

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 17

(Chair, Finance Committee)(By Request - Departmental -  
Health)

Finance

Health and Government Operations

**Health Information Exchanges - Definitions and Regulations**

This departmental bill expands both the definition of “health information exchange” (HIE) and the applicability of regulations that govern the privacy and security of protected health information (PHI) obtained or released through an HIE.

**Fiscal Summary**

**State Effect:** Any additional workload for the Maryland Health Care Commission (MHCC) can be handled with existing budgeted resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** The Maryland Department of Health has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

**Analysis**

**Bill Summary/Current Law:**

*Definition of Health Information Exchange*

Under current law, an HIE is defined as an infrastructure that provides organizational and technical capabilities for the exchange of PHI electronically among entities not under common ownership.

The bill expands the definition of HIE to mean an entity that provides or governs organizational and technical processes for the maintenance, transmittal, access, or disclosure of electronic health care information between or among health care providers or entities through an interoperable system. The bill specifies that HIE does not include (1) an entity composed of health care providers under “common ownership” or (2) specified health insurance entities if the processes provided are transactions as defined under federal regulations (the transmission of information between two parties to carry out financial or administrative activities related to health care).

The bill defines “common ownership” as ownership of a health care entity by (1) two or more health care providers; (2) two or more health care providers employed by a mutual employer for a wage, salary, fee, or payment; (3) health care organizations operating as an organized health care arrangement as defined under federal regulations; (4) a health care entity or health care entities that possess an ownership or equity interest of 5% or more in another health care entity; or (5) affiliated providers operating under the same trade name.

#### *Applicability of Regulations for the Privacy and Security of Protected Health Information*

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 specified parties. The Acts specify that the regulations may not apply to PHI exchanged (1) between a hospital and credentialed members of the hospital’s medical staff; (2) among credentialed members of a hospital’s medical staff; or (3) between a hospital and certain ancillary clinical service providers.

MHCC adopted regulations in March 2014, which set forth procedural and technical controls for the exchange of health information, including (1) protocols for health care consumers to opt out from having their health information exchanged via the HIE and request information on who has accessed their health information; (2) how HIEs disclose sensitive health information; (3) annual audits to review and test the implementation of controls; (4) processes to assess and respond to a breach or potential noncompliance with the regulations, including investigations, remedial action plans, notifications, and suspension or termination of access; (5) protocols for the release of data for secondary use; and (6) policies and procedures regarding access, use, and disclosure of data in emergency situations.

The bill broadens the applicability of the regulations by repealing the specified parties to which they apply (a health care provider, a payor, a health care consumer, or any person authorized by a health care consumer to act on behalf of the consumer) as well as language exempting hospitals from them.

**Background:** According to MHCC, the existing definition of HIE allows a number of organizations that provide HIE services, yet do not meet the statutory definition of an HIE, to implement only minimum privacy and security protections established under the Health Insurance Portability and Accountability Act of 1996. Revision of the definition of HIE and expansion of the applicability of privacy and security regulations are intended to ensure consistent privacy and security protections across all organizations that electronically exchange PHI.

The bill's revised definition of HIE generally reflects a consensus recommendation developed by stakeholders in 2015 and included in a September 2016 [report](#) issued by MHCC.

**State Expenditures:** State regulations require that, to operate as an HIE in the State, an organization must be recognized by MHCC as having met requirements for registration as an HIE. As of June 2016, there were seven organizations registered as HIEs with MHCC. MHCC estimates that about eight additional organizations will be required to register as HIEs under the bill. Any additional workload can be handled within existing budgeted resources. As there is no fee associated with registration, revenues are not affected.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

**Fiscal Note History:** First Reader - January 15, 2018  
mm/ljm Third Reader - March 20, 2018  
Revised - Amendment(s) - March 20, 2018

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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**  
**Department of Health**  
**Session 2018**

**TITLE:** Health Information Exchange- Definition and Regulations

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**(Program\Unit):** MHCC

**PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

  x   WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

       WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

**PART B. ECONOMIC IMPACT ANALYSIS**

The legislation is expected to have a moderate financial impact on organizations that meet the proposed definition of an HIE. While most organizations that will be impacted by an expanded definition of an HIE are considered large, some small businesses may be required to register as an HIE. Overall, the impact on small businesses is expected to be minimal.