

# HOUSE BILL 213

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By: **Delegate Kelly**

Introduced and read first time: January 13, 2022

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Information Exchanges – Definition and Privacy Regulations**

3 FOR the purpose of altering the definition of a “health information exchange” as used in  
4 provisions of law governing the confidentiality of medical records; providing that  
5 regulations governing the privacy and security of protected health information  
6 obtained or released through a health information exchange may not prohibit the  
7 sharing and disclosing of information that is required to be exchanged or the use of  
8 electronic health information for certain purposes; and generally relating to health  
9 information exchanges.

10 BY repealing and reenacting, without amendments,  
11 Article – Health – General  
12 Section 4–301(a) and 4–302.2(a)  
13 Annotated Code of Maryland  
14 (2019 Replacement Volume and 2021 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Health – General  
17 Section 4–301(i) and 4–302.2(b)  
18 Annotated Code of Maryland  
19 (2019 Replacement Volume and 2021 Supplement)

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

22 **Article – Health – General**

23 4–301.

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) (1) “Health information exchange” means an entity that [provides or  
2 governs organizational and technical processes for the maintenance, transmittal, access, or  
3 disclosure] **DETERMINES, CONTROLS, OR HAS THE DISCRETION TO ADMINISTER ANY**  
4 **REQUIREMENT, POLICY, OR AGREEMENT THAT ALLOWS, ENABLES, OR REQUIRES**  
5 **THE USE OF ANY TECHNOLOGY OR SERVICE FOR ACCESS, EXCHANGE, OR USE** of  
6 electronic **PROTECTED** health care information between or among **UNAFFILIATED** health  
7 care providers or entities [through an interoperable system] **THAT ARE ENABLED TO**  
8 **EXCHANGE ELECTRONIC PROTECTED HEALTH INFORMATION WITH EACH OTHER**  
9 **FOR A TREATMENT, PAYMENT, OR HEALTH CARE OPERATIONS PURPOSE, AS THOSE**  
10 **TERMS ARE DEFINED IN 45 C.F.R. § 164.501.**

11 (2) “Health information exchange” does not include:

12 (i) An entity composed of health care providers under common  
13 ownership; [or]

14 (ii) If the organizational and technical processes it provides or  
15 governs are [transactions, as defined in 45 C.F.R. § 160.103] **FOR TREATMENT, PAYMENT,**  
16 **OR HEALTH CARE OPERATIONS PURPOSES, AS THOSE TERMS ARE DEFINED IN 45**  
17 **C.F.R. § 164.501:**

18 1. A carrier, as defined in § 15–1301 of the Insurance Article;

19 [2. A carrier’s business associate, as defined in 45 C.F.R. §  
20 160.103; or]

21 [3.] 2. An administrator, as defined in § 8–301 of the  
22 Insurance Article; **OR**

23 3. **A HEALTH CARE PROVIDER, AS DEFINED IN**  
24 **SUBSECTION (H) OF THIS SECTION;**

25 (iii) **A CARRIER’S BUSINESS ASSOCIATE, AS DEFINED IN 45**  
26 **C.F.R. § 160.103, IF THE ORGANIZATIONAL AND TECHNICAL PROCESSES PROVIDED**  
27 **OR GOVERNED BY THE BUSINESS ASSOCIATE ARE TRANSACTIONS, AS DEFINED IN 45**  
28 **C.F.R. § 160.103; OR**

29 (iv) **A CARRIER EXCHANGING INFORMATION AS REQUIRED BY**  
30 **45 C.F.R. § 156.221.**

31 4–302.2.

32 (a) The Maryland Health Care Commission shall adopt regulations for the  
33 privacy and security of protected health information obtained or released through a health  
34 information exchange.

1 (b) (1) The regulations adopted under subsection (a) of this section shall:

2 (i) Govern the access, use, maintenance, disclosure, and  
3 redisclosure of protected health information as required by State or federal law, including  
4 the federal Health Insurance Portability and Accountability Act, the federal Health  
5 Information Technology for Economic and Clinical Health Act, the federal 21st Century  
6 Cures Act, and Title 21, Subtitle 2A of this article;

7 (ii) Include protections for the secondary use of protected health  
8 information obtained or released through a health information exchange;

9 (iii) Require the State-designated health information exchange to  
10 develop and maintain a consent management application, subject to State and federal law,  
11 that:

12 1. Allows a person in interest to opt out of having electronic  
13 health information shared or disclosed by a health information exchange;

14 2. Informs the person in interest of the electronic health  
15 information that may be shared or disclosed notwithstanding the choice to opt out;

16 3. Requires that the State-designated health information  
17 exchange provide a health information exchange with the opt-out status of a person in  
18 interest, on receipt of an electronic request from the health information exchange for the  
19 opt-out status of the person in interest;

20 4. Requires a health information exchange to obtain the  
21 opt-out status of a person in interest from the State-designated health information  
22 exchange before sharing or disclosing the electronic health information of the person in  
23 interest; and

24 5. Except as provided in paragraph (2) of this subsection,  
25 prohibits a health information exchange from sharing or disclosing the electronic health  
26 information of a person in interest if the person in interest has opted out of having  
27 electronic health information shared or disclosed by a health information exchange; and

28 (iv) Provide appropriate penalties for noncompliance with the  
29 regulations, including fines that do not exceed \$10,000 per day and that are determined  
30 based on:

31 1. The extent of actual or potential public harm caused by  
32 the violation;

33 2. The cost of investigating the violation; and

34 3. Whether the person committed previous violations.

1           (2) The regulations adopted under subsection (a) of this section [shall,  
2 subject to State and federal law, allow the Department, the Maryland Health Care  
3 Commission, and the Health Services Cost Review Commission to use electronic health  
4 information for planning activities and public health functions] **MAY NOT PROHIBIT:**

5                   **(I) THE SHARING OR DISCLOSING OF INFORMATION THAT IS**  
6 **REQUIRED TO BE EXCHANGED UNDER FEDERAL LAW OR TITLE 21, SUBTITLE 2A OF**  
7 **THIS ARTICLE;**

8                   **(II) THE SHARING OR DISCLOSING OF INFORMATION THAT IS**  
9 **REQUIRED TO BE EXCHANGED FOR THE PURPOSES OF PAYMENT, AS DEFINED IN 45**  
10 **C.F.R. § 164.501; OR**

11                   **(III) THE USE OF THE ELECTRONIC HEALTH INFORMATION,**  
12 **SUBJECT TO STATE AND FEDERAL LAW, FOR PURPOSES THAT ARE IMPORTANT TO**  
13 **PUBLIC HEALTH FUNCTIONS OR HEALTH PLANNING ACTIVITIES OF THE**  
14 **DEPARTMENT, THE MARYLAND HEALTH CARE COMMISSION, OR THE HEALTH**  
15 **SERVICES COST REVIEW COMMISSION.**

16           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2022.