

Chapter 657

(Senate Bill 17)

AN ACT concerning

Health Information Exchanges – Definitions and Regulations

FOR the purpose of altering the requirement that the Maryland Health Care Commission adopt certain regulations for the privacy and security of protected health information obtained or released through a health information exchange; repealing a certain provision of law prohibiting certain regulations from applying to protected health information exchanged between or among certain persons; defining a certain term; altering a certain definition; and generally relating to health information exchanges.

BY repealing and reenacting, with amendments,

Article – Health – General

Section 4–301 and 4–302.2

Annotated Code of Maryland

(2015 Replacement Volume and 2017 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) “COMMON OWNERSHIP” MEANS OWNERSHIP OF A HEALTH CARE ENTITY:

(1) BY TWO OR MORE HEALTH CARE PROVIDERS;

(2) BY TWO OR MORE HEALTH CARE PROVIDERS EMPLOYED BY A MUTUAL EMPLOYER FOR A WAGE, SALARY, FEE, OR PAYMENT TO PERFORM WORK FOR THE EMPLOYER;

(3) BY HEALTH CARE ORGANIZATIONS OPERATING AS AN ORGANIZED HEALTH CARE ARRANGEMENT, AS DEFINED IN 45 C.F.R. § 160.103;

(4) BY 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) BY AFFILIATED PROVIDERS OPERATING UNDER THE SAME TRADE NAME.

[(b)] (C) “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.

[(c)] (D) “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)] (E) “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)] (F) “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)] (G) “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)] (H) (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(g) 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)] (I) (1) “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] 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.

(2) “HEALTH INFORMATION EXCHANGE” DOES NOT INCLUDE:

(I) AN ENTITY COMPOSED OF HEALTH CARE PROVIDERS UNDER COMMON OWNERSHIP; OR

(II) IF THE ORGANIZATIONAL AND TECHNICAL PROCESSES IT PROVIDES OR GOVERNS ARE TRANSACTIONS, AS DEFINED IN 45 C.F.R. § 160.103:

1. A CARRIER, AS DEFINED IN § 15–1301 OF THE INSURANCE ARTICLE;

2. A CARRIER’S BUSINESS ASSOCIATE, AS DEFINED IN 45 C.F.R. § 160.103; OR

3. AN ADMINISTRATOR, AS DEFINED IN § 8–301 OF THE INSURANCE ARTICLE.

[(i)] (J) (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(c)(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.

[(j)] (K) (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 of this article or Title 3 of the Criminal Procedure Article.

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

[(l)] (M) “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.

[(m)] (N) “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)] (O) “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.

[(o)] (P) “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 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;

(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:

(1) Govern the access, use, maintenance, disclosure, and redisclosure of protected health information as required by State or federal law, including the federal Health Insurance Portability and Accountability Act and the federal Health Information Technology for Economic and Clinical Health Act; and

(2) 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.

[(d) Regulations adopted under subsections (a) and (b) of this section may not apply to protected health information 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 ancillary clinical service providers that are affiliated with the hospital and have signed a business associate agreement.]

[(e)] (D) The Maryland Health Care Commission shall consult with health care providers, payors, State health agencies, consumer advocates, and employers before adopting regulations under subsections (a) and (b) of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Approved by the Governor, May 15, 2018.