

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 723

(Senator Rosapepe)

Finance

Health and Government Operations

Medical Records - Health Information Exchanges

This bill requires the Maryland Health Care Commission (MHCC) to adopt regulations for the privacy and security of protected health information obtained or released through a health information exchange by specified parties. The regulations – which must be developed in consultation with health care providers, payors, State health agencies, consumer advocates, and employers – must include protections for the secondary use of protected health information. The regulations do 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 certain ancillary clinical service providers. The bill also authorizes MHCC to adopt regulations for implementing connectivity to the State-designated exchange and promoting certain technology standards and formats.

The bill also (1) establishes requirements for entities to connect to the State-designated exchange and respond to certain requests for clinical information through the exchange; (2) specifies that the existence of an exchange does not, in itself, create a new cause of actions; and (3) establishes limitations on the sale of data obtained or released through a health information exchange.

Fiscal Summary

State Effect: The bill’s requirement to adopt certain regulations can be handled with existing budgeted resources. The bill’s other requirements are not expected to materially affect governmental finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Health information exchange” means an infrastructure that provides organizational and technical capabilities for the electronic exchange of protected health information among entities not under common ownership. “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.

“State-designated exchange” refers to the health information exchange designated by MHCC and the Health Services Cost Review Commission (HSCRC). “Standard request” means a request for clinical information from a health information exchange that conforms to certain specified standards.

Under the bill, certain entities must connect to the State-designated exchange in a manner consistent with applicable State and federal privacy laws and must respond, to the extent authorized by State and federal privacy laws, to standard requests for clinical information received through the State-designated exchange. These entities include (1) a health information exchange, other than the State-designated exchange, operating within the State; and (2) a payor that holds a valid certificate of authority issued by the Maryland Insurance Commissioner and acts as, operates, or owns a health information exchange. If one of these entities obtains a patient’s consent to release clinical information to a provider, the consent applies to information transmitted through the State-designated exchange or by other means.

The bill does not (1) require an entity to collect clinical information or obtain any additional authorizations relating to information to be sent or received through the State-designated exchange; (2) prohibit an entity from directly receiving or sending information to providers or subscribers outside of the State-designated exchange; or (3) prohibit an entity from connecting and interoperating with the State-designated exchange in a manner and scope beyond that required under the bill.

Current Law/Background: Chapter 689 of 2009 required MHCC and HSCRC to designate a health information exchange by October 1, 2009. The commissions selected the Chesapeake Regional Information System for our Patients (a nonprofit organization) to build the health information exchange, which is a statewide infrastructure that provides organizational and technical capabilities to enable the electronic exchange of health information between health care providers and other health services organizations authorized by MHCC. MHCC advises that the exchange, which is in an early phase of implementation, has limited data sharing to that which is adequately protected by current law; thus, data sharing is currently limited to results delivery, discharge summaries, and select clinical information.

In its December 2010 report to the Governor, MHCC advised that the statewide health information exchange will enable critical information to be shared among providers of different organizations and regions in real time; support the use of evidence-based medicine; contribute to public health initiatives in biosurveillance and disease tracking; and prepare for emergency preparedness efforts that will positively impact health care outcomes by providing greater access to secure and accurate health information. The architecture of the statewide exchange is a distributed model in which data remain at the source and the exchange is a conduit for the secure transmission of the data from one provider or organization to another.

In its report, MHCC identified certain legislative changes necessary to facilitate the statewide health information exchange. MHCC specifically recommended that State law be changed to (1) establish liability protections for the health information exchange and participating providers; and (2) authorize MHCC to establish policies governing health information exchanges to ensure the privacy and security interests of individuals whose health information is held by or flows through an exchange.

Additional Comments: The Maryland Insurance Administration advises that the bill may have an operational impact upon the insurance industry to the extent that insurers are subject to additional requirements.

Additional Information

Prior Introductions: None.

Cross File: HB 784 (Delegate Pendergrass, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Insurance Administration, Department of Budget and Management, Department of Health and Mental Hygiene, Department of Legislative Services

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