

Chapter 535

(House Bill 784)

AN ACT concerning

Medical Records – Health Information Exchanges

FOR the purpose of ~~authorizing~~ requiring the Maryland Health Care Commission to adopt regulations for the privacy and security of protected health information obtained or released through a health information exchange by certain persons; requiring the regulations to include protections for the secondary use of certain protected information; providing that the regulations may not apply to protected health information exchanged between and among certain persons; requiring the Commission to consult with certain persons before adopting the regulations; establishing certain limitations on the sale of data obtained or released through a health information exchange; requiring certain ~~payors that release protected health information through a health information exchange to certain health care providers to connect and provide the protected health information electronically to the health information exchange designated by the Commission and the Health Services Cost Review Commission under a certain provision of law~~ entities to connect to the State designated exchange and respond to certain requests for clinical information transmitted through the exchange in a certain manner; providing that a certain consent applies to information transmitted through the State designated exchange or by other means; authorizing the Commission to adopt certain regulations relating to the State designated exchange; providing for the effect of certain provisions of this Act; providing that the existence of a health information exchange does not, in itself, ~~change a certain standard of care for obtaining or releasing protected health information~~; ~~providing that, in certain actions, a health information exchange or a health care provider may not be held liable based solely on certain actions relating to a health information exchange, except under certain circumstances~~; ~~providing that certain provisions of this Act do not~~ create a new cause of action against a health information exchange or a health care provider; defining certain terms; and generally relating to obtaining and releasing protected health information through a health information exchange.

BY repealing and reenacting, with amendments,
 Article – Health – General
 Section 4–301
 Annotated Code of Maryland
 (2009 Replacement Volume and 2010 Supplement)

BY adding to
 Article – Health – General

Section 4–302.2, 4–302.3, and 4–302.4
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

4–301.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Directory information” means information concerning the presence and general health condition of a patient who has been admitted to a health care facility or who is currently receiving emergency health care in a health care facility.

(2) “Directory information” does not include health care information developed primarily in connection with mental health services.

(c) “Disclose or disclosure” means the transmission or communication of information in a medical record, including an acknowledgment that a medical record on a particular patient or recipient exists.

(d) “Emergency” means a situation when, in the professional opinion of the health care provider, a clear and significant risk of death or imminent serious injury or harm to a patient or recipient exists.

(e) “General health condition” means the health status of a patient described in terms of “critical”, “poor”, “fair”, “good”, “excellent”, or terms denoting similar conditions.

(f) “Health care” means any care, treatment, or procedure by a health care provider:

(1) To diagnose, evaluate, rehabilitate, manage, treat, or maintain the physical or mental condition of a patient or recipient; or

(2) That affects the structure or any function of the human body.

(g) (1) “Health care provider” means:

(i) A person who is licensed, certified, or otherwise authorized under the Health Occupations Article or § 13–516 of the Education Article to provide

health care in the ordinary course of business or practice of a profession or in an approved education or training program; or

(ii) A facility where health care is provided to patients or recipients, including a facility as defined in § 10–101(e) of this article, a hospital as defined in § 19–301 of this article, a related institution as defined in § 19–301 of this article, a health maintenance organization as defined in § 19–701(g) of this article, an outpatient clinic, and a medical laboratory.

(2) “Health care provider” includes the agents, employees, officers, and directors of a facility and the agents and employees of a health care provider.

(H) “HEALTH INFORMATION EXCHANGE” MEANS AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH INFORMATION ELECTRONICALLY AMONG ENTITIES NOT UNDER COMMON OWNERSHIP.

[(h)] (I) (1) “Medical record” means any oral, written, or other transmission in any form or medium of information that:

- (i) Is entered in the record of a patient or recipient;
- (ii) Identifies or can readily be associated with the identity of a patient or recipient; and
- (iii) Relates to the health care of the patient or recipient.

(2) “Medical record” includes any:

(i) Documentation of disclosures of a medical record to any person who is not an employee, agent, or consultant of the health care provider;

(ii) File or record maintained under § 12–403(b)(13) of the Health Occupations Article by a pharmacy of a prescription order for drugs, medicines, or devices that identifies or may be readily associated with the identity of a patient;

(iii) Documentation of an examination of a patient regardless of who:

1. Requested the examination; or
2. Is making payment for the examination; and

(iv) File or record received from another health care provider that:

1. Relates to the health care of a patient or recipient received from that health care provider; and

2. Identifies or can readily be associated with the identity of the patient or recipient.

[(i)] (J) (1) “Mental health services” means health care rendered to a recipient primarily in connection with the diagnosis, evaluation, treatment, case management, or rehabilitation of any mental disorder.

(2) For acute general hospital services, mental health services are considered to be the primarily rendered service only if service is provided pursuant to Title 10, Subtitle 6 or Title 12 of this article.

[(j)] (K) “Patient” means a person who receives health care and on whom a medical record is maintained.

[(k)] (L) “Person in interest” means:

(1) An adult on whom a health care provider maintains a medical record;

(2) A person authorized to consent to health care for an adult consistent with the authority granted;

(3) A duly appointed personal representative of a deceased person;

(4) (i) A minor, if the medical record concerns treatment to which the minor has the right to consent and has consented under Title 20, Subtitle 1 of this article; or

(ii) A parent, guardian, custodian, or a representative of the minor designated by a court, in the discretion of the attending physician who provided the treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

(5) If item (4) of this subsection does not apply to a minor:

(i) A parent of the minor, except if the parent’s authority to consent to health care for the minor has been specifically limited by a court order or a valid separation agreement entered into by the parents of the minor; or

(ii) A person authorized to consent to health care for the minor consistent with the authority granted; or

(6) An attorney appointed in writing by a person listed in item (1), (2), (3), (4), or (5) of this subsection.

[(l)] (M) “Primary provider of mental health services” means the designated mental health services provider who:

- (1) Has primary responsibility for the development of the mental health treatment plan for the recipient; and
- (2) Is actively involved in providing that treatment.

(N) “PROTECTED HEALTH INFORMATION” MEANS ALL INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION HELD OR TRANSMITTED BY A COVERED ENTITY OR ITS BUSINESS ASSOCIATE PROTECTED UNDER THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRIVACY RULE.

[(m)] (O) “Recipient” means a person who has applied for, for whom an application has been submitted, or who has received mental health services.

4-302.2.

(A) THE MARYLAND HEALTH CARE COMMISSION ~~MAY~~ SHALL ADOPT REGULATIONS FOR THE PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE BY:

- (1) A HEALTH CARE PROVIDER; ~~OR~~**
- (2) A PAYOR THAT HOLDS A VALID CERTIFICATE OF AUTHORITY ISSUED BY THE MARYLAND INSURANCE COMMISSIONER;**
- (3) A HEALTH CARE CONSUMER; OR**
- (4) ANY PERSON AUTHORIZED BY A HEALTH CARE CONSUMER TO ACT ON BEHALF OF THE HEALTH CARE CONSUMER.**

(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE PROTECTIONS FOR THE SECONDARY USE OF PROTECTED HEALTH INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE.

(C) DATA OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION EXCHANGE:

(1) MAY NOT BE SOLD FOR FINANCIAL REMUNERATION UNTIL THE REGULATIONS REQUIRED UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION ARE ADOPTED; AND

(2) MAY BE SOLD FOR FINANCIAL REMUNERATION ONLY IN ACCORDANCE WITH THE REGULATIONS ADOPTED UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION.

~~(B)~~ (D) ~~ANY REGULATIONS~~ REGULATIONS ADOPTED UNDER SUBSECTION ~~(A)~~ SUBSECTIONS (A) AND (B) OF THIS SECTION MAY NOT APPLY TO PROTECTED HEALTH INFORMATION EXCHANGED:

(1) BETWEEN A HOSPITAL AND CREDENTIALLED MEMBERS OF THE HOSPITAL'S MEDICAL STAFF; ~~OR~~

(2) AMONG CREDENTIALLED MEMBERS OF A HOSPITAL'S MEDICAL STAFF; OR

(3) BETWEEN A HOSPITAL AND ANCILLARY CLINICAL SERVICE PROVIDERS THAT ARE AFFILIATED WITH THE HOSPITAL AND HAVE SIGNED A BUSINESS ASSOCIATE AGREEMENT.

~~(E)~~ (E) THE MARYLAND HEALTH CARE COMMISSION SHALL CONSULT WITH HEALTH CARE PROVIDERS, PAYORS, STATE HEALTH AGENCIES, CONSUMER ADVOCATES, AND EMPLOYERS BEFORE ADOPTING ~~ANY~~ REGULATIONS UNDER ~~SUBSECTION (A)~~ SUBSECTIONS (A) AND (B) OF THIS SECTION.

4-302.3.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "STATE DESIGNATED EXCHANGE" MEANS THE HEALTH INFORMATION EXCHANGE DESIGNATED BY THE MARYLAND HEALTH CARE COMMISSION AND THE HEALTH SERVICES COST REVIEW COMMISSION UNDER § 19-143 OF THIS ARTICLE.

(3) "STANDARD REQUEST" MEANS A REQUEST FOR CLINICAL INFORMATION FROM A HEALTH INFORMATION EXCHANGE THAT CONFORMS TO THE MAJOR STANDARDS VERSION SPECIFIED BY THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

(B) THIS SECTION APPLIES TO:

(1) EXCEPT FOR THE STATE DESIGNATED EXCHANGE, A HEALTH INFORMATION EXCHANGE OPERATING IN THE STATE; AND

(2) A PAYOR THAT:

(1) HOLDS A VALID CERTIFICATE OF AUTHORITY ISSUED BY THE MARYLAND INSURANCE COMMISSIONER; AND

(2) ACTS AS, OPERATES, OR OWNS A HEALTH INFORMATION EXCHANGE.

(C) A PAYOR AN ENTITY TO WHICH THIS SECTION APPLIES THAT RELEASES PROTECTED HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE TO A HEALTH CARE PROVIDER THAT IS NOT THE HEALTH CARE PROVIDER THAT GENERATED THE PROTECTED HEALTH INFORMATION SHALL CONNECT AND PROVIDE THE PROTECTED HEALTH INFORMATION ELECTRONICALLY TO THE HEALTH INFORMATION EXCHANGE DESIGNATED BY THE MARYLAND HEALTH CARE COMMISSION AND THE HEALTH SERVICES COST REVIEW COMMISSION UNDER § 19-143 OF THIS ARTICLE SHALL CONNECT TO THE STATE DESIGNATED EXCHANGE IN A MANNER CONSISTENT WITH APPLICABLE FEDERAL AND STATE PRIVACY LAWS.

(D) WHEN A STANDARD REQUEST FOR CLINICAL INFORMATION IS RECEIVED THROUGH THE STATE DESIGNATED EXCHANGE, AN ENTITY TO WHICH THIS SECTION APPLIES SHALL RESPOND TO THE REQUEST TO THE EXTENT AUTHORIZED UNDER FEDERAL AND STATE PRIVACY LAWS.

(E) A CONSENT FROM A PATIENT TO RELEASE CLINICAL INFORMATION TO A PROVIDER OBTAINED BY AN ENTITY TO WHICH THIS SECTION APPLIES SHALL APPLY TO INFORMATION TRANSMITTED THROUGH THE STATE DESIGNATED EXCHANGE OR BY OTHER MEANS.

(F) THE MARYLAND HEALTH CARE COMMISSION:

(1) MAY ADOPT REGULATIONS FOR IMPLEMENTING THE CONNECTIVITY TO THE STATE DESIGNATED EXCHANGE REQUIRED UNDER THIS SECTION; AND

(2) SHALL SEEK, THROUGH ANY REGULATIONS ADOPTED UNDER ITEM (1) OF THIS SUBSECTION, TO PROMOTE TECHNOLOGY STANDARDS AND FORMATS THAT CONFORM TO THOSE SPECIFIED BY THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

(G) (1) THE MARYLAND HEALTH CARE COMMISSION MAY ADOPT REGULATIONS SPECIFYING THE SCOPE OF CLINICAL INFORMATION TO BE EXCHANGED UNDER THIS SECTION.

(2) ANY REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL LIMIT THE SCOPE OF THE CLINICAL INFORMATION TO PURPOSES THAT PROMOTE:

(I) IMPROVED ACCESS TO CLINICAL RECORDS BY TREATING CLINICIANS; OR

(II) USES OF THE STATE DESIGNATED EXCHANGE IMPORTANT TO PUBLIC HEALTH AGENCIES.

(H) THIS SECTION DOES NOT:

(1) REQUIRE AN ENTITY TO WHICH THIS SECTION APPLIES TO COLLECT CLINICAL INFORMATION OR OBTAIN ANY AUTHORIZATIONS, NOT OTHERWISE REQUIRED BY FEDERAL OR STATE LAW, RELATING TO INFORMATION TO BE SENT OR RECEIVED THROUGH THE STATE DESIGNATED EXCHANGE;

(2) PROHIBIT AN ENTITY TO WHICH THIS SECTION APPLIES FROM DIRECTLY RECEIVING OR SENDING INFORMATION TO PROVIDERS OR SUBSCRIBERS OUTSIDE OF THE STATE DESIGNATED EXCHANGE; OR

(3) PROHIBIT AN ENTITY TO WHICH THIS SECTION APPLIES FROM CONNECTING AND INTEROPERATING WITH THE STATE DESIGNATED EXCHANGE IN A MANNER AND SCOPE BEYOND THAT REQUIRED UNDER THIS SECTION.

4-302.4.

~~(A) THE EXISTENCE OF A HEALTH INFORMATION EXCHANGE DOES NOT, IN ITSELF, CHANGE THE STANDARD OF CARE APPLICABLE TO HEALTH CARE PROVIDERS FOR OBTAINING OR RELEASING PROTECTED HEALTH INFORMATION.~~

~~(B) IN ANY ACTION AGAINST A HEALTH CARE PROVIDER OR A HEALTH INFORMATION EXCHANGE FOR DAMAGES OR OTHER RELIEF OR FOR PENALTIES OF ANY NATURE, THE HEALTH CARE PROVIDER OR HEALTH INFORMATION EXCHANGE MAY NOT BE HELD LIABLE BASED SOLELY ON OBTAINING OR~~

~~FAILING TO OBTAIN, OR RELEASING OR FAILING TO RELEASE, PROTECTED HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE, UNLESS:~~

~~(1) WITH RESPECT TO A HEALTH CARE PROVIDER, THE HEALTH CARE PROVIDER VIOLATED AN APPLICABLE STANDARD OF CARE; OR~~

~~(2) WITH RESPECT TO A HEALTH INFORMATION EXCHANGE, THE HEALTH INFORMATION EXCHANGE VIOLATED AN APPLICABLE STATE OR FEDERAL LAW.~~

~~(c) THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION AGAINST A HEALTH INFORMATION EXCHANGE OR A HEALTH CARE PROVIDER.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 19, 2011.