

# HOUSE BILL 1375

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By: **Delegate Kelly**

Introduced and read first time: March 1, 2021

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Information Exchanges – Electronic Health Information – Sharing and**  
3 **Disclosure**

4 FOR the purpose of requiring that certain regulations adopted by the Maryland Health  
5 Care Commission require the State–designated health information exchange to  
6 develop and maintain a certain consent management application and provide for  
7 certain penalties; providing that certain regulations may not prohibit certain sharing  
8 and disclosing of certain information or certain uses of electronic health information;  
9 requiring, to the extent authorized under certain laws, certain health information  
10 exchanges and payors to transmit to the State–designated health information  
11 exchange certain clinical information; altering the purposes for which certain  
12 regulations adopted by the Commission are required to limit the scope of certain  
13 clinical information; defining certain terms; altering certain definitions; making  
14 conforming changes; and generally relating to health information exchanges.

15 BY repealing and reenacting, with amendments,  
16 Article – Health – General  
17 Section 4–301, 4–302.2(b), 4–302.3, 19–142, and 19–143(a)(2) and (f)(1)(ii)  
18 Annotated Code of Maryland  
19 (2019 Replacement Volume and 2020 Supplement)

20 BY repealing and reenacting, without amendments,  
21 Article – Health – General  
22 Section 4–302.2(a)  
23 Annotated Code of Maryland  
24 (2019 Replacement Volume and 2020 Supplement)

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

27 **Article – Health – General**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 4-301.

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

3 (b) “Common ownership” means ownership of a health care entity:

4 (1) By two or more health care providers;

5 (2) By two or more health care providers employed by a mutual employer  
6 for a wage, salary, fee, or payment to perform work for the employer;

7 (3) By health care organizations operating as an organized health care  
8 arrangement, as defined in 45 C.F.R. § 160.103;

9 (4) By a health care entity or health care entities that possess an ownership  
10 or equity interest of 5% or more in another health care entity; or

11 (5) By affiliated providers operating under the same trade name.

12 (c) “Directory information” means information concerning the presence and  
13 general health condition of a patient who has been admitted to a health care facility or who  
14 is currently receiving emergency health care in a health care facility.

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

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

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

23 (g) “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 **(H) “HEALTH CARE OPERATIONS” HAS THE MEANING STATED IN 45 C.F.R.**  
29 **§ 164.501.**

30 **[(h)] (I) (1) “Health care provider” means:**

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

5 (ii) A facility where health care is provided to patients or recipients,  
6 including a facility as defined in § 10–101(g) of this article, a hospital as defined in §  
7 19–301 of this article, a related institution as defined in § 19–301 of this article, a health  
8 maintenance organization as defined in § 19–701(g) of this article, an outpatient clinic, a  
9 medical laboratory, a comprehensive crisis response center, a crisis stabilization center,  
10 and a crisis treatment center established under § 7.5–207 of this article.

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

13 **[(i)] (J)** (1) “Health information exchange” means an entity that **[provides]:**

14 **(I) DETERMINES, CONTROLS, OR HAS THE DISCRETION TO**  
15 **ADMINISTER A REQUIREMENT, A POLICY, OR AN AGREEMENT THAT AUTHORIZES,**  
16 **ENABLES, OR REQUIRES THE USE OF A TECHNOLOGY OR SERVICE; OR**

17 **(II) PROVIDES** or governs organizational and technical processes for  
18 the maintenance, transmittal, access, **[or]** disclosure, **EXCHANGE, OR USE** of electronic  
19 health care information **[between]:**

20 **1. BETWEEN** or among **UNAFFILIATED** health care  
21 providers or entities **[through an interoperable system] THAT ARE ENABLED TO**  
22 **EXCHANGE ELECTRONIC HEALTH INFORMATION WITH EACH OTHER; AND**

23 **2. FOR A TREATMENT, PAYMENT, OR HEALTH CARE**  
24 **OPERATIONS PURPOSE.**

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

26 (i) An entity composed of health care providers under common  
27 ownership; or

28 (ii) If the organizational and technical processes it provides or  
29 governs are transactions, as defined in 45 C.F.R. § 160.103:

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

31 2. A carrier’s business associate, as defined in 45 C.F.R. §  
32 160.103; or

1                                   3.     An administrator, as defined in § 8–301 of the Insurance  
2 Article.

3             **[(j)] (K)**     (1)    “Medical record” means any oral, written, or other transmission  
4 in any form or medium of information that:

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

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

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

9             (2)    “Medical record” includes any:

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

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

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

16                                   1.     Requested the examination; or

17                                   2.     Is making payment for the examination; and

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

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

21                                   2.     Identifies or can readily be associated with the identity of  
22 the patient or recipient.

23             **[(k)] (L)**     (1)    “Mental health services” means health care rendered to a  
24 recipient primarily in connection with the diagnosis, evaluation, treatment, case  
25 management, or rehabilitation of any mental disorder.

26                            (2)    For acute general hospital services, mental health services are  
27 considered to be the primarily rendered service only if service is provided pursuant to Title  
28 10, Subtitle 6 of this article or Title 3 of the Criminal Procedure Article.

29             **[(l)] (M)**     “Patient” means a person who receives health care and on whom a  
30 medical record is maintained.

1           [(m)] (N)    “Person in interest” means:

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

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

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

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

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

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

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

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

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

20           [(n)] (O)    “Primary provider of mental health services” means the designated  
21 mental health services provider who:

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

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

25           [(o)] (P)    “Protected health information” means all individually identifiable  
26 health information held or transmitted by a covered entity or its business associate  
27 protected under the U.S. Department of Health and Human Services Privacy Rule.

28           [(p)] (Q)    “Recipient” means a person who has applied for, for whom an  
29 application has been submitted, or who has received mental health services.

30           (R)    “STATE–DESIGNATED HEALTH INFORMATION EXCHANGE” MEANS THE  
31 HEALTH 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 4-302.2.

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

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

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

12 [(2)] (II) Include protections for the secondary use of protected health  
13 information obtained or released through a health information exchange;

14 (III) REQUIRE THE STATE-DESIGNATED HEALTH INFORMATION  
15 EXCHANGE TO DEVELOP AND MAINTAIN A CONSENT MANAGEMENT APPLICATION  
16 THAT:

17 1. ALLOWS A PERSON IN INTEREST TO OPT OUT OF  
18 HAVING ELECTRONIC HEALTH INFORMATION SHARED OR DISCLOSED BY A HEALTH  
19 INFORMATION EXCHANGE;

20 2. REQUIRES THAT THE STATE-DESIGNATED HEALTH  
21 INFORMATION EXCHANGE PROVIDE A HEALTH INFORMATION EXCHANGE WITH THE  
22 OPT-OUT STATUS OF A PERSON IN INTEREST, ON RECEIPT OF AN ELECTRONIC  
23 REQUEST FROM THE HEALTH INFORMATION EXCHANGE FOR THE OPT-OUT STATUS  
24 OF THE PERSON IN INTEREST;

25 3. REQUIRES A HEALTH INFORMATION EXCHANGE TO  
26 OBTAIN THE OPT-OUT STATUS OF A PERSON IN INTEREST FROM THE  
27 STATE-DESIGNATED HEALTH INFORMATION EXCHANGE BEFORE SHARING OR  
28 DISCLOSING THE ELECTRONIC HEALTH INFORMATION OF THE PERSON IN INTEREST;  
29 AND

30 4. EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
31 SUBSECTION, PROHIBITS A HEALTH INFORMATION EXCHANGE FROM SHARING OR  
32 DISCLOSING THE ELECTRONIC HEALTH INFORMATION OF A PERSON IN INTEREST IF  
33 THE PERSON IN INTEREST HAS OPTED OUT OF HAVING ELECTRONIC HEALTH  
34 INFORMATION SHARED OR DISCLOSED BY A HEALTH INFORMATION EXCHANGE; AND

1 (IV) PROVIDE APPROPRIATE PENALTIES FOR NONCOMPLIANCE  
2 WITH THE REGULATIONS, INCLUDING FINES THAT DO NOT EXCEED \$10,000 PER DAY  
3 AND THAT ARE DETERMINED BASED ON:

4 1. THE EXTENT OF ACTUAL OR POTENTIAL PUBLIC  
5 HARM CAUSED BY THE VIOLATION;

6 2. THE COST OF INVESTIGATING THE VIOLATION; AND

7 3. WHETHER THE PERSON COMMITTED PREVIOUS  
8 VIOLATIONS.

9 (2) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS  
10 SECTION MAY NOT PROHIBIT:

11 (I) THE SHARING OR DISCLOSING OF INFORMATION THAT IS  
12 REQUIRED TO BE EXCHANGED UNDER FEDERAL LAW OR TITLE 21, SUBTITLE 2A OF  
13 THIS ARTICLE; OR

14 (II) THE USE OF THE ELECTRONIC HEALTH INFORMATION FOR  
15 PURPOSES THAT ARE IMPORTANT TO PUBLIC HEALTH FUNCTIONS OR HEALTH  
16 PLANNING ACTIVITIES OF THE DEPARTMENT, THE MARYLAND HEALTH CARE  
17 COMMISSION, OR THE HEALTH SERVICES COST REVIEW COMMISSION.

18 4-302.3.

19 (a) [(1)] In this section [the following words have the meanings indicated.

20 (2) “Standard], “STANDARD request” means a request for clinical  
21 information from a health information exchange that conforms to the major standards  
22 version specified by the Office of the National Coordinator for Health Information  
23 Technology.

24 [(3) “State designated exchange” means the health information exchange  
25 designated by the Maryland Health Care Commission and the Health Services Cost Review  
26 Commission under § 19-143 of this article.]

27 (b) This section applies to:

28 (1) Except for the [State designated] STATE-DESIGNATED HEALTH  
29 INFORMATION exchange, a health information exchange operating in the State; and

30 (2) A payor that:

1 (i) Holds a valid certificate of authority issued by the Maryland  
2 Insurance Commissioner; and

3 (ii) Acts as, operates, or owns a health information exchange.

4 (c) An entity to which this section applies shall connect to the [State designated]  
5 **STATE-DESIGNATED HEALTH INFORMATION** exchange in a manner consistent with  
6 applicable federal and State privacy laws.

7 (d) **(1)** When a standard request for clinical information is received through  
8 the [State designated] **STATE-DESIGNATED HEALTH INFORMATION** exchange, an entity  
9 to which this section applies shall respond to the request to the extent authorized under  
10 federal and State privacy laws.

11 **(2) TO THE EXTENT AUTHORIZED UNDER FEDERAL OR STATE**  
12 **PRIVACY LAW, AN ENTITY TO WHICH THIS SECTION APPLIES SHALL TRANSMIT TO**  
13 **THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE THE CLINICAL**  
14 **INFORMATION SPECIFIED IN THE REGULATIONS ADOPTED IN ACCORDANCE WITH**  
15 **SUBSECTION (G) OF THIS SECTION.**

16 (e) A consent from a patient to release clinical information to a provider obtained  
17 by an entity to which this section applies shall apply to information transmitted through  
18 the [State designated] **STATE-DESIGNATED HEALTH INFORMATION** exchange or by  
19 other means.

20 (f) The Maryland Health Care Commission:

21 (1) May adopt regulations for implementing the connectivity to the  
22 [State designated] **STATE-DESIGNATED HEALTH INFORMATION** exchange required  
23 under this section; and

24 (2) Shall seek, through any regulations adopted under item (1) of this  
25 subsection, to promote technology standards and formats that conform to those specified by  
26 the Office of the National Coordinator for Health Information Technology.

27 (g) (1) The Maryland Health Care Commission may adopt regulations  
28 specifying the scope of clinical information to be exchanged **OR SENT** under this section.

29 (2) Any regulations adopted under paragraph (1) of this subsection shall  
30 limit the scope of the clinical information to purposes that promote:

31 (i) Improved **TREATMENT, INCLUDING IMPROVED** access to  
32 clinical records by treating clinicians; [or]

33 (ii) Uses of the [State designated] **STATE-DESIGNATED HEALTH**



1 INFORMATION exchange important to public health [agencies]; OR

2 (III) THE PROTECTION OF THE ELECTRONIC HEALTH  
3 INFORMATION OF A PERSON IN INTEREST WHO HAS OPTED OUT OF HAVING  
4 ELECTRONIC HEALTH INFORMATION SHARED OR DISCLOSED BY A HEALTH  
5 INFORMATION EXCHANGE.

6 (h) This section does not:

7 (1) Require an entity to which this section applies to collect clinical  
8 information or obtain any authorizations, not otherwise required by federal or State law,  
9 relating to information to be sent or received through the [State designated]  
10 STATE-DESIGNATED HEALTH INFORMATION exchange;

11 (2) Prohibit an entity to which this section applies from directly receiving  
12 or sending information to providers or subscribers outside of the [State designated]  
13 STATE-DESIGNATED HEALTH INFORMATION exchange; or

14 (3) Prohibit an entity to which this section applies from connecting and  
15 interoperating with the [State designated] STATE-DESIGNATED HEALTH INFORMATION  
16 exchange in a manner and scope beyond that required under this section.

17 19-142.

18 (a) In this Part IV of this subtitle the following words have the meanings  
19 indicated.

20 (b) "Carrier" means:

21 (1) An insurer;

22 (2) A nonprofit health service plan;

23 (3) A health maintenance organization; or

24 (4) Any other person that provides health benefit plans subject to  
25 regulation by the State.

26 (c) "Electronic health record" means an electronic record of health-related  
27 information on an individual that:

28 (1) Includes patient demographic and clinical health information; and

29 (2) Has the capacity to:

30 (i) Provide clinical decision support;

- 1 (ii) Support physician order entry;
- 2 (iii) Capture and query information relevant to health care quality;
- 3 and
- 4 (iv) Exchange electronic health information with and integrate the
- 5 information from other sources.

6 (d) (1) “Health benefit plan” means a hospital or medical policy, contract, or

7 certificate issued by a carrier.

8 (2) “Health benefit plan” does not include:

- 9 (i) Coverage for accident or disability income insurance;
- 10 (ii) Coverage issued as a supplement to liability insurance;
- 11 (iii) Liability insurance, including general liability insurance and
- 12 automobile liability insurance;
- 13 (iv) Workers’ compensation or similar insurance;
- 14 (v) Automobile or property medical payment insurance;
- 15 (vi) Credit-only insurance;
- 16 (vii) Coverage for on-site medical clinics;
- 17 (viii) Dental or vision insurance;
- 18 (ix) Long-term care insurance or benefits for nursing home care,
- 19 home health care, community-based care, or any combination of these;
- 20 (x) Coverage only for a specified disease or illness;
- 21 (xi) Hospital indemnity or other fixed indemnity insurance; or
- 22 (xii) The following benefits if offered as a separate insurance policy:
- 23 1. Medicare supplemental health insurance, as defined in §
- 24 1882(g)(1) of the Social Security Act;
- 25 2. Coverage supplemental to the coverage provided under
- 26 Chapter 55 of Title 10, U.S.C.; or
- 27 3. Similar supplemental coverage provided to coverage under

1 an employer–sponsored plan.

2 (e) (1) “Health care provider” means:

3 (i) A person who is licensed, certified, or otherwise authorized under  
4 the Health Occupations Article to provide health care in the ordinary course of business or  
5 practice of a profession or in an approved education or training program; or

6 (ii) A facility where health care is provided to patients or recipients,  
7 including:

8 1. A facility, as defined in § 10–101(g) of this article;

9 2. A hospital, as defined in § 19–301 of this title;

10 3. A related institution, as defined in § 19–301 of this title;

11 4. An outpatient clinic;

12 5. A freestanding medical facility, as defined in § 19–3A–01  
13 of this title;

14 6. An ambulatory surgical facility, as defined in § 19–3B–01  
15 of this title; and

16 7. A nursing home, as defined in § 19–1401 of this title.

17 (2) “Health care provider” does not include a health maintenance  
18 organization as defined in § 19–701 of this title.

19 (f) “Health information exchange” [means a statewide infrastructure that  
20 provides organizational and technical capabilities to enable the electronic exchange of  
21 health information between health care providers and other health services organizations  
22 authorized by the Commission] **HAS THE MEANING STATED IN § 4–301 OF THIS**  
23 **ARTICLE.**

24 (g) “Management service organization” means an organization that offers one or  
25 more hosted electronic health record solutions and other management services to multiple  
26 health care providers.

27 **(H) “STATE–DESIGNATED HEALTH INFORMATION EXCHANGE” MEANS THE**  
28 **HEALTH INFORMATION EXCHANGE DESIGNATED BY THE MARYLAND HEALTH CARE**  
29 **COMMISSION AND THE HEALTH SERVICES COST REVIEW COMMISSION UNDER §**  
30 **19–143 OF THIS SUBTITLE.**

31 **[(h)] (I) (1) “State–regulated payor” means a carrier issuing or delivering**

1 health benefit plans in the State.

2 (2) “State–regulated payor” does not include a managed care organization  
3 as defined in Title 15, Subtitle 1 of this article.

4 19–143.

5 (a) (2) The Secretary, to align funding opportunities with the purposes of this  
6 section and the development and effective operation of the [State’s] **STATE–DESIGNATED**  
7 health information exchange, may provide grants to the **STATE–DESIGNATED** health  
8 information exchange [designated under paragraph (1) of this subsection].

9 (f) On and after the later of January 1, 2015, or the date established for the  
10 imposition of penalties under § 4102 of the federal American Recovery and Reinvestment  
11 Act of 2009:

12 (1) Each health care provider using an electronic health record that seeks  
13 payment from a State–regulated payor shall use electronic health records that are:

14 (ii) Capable of connecting to and exchanging data with the  
15 **STATE–DESIGNATED** health information exchange [designated by the Commission under  
16 subsection (a) of this section]; and

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2021.