

SENATE BILL 723

J3, J1

11r2152
CF 11r1901

By: **Senator Rosapepe**

Introduced and read first time: February 4, 2011

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Records – Health Information Exchanges**

3 FOR the purpose of authorizing the Maryland Health Care Commission to adopt
4 regulations for the privacy and security of protected health information
5 obtained or released through a health information exchange by certain persons;
6 providing that the regulations may not apply to protected health information
7 exchanged between and among certain persons; requiring the Commission to
8 consult with certain persons before adopting the regulations; requiring certain
9 payors that release protected health information through a health information
10 exchange to certain health care providers to connect and provide the protected
11 health information electronically to the health information exchange designated
12 by the Commission and the Health Services Cost Review Commission under a
13 certain provision of law; providing that the existence of a health information
14 exchange does not, in itself, change a certain standard of care for obtaining or
15 releasing protected health information; providing that, in certain actions, a
16 health information exchange or a health care provider may not be held liable
17 based solely on certain actions relating to a health information exchange, except
18 under certain circumstances; providing that certain provisions of this Act do not
19 create a new cause of action against a health information exchange or a health
20 care provider; defining certain terms; and generally relating to obtaining and
21 releasing protected health information through a health information exchange.

22 BY repealing and reenacting, with amendments,
23 Article – Health – General
24 Section 4–301
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2010 Supplement)

27 BY adding to
28 Article – Health – General
29 Section 4–302.2, 4–302.3, and 4–302.4

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2010 Supplement)

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

5 **Article – Health – General**

6 4–301.

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

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

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

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

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

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

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

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

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

28 (g) (1) “Health care provider” means:

29 (i) A person who is licensed, certified, or otherwise authorized
30 under the Health Occupations Article or § 13–516 of the Education Article to provide
31 health care in the ordinary course of business or practice of a profession or in an
32 approved education or training program; or

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

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

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

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

14 (i) Is entered in the record of a patient or recipient;

15 (ii) Identifies or can readily be associated with the identity of a
16 patient or recipient; and

17 (iii) Relates to the health care of the patient or recipient.

18 (2) “Medical record” includes any:

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

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

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

26 1. Requested the examination; or

27 2. Is making payment for the examination; and

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

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

1 (1) Has primary responsibility for the development of the mental
2 health treatment plan for the recipient; and

3 (2) Is actively involved in providing that treatment.

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

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

10 **4-302.2.**

11 (A) **THE MARYLAND HEALTH CARE COMMISSION MAY ADOPT**
12 **REGULATIONS FOR THE PRIVACY AND SECURITY OF PROTECTED HEALTH**
13 **INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION**
14 **EXCHANGE BY:**

15 (1) **A HEALTH CARE PROVIDER; OR**

16 (2) **A PAYOR THAT HOLDS A VALID CERTIFICATE OF AUTHORITY**
17 **ISSUED BY THE MARYLAND INSURANCE COMMISSIONER.**

18 (B) **ANY REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS**
19 **SECTION MAY NOT APPLY TO PROTECTED HEALTH INFORMATION EXCHANGED:**

20 (1) **BETWEEN A HOSPITAL AND CREDENTIALLED MEMBERS OF THE**
21 **HOSPITAL’S MEDICAL STAFF; OR**

22 (2) **AMONG CREDENTIALLED MEMBERS OF A HOSPITAL’S MEDICAL**
23 **STAFF.**

24 (C) **THE MARYLAND HEALTH CARE COMMISSION SHALL CONSULT**
25 **WITH HEALTH CARE PROVIDERS, PAYORS, STATE HEALTH AGENCIES,**
26 **CONSUMER ADVOCATES, AND EMPLOYERS BEFORE ADOPTING ANY**
27 **REGULATIONS UNDER SUBSECTION (A) OF THIS SECTION.**

28 **4-302.3.**

29 (A) **THIS SECTION APPLIES TO A PAYOR THAT:**

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

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

5 **(B) A PAYOR TO WHICH THIS SECTION APPLIES THAT RELEASES**
6 **PROTECTED HEALTH INFORMATION THROUGH A HEALTH INFORMATION**
7 **EXCHANGE TO A HEALTH CARE PROVIDER THAT IS NOT THE HEALTH CARE**
8 **PROVIDER THAT GENERATED THE PROTECTED HEALTH INFORMATION SHALL**
9 **CONNECT AND PROVIDE THE PROTECTED HEALTH INFORMATION**
10 **ELECTRONICALLY TO THE HEALTH INFORMATION EXCHANGE DESIGNATED BY**
11 **THE MARYLAND HEALTH CARE COMMISSION AND THE HEALTH SERVICES**
12 **COST REVIEW COMMISSION UNDER § 19-143 OF THIS ARTICLE.**

13 **4-302.4.**

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

18 **(B) IN ANY ACTION AGAINST A HEALTH CARE PROVIDER OR A HEALTH**
19 **INFORMATION EXCHANGE FOR DAMAGES OR OTHER RELIEF OR FOR PENALTIES**
20 **OF ANY NATURE, THE HEALTH CARE PROVIDER OR HEALTH INFORMATION**
21 **EXCHANGE MAY NOT BE HELD LIABLE BASED SOLELY ON OBTAINING OR**
22 **FAILING TO OBTAIN, OR RELEASING OR FAILING TO RELEASE, PROTECTED**
23 **HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE, UNLESS:**

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

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

29 **(C) THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION AGAINST**
30 **A HEALTH INFORMATION EXCHANGE OR A HEALTH CARE PROVIDER.**

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