic health record technology (CEHRT) to ensure that all patient information, regardless of whether the data is stored in the cloud or a third-party computing facility, is physically maintained within the United States or Canada. The requirement applies to nearly all Florida licensed providers using CEHRTs, a common practice among providers as such use is incentivized and even required by federal government's interoperability initiatives in some cases.

The new law may also have steep consequences for all health-tech vendors, including vendors offering remote patient monitoring (RPM) platforms, clinical decision-making platforms, and platforms that generally collect and integrate health records from various sources. Given ambiguity in how the law is written, the offshoring prohibition may apply to all electronic health records, even if not a CEHRT. The law states: "this subsection [the offshoring prohibition referenced above] applies to all qualified electronic health records that are stored using any technology that can allow information to be electronically retrieved, accessed, or transmitted." "Qualified electronic health record" generally means platforms that assist providers with clinical decision making and integration of health information from multiple sources. It remains to be seen if the law is intended to apply to CEHRTs only or all electronic health record technology generally.

While this new law puts the onus on providers, digital health technology vendors that provide platforms assisting Florida providers with CEHRT functionality, clinical decision making, capturing information relevant to quality, and integrating electronic health record data from multiple sources, must ensure compliance with the new law to avoid putting their provider-clients at risk. While certain states prohibit the offshoring of data for providers and vendors enrolled in Medicaid, this new Florida requirement impacts nearly all licensed providers in Florida.

Here are five key takeaways from the new law:

1. **Who is subject to the law?** Nearly all health care providers in Florida, if they use a CEHRT or, potentially, any clinical decision-making support platform, must comply with this law. The

law applies to most health care practitioners licensed by the Florida Department of Health (e.g., physicians, chiropractors, pharmacists, dentists, physical therapists, nurses, just to name a few), health care facilities licensed by Florida Agency for Health Care Administration (AHCA), licensed pharmacies, licensed continuing care facilities, certain licensed mental health and substance abuse facilities and practitioners, and others.

2. **Where does the information have to be physically maintained?** All included data must be stored in the continental United States, territories of the United States, or Canada.

3. **How will the state monitor compliance?** Health care providers submitting an initial or renewal application for a license from Florida's health care administration agency, AHCA, will need to attest, under penalty of perjury, that the applicant is complying, and will remain in compliance, with this new requirement. Failure to comply can subject the provider to disciplinary action by AHCA.

4. **When does the law take effect?** The effective date of the statute is July 1, 2023.

5. **What should health care providers do to prepare?** Providers need to assess where electronic patient information is currently maintained, both by the providers themselves and any third-party vendors. If the patient information is physically maintained outside the United States or Canada, providers should start transitioning the patient information in advance of the law's effective date.

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