

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 806 (Delegate Lee, *et al.*)
Health and Government Operations

Finance

Health Information Exchanges - Protected Health Information - Regulations

This bill requires the Maryland Health Care Commission (MHCC) to adopt regulations regarding protected health information (PHI) obtained or released through a health information exchange (HIE) to govern the access, use, maintenance, disclosure, and redisclosure of PHI as required by State or federal law, including the federal Health Insurance Portability and Accountability Act (HIPAA) and the federal Health Information Technology for Economic and Clinical Health Act (HITECH Act).

Fiscal Summary

State Effect: MHCC can adopt the required regulations using existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A “health information exchange” is an infrastructure that provides organizational and technical capabilities for the electronic exchange of PHI among entities not under common ownership. “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.

Chapters 534 and 535 of 2011 require MHCC to adopt regulations for the privacy and security of PHI obtained or released through an HIE by a payor, a consumer, or any person authorized by a consumer to act on behalf of the consumer. The regulations must include protections for the secondary use of PHI obtained or released through an HIE. MHCC must consult with health care providers, payors, State health agencies, consumer advocates, and employers before adopting the regulations.

Data obtained or released through an HIE may not be sold for financial remuneration until the regulations are adopted, and it may be sold for financial remuneration only in accordance with the regulations. Regulations may not apply to PHI exchanged between a hospital and credentialed members of the hospital's medical staff, among credentialed members of a hospital's medical staff, or between a hospital and ancillary clinical service providers that are affiliated with the hospital and have signed a business associate agreement.

Background: MHCC designated CRISP (Chesapeake Regional Information System for Our Patients) as the statewide HIE in 2009, and the infrastructure became operational in 2010. All 46 acute care hospitals and 2 specialty hospitals in the State are connected and provide admission, discharge, and transfer information. About 40 hospitals have established live clinical data feeds (*e.g.*, radiology, clinical documents) to the infrastructure. Two national laboratory and three radiology centers are connected and provide laboratory and radiology reports.

According to MHCC, the exchange of electronic health information requires an extensive commitment to developing sound privacy and security policies. To address privacy and security challenges, MHCC convened the HIE Policy Board (a staff advisory workgroup), which comprises a diverse group of stakeholders, to develop and recommend policies for privacy and security of PHI shared through HIEs in Maryland. MHCC considers the recommendations of the HIE Policy Board and adopts regulations for HIEs to implement that will ensure a high level of privacy and security protections.

MHCC drafted the first of several sets of regulations related to HIE, based on 10 HIE Policy Board recommendations. The regulations were adopted by MHCC at its February 20, 2014 commission meeting and the regulations are expected to take effect March 17, 2014. The regulations address the privacy and security of PHI obtained or released by any person through an HIE to (1) assure the privacy and security of PHI accessed, used, or disclosed through an HIE, including protections for the secondary use of PHI obtained, accessed, or released through an HIE; (2) govern the access, use, and disclosure of PHI through an HIE; (3) improve access to clinical records by treating clinicians; and (4) promote uses of the State-designated HIE that will assist public health agencies in reaching public health goals. The draft regulations specifically state that the requirements of the regulations are *in addition to* those required by HIPAA, including all

pertinent regulations issued by the U.S. Department of Health and Human Services, as amended by Subtitle D of the HITECH Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, as well as all other confidentiality requirements under Maryland law including those enacted by the Maryland Consumer Protection Act, the Maryland Personal Information Protection Act, and the Maryland Confidentiality of Medical Records Act.

MHCC will be developing additional regulations related to other aspects of HIE privacy and security in 2014.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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