

SENATE BILL 723

J3, J1

11r2152
CF HB 784

By: **Senator Rosapepe**

Introduced and read first time: February 4, 2011

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2011

CHAPTER _____

1 AN ACT concerning

2 **Medical Records – Health Information Exchanges**

3 FOR the purpose of ~~authorizing~~ requiring the Maryland Health Care Commission to
4 adopt regulations for the privacy and security of protected health information
5 obtained or released through a health information exchange by certain persons;
6 requiring the regulations to include protections for the secondary use of certain
7 protected information; providing that the regulations may not apply to protected
8 health information exchanged between and among certain persons; requiring
9 the Commission to consult with certain persons before adopting the regulations;
10 establishing certain limitations on the sale of data obtained or released through
11 a health information exchange; requiring certain ~~payors that release protected~~
12 ~~health information through a health information exchange to certain health~~
13 ~~care providers to connect and provide the protected health information~~
14 ~~electronically to the health information exchange designated by the Commission~~
15 ~~and the Health Services Cost Review Commission under a certain provision of~~
16 ~~law~~ entities to connect to the State designated exchange and respond to certain
17 requests for clinical information transmitted through the exchange in a certain
18 manner; providing that a certain consent applies to information transmitted
19 through the State designated exchange or by other means; authorizing the
20 Commission to adopt certain regulations relating to the State designated
21 exchange; providing for the effect of certain provisions of this Act; providing
22 that the existence of a health information exchange does not, in itself, ~~change a~~
23 ~~certain standard of care for obtaining or releasing protected health information~~;
24 ~~providing that, in certain actions, a health information exchange or a health~~
25 ~~care provider may not be held liable based solely on certain actions relating to a~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~health information exchange, except under certain circumstances; providing~~
2 ~~that certain provisions of this Act do not~~ create a new cause of action against a
3 health information exchange or a health care provider; defining certain terms;
4 and generally relating to obtaining and releasing protected health information
5 through a health information exchange.

6 BY repealing and reenacting, with amendments,
7 Article – Health – General
8 Section 4–301
9 Annotated Code of Maryland
10 (2009 Replacement Volume and 2010 Supplement)

11 BY adding to
12 Article – Health – General
13 Section 4–302.2, 4–302.3, and 4–302.4
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2010 Supplement)

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

18 **Article – Health – General**

19 4–301.

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

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

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

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

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

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

1 (f) "Health care" means any care, treatment, or procedure by a health care
2 provider:

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

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

6 (g) (1) "Health care provider" means:

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

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

16 (2) "Health care provider" includes the agents, employees, officers, and
17 directors of a facility and the agents and employees of a health care provider.

18 **(H) "HEALTH INFORMATION EXCHANGE" MEANS AN INFRASTRUCTURE**
19 **THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE**
20 **EXCHANGE OF PROTECTED HEALTH INFORMATION ELECTRONICALLY AMONG**
21 **ENTITIES NOT UNDER COMMON OWNERSHIP.**

22 **[(h)] (I)** (1) "Medical record" means any oral, written, or other
23 transmission in any form or medium of information that:

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

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

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

28 (2) "Medical record" includes any:

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

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

1 (iii) Documentation of an examination of a patient regardless of
2 who:

- 3 1. Requested the examination; or
- 4 2. Is making payment for the examination; and

5 (iv) File or record received from another health care provider
6 that:

- 7 1. Relates to the health care of a patient or recipient
8 received from that health care provider; and
- 9 2. Identifies or can readily be associated with the
10 identity of the patient or recipient.

11 **[(i)] (J)** (1) “Mental health services” means health care rendered to a
12 recipient primarily in connection with the diagnosis, evaluation, treatment, case
13 management, or rehabilitation of any mental disorder.

14 (2) For acute general hospital services, mental health services are
15 considered to be the primarily rendered service only if service is provided pursuant to
16 Title 10, Subtitle 6 or Title 12 of this article.

17 **[(j)] (K)** “Patient” means a person who receives health care and on whom a
18 medical record is maintained.

19 **[(k)] (L)** “Person in interest” means:

20 (1) An adult on whom a health care provider maintains a medical
21 record;

22 (2) A person authorized to consent to health care for an adult
23 consistent with the authority granted;

24 (3) A duly appointed personal representative of a deceased person;

25 (4) (i) A minor, if the medical record concerns treatment to which
26 the minor has the right to consent and has consented under Title 20, Subtitle 1 of this
27 article; or

28 (ii) A parent, guardian, custodian, or a representative of the
29 minor designated by a court, in the discretion of the attending physician who provided
30 the treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

31 (5) If item (4) of this subsection does not apply to a minor:

1 (i) A parent of the minor, except if the parent's authority to
2 consent to health care for the minor has been specifically limited by a court order or a
3 valid separation agreement entered into by the parents of the minor; or

4 (ii) A person authorized to consent to health care for the minor
5 consistent with the authority granted; or

6 (6) An attorney appointed in writing by a person listed in item (1), (2),
7 (3), (4), or (5) of this subsection.

8 **[(1)] (M)** "Primary provider of mental health services" means the designated
9 mental health services provider who:

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

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

13 **(N) "PROTECTED HEALTH INFORMATION" MEANS ALL INDIVIDUALLY**
14 **IDENTIFIABLE HEALTH INFORMATION HELD OR TRANSMITTED BY A COVERED**
15 **ENTITY OR ITS BUSINESS ASSOCIATE PROTECTED UNDER THE U.S.**
16 **DEPARTMENT OF HEALTH AND HUMAN SERVICES PRIVACY RULE.**

17 **[(m)] (O)** "Recipient" means a person who has applied for, for whom an
18 application has been submitted, or who has received mental health services.

19 **4-302.2.**

20 **(A) THE MARYLAND HEALTH CARE COMMISSION ~~MAY~~ SHALL ADOPT**
21 **REGULATIONS FOR THE PRIVACY AND SECURITY OF PROTECTED HEALTH**
22 **INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION**
23 **EXCHANGE BY:**

24 **(1) A HEALTH CARE PROVIDER; ~~OR~~**

25 **(2) A PAYOR THAT HOLDS A VALID CERTIFICATE OF AUTHORITY**
26 **ISSUED BY THE MARYLAND INSURANCE COMMISSIONER;**

27 **(3) A HEALTH CARE CONSUMER; OR**

28 **(4) ANY PERSON AUTHORIZED BY A HEALTH CARE CONSUMER TO**
29 **ACT ON BEHALF OF THE HEALTH CARE CONSUMER.**

1 **(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS**
 2 **SECTION SHALL INCLUDE PROTECTIONS FOR THE SECONDARY USE OF**
 3 **PROTECTED HEALTH INFORMATION OBTAINED OR RELEASED THROUGH A**
 4 **HEALTH INFORMATION EXCHANGE.**

5 **(C) DATA OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION**
 6 **EXCHANGE:**

7 **(1) MAY NOT BE SOLD FOR FINANCIAL REMUNERATION UNTIL**
 8 **THE REGULATIONS REQUIRED UNDER SUBSECTIONS (A) AND (B) OF THIS**
 9 **SECTION ARE ADOPTED; AND**

10 **(2) MAY BE SOLD FOR FINANCIAL REMUNERATION ONLY IN**
 11 **ACCORDANCE WITH THE REGULATIONS ADOPTED UNDER SUBSECTIONS (A) AND**
 12 **(B) OF THIS SECTION.**

13 **~~(B)~~ (D) ~~ANY REGULATIONS~~ REGULATIONS ADOPTED UNDER**
 14 **SUBSECTION ~~(A)~~ SUBSECTIONS (A) AND (B) OF THIS SECTION MAY NOT APPLY TO**
 15 **PROTECTED HEALTH INFORMATION EXCHANGED:**

16 **(1) BETWEEN A HOSPITAL AND CREDENTIALLED MEMBERS OF THE**
 17 **HOSPITAL'S MEDICAL STAFF; ~~OR~~**

18 **(2) AMONG CREDENTIALLED MEMBERS OF A HOSPITAL'S MEDICAL**
 19 **STAFF; OR**

20 **(3) BETWEEN A HOSPITAL AND ANCILLARY CLINICAL SERVICE**
 21 **PROVIDERS THAT ARE AFFILIATED WITH THE HOSPITAL AND HAVE SIGNED A**
 22 **BUSINESS ASSOCIATE AGREEMENT.**

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

28 **4-302.3.**

29 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
 30 **MEANINGS INDICATED.**

31 **(2) "STATE DESIGNATED EXCHANGE" MEANS THE HEALTH**
 32 **INFORMATION EXCHANGE DESIGNATED BY THE MARYLAND HEALTH CARE**

1 COMMISSION AND THE HEALTH SERVICES COST REVIEW COMMISSION UNDER
 2 § 19-143 OF THIS ARTICLE.

3 (3) “STANDARD REQUEST” MEANS A REQUEST FOR CLINICAL
 4 INFORMATION FROM A HEALTH INFORMATION EXCHANGE THAT CONFORMS TO
 5 THE MAJOR STANDARDS VERSION SPECIFIED BY THE OFFICE OF THE NATIONAL
 6 COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

7 (B) THIS SECTION APPLIES TO:

8 (1) EXCEPT FOR THE STATE DESIGNATED EXCHANGE, A HEALTH
 9 INFORMATION EXCHANGE OPERATING IN THE STATE; AND

10 (2) A PAYOR THAT:

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

13 (2) ACTS AS, OPERATES, OR OWNS A HEALTH INFORMATION
 14 EXCHANGE.

15 ~~(B) (C) A PAYOR AN ENTITY TO WHICH THIS SECTION APPLIES THAT~~
 16 ~~RELEASES PROTECTED HEALTH INFORMATION THROUGH A HEALTH~~
 17 ~~INFORMATION EXCHANGE TO A HEALTH CARE PROVIDER THAT IS NOT THE~~
 18 ~~HEALTH CARE PROVIDER THAT GENERATED THE PROTECTED HEALTH~~
 19 ~~INFORMATION SHALL CONNECT AND PROVIDE THE PROTECTED HEALTH~~
 20 ~~INFORMATION ELECTRONICALLY TO THE HEALTH INFORMATION EXCHANGE~~
 21 ~~DESIGNATED BY THE MARYLAND HEALTH CARE COMMISSION AND THE~~
 22 ~~HEALTH SERVICES COST REVIEW COMMISSION UNDER § 19-143 OF THIS~~
 23 ~~ARTICLE~~ SHALL CONNECT TO THE STATE DESIGNATED EXCHANGE IN A MANNER
 24 CONSISTENT WITH APPLICABLE FEDERAL AND STATE PRIVACY LAWS.

25 (D) WHEN A STANDARD REQUEST FOR CLINICAL INFORMATION IS
 26 RECEIVED THROUGH THE STATE DESIGNATED EXCHANGE, AN ENTITY TO WHICH
 27 THIS SECTION APPLIES SHALL RESPOND TO THE REQUEST TO THE EXTENT
 28 AUTHORIZED UNDER FEDERAL AND STATE PRIVACY LAWS.

29 (E) A CONSENT FROM A PATIENT TO RELEASE CLINICAL INFORMATION
 30 TO A PROVIDER OBTAINED BY AN ENTITY TO WHICH THIS SECTION APPLIES
 31 SHALL APPLY TO INFORMATION TRANSMITTED THROUGH THE STATE
 32 DESIGNATED EXCHANGE OR BY OTHER MEANS.

33 (F) THE MARYLAND HEALTH CARE COMMISSION:

1 (1) MAY ADOPT REGULATIONS FOR IMPLEMENTING THE
2 CONNECTIVITY TO THE STATE DESIGNATED EXCHANGE REQUIRED UNDER THIS
3 SECTION; AND

4 (2) SHALL SEEK, THROUGH ANY REGULATIONS ADOPTED UNDER
5 ITEM (1) OF THIS SUBSECTION, TO PROMOTE TECHNOLOGY STANDARDS AND
6 FORMATS THAT CONFORM TO THOSE SPECIFIED BY THE OFFICE OF THE
7 NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

8 (G) (1) THE MARYLAND HEALTH CARE COMMISSION MAY ADOPT
9 REGULATIONS SPECIFYING THE SCOPE OF CLINICAL INFORMATION TO BE
10 EXCHANGED UNDER THIS SECTION.

11 (2) ANY REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS
12 SUBSECTION SHALL LIMIT THE SCOPE OF THE CLINICAL INFORMATION TO
13 PURPOSES THAT PROMOTE:

14 (I) IMPROVED ACCESS TO CLINICAL RECORDS BY
15 TREATING CLINICIANS; OR

16 (II) USES OF THE STATE DESIGNATED EXCHANGE
17 IMPORTANT TO PUBLIC HEALTH AGENCIES.

18 (H) THIS SECTION DOES NOT:

19 (1) REQUIRE AN ENTITY TO WHICH THIS SECTION APPLIES TO
20 COLLECT CLINICAL INFORMATION OR OBTAIN ANY AUTHORIZATIONS, NOT
21 OTHERWISE REQUIRED BY FEDERAL OR STATE LAW, RELATING TO
22 INFORMATION TO BE SENT OR RECEIVED THROUGH THE STATE DESIGNATED
23 EXCHANGE;

24 (2) PROHIBIT AN ENTITY TO WHICH THIS SECTION APPLIES FROM
25 DIRECTLY RECEIVING OR SENDING INFORMATION TO PROVIDERS OR
26 SUBSCRIBERS OUTSIDE OF THE STATE DESIGNATED EXCHANGE; OR

27 (3) PROHIBIT AN ENTITY TO WHICH THIS SECTION APPLIES FROM
28 CONNECTING AND INTEROPERATING WITH THE STATE DESIGNATED EXCHANGE
29 IN A MANNER AND SCOPE BEYOND THAT REQUIRED UNDER THIS SECTION.

30 4-302.4.

31 ~~(A) THE EXISTENCE OF A HEALTH INFORMATION EXCHANGE DOES NOT,
32 IN ITSELF, CHANGE THE STANDARD OF CARE APPLICABLE TO HEALTH CARE~~

1 ~~PROVIDERS FOR OBTAINING OR RELEASING PROTECTED HEALTH~~
2 ~~INFORMATION.~~

3 ~~(b) IN ANY ACTION AGAINST A HEALTH CARE PROVIDER OR A HEALTH~~
4 ~~INFORMATION EXCHANGE FOR DAMAGES OR OTHER RELIEF OR FOR PENALTIES~~
5 ~~OF ANY NATURE, THE HEALTH CARE PROVIDER OR HEALTH INFORMATION~~
6 ~~EXCHANGE MAY NOT BE HELD LIABLE BASED SOLELY ON OBTAINING OR~~
7 ~~FAILING TO OBTAIN, OR RELEASING OR FAILING TO RELEASE, PROTECTED~~
8 ~~HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE, UNLESS:~~

9 ~~(1) WITH RESPECT TO A HEALTH CARE PROVIDER, THE HEALTH~~
10 ~~CARE PROVIDER VIOLATED AN APPLICABLE STANDARD OF CARE; OR~~

11 ~~(2) WITH RESPECT TO A HEALTH INFORMATION EXCHANGE, THE~~
12 ~~HEALTH INFORMATION EXCHANGE VIOLATED AN APPLICABLE STATE OR~~
13 ~~FEDERAL LAW.~~

14 ~~(c) THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION AGAINST~~
15 ~~A HEALTH INFORMATION EXCHANGE OR A HEALTH CARE PROVIDER.~~

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.