

AttorneyGeneral_FWA_SB112

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January 14, 2020

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit

Re: Senate Bill 112 (Health Insurance-Health Information-Disclosures Between Carriers): Support as Amended

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports Senate Bill 112 as amended in the version submitted to the Committee by the Maryland Insurance Administration (MIA) today. The HEAU had proposed the amendments set forth on page 2 for the reasons stated below.

The original bill would *require* a carrier, upon request, to disclose protected health information in the form of case management and care coordination records regarding a former enrollee to the current carrier, without an affirmative authorization from the individual. HIPAA *permits* these types of disclosures but does not require them. We are concerned that the lack of voluntary and informed consent to participation in carriers' case management and care coordination activities, and to disclosure of the records to a new carrier, could, if required, result in impermissible reductions of HIPAA's privacy protections notwithstanding any increase in operational efficiency that may occur.

The facts of an HEAU complaint exemplify some of these issues. The mother of a ten-year-old child with a rare genetic condition complained that a third party (hired by the carrier) billed for nurse case manager services the mother had declined. Moreover, before the mother was even offered the services, the nurse case manager obtained the child's medical record without the mother's knowledge or consent. Privacy violations like these risk being facilitated by mandatory disclosures without authorization.

We believe privacy and operational efficiency are balanced and served by obtaining a HIPAA compliant authorization from the individual; limiting the authorized disclosure to case management and care coordination records; limiting their use to case management and care

coordination activities; and requiring the carrier to provide the individual access to the disclosed records upon request, as set forth in the amended bill. The HEAU's support is for the amended bill in its current form.

cc: Members of the Finance Committee

HEAU Amendments to Senate Bill 112 – Health Insurance- Health Information –
Disclosures Between Carriers (First Reading Bill)

Amendment #1

On page 1, delete lines 19-20

Amendment #2

On page 2, in line 4, after “FOR”, delete “HEALTH CARE OPERATIONS ACTIVITIES” and insert “CASE MANAGEMENT AND CARE COORDINATION ACTIVITIES”

Amendment #3

On page 2, in line 9, after “INFORMATION”, delete “RELATES TO THE RELATIONSHIP BETWEEN THE INDIVIDUAL WHO IS THE SUBJECT OF THE PROTECTED HEALTH INFORMATION AND THE CARRIER THAT RECEIVES THE PROTECTED HEALTH INFORMATION; AND”, and insert “PERTAINS TO SUCH RELATIONSHIP”

Amendment #4

On page 2, in line 14, after “INFORMATION”, delete through line 16, and insert “IN CASE MANAGEMENT AND CARE COORDINATION RECORDS OF THE INDIVIDUAL WHO IS THE SUBJECT OF THE PROTECTED HEALTH INFORMATION; AND (4) THE INDIVIDUAL HAS PROVIDED THE CARRIER WITH AN AUTHORIZATION THAT COMPLIES WITH 45 CFR 164.508(C).”

Amendment #5

On page 2, in line 30, before “SECTION”, insert “(D) THE CARRIER SHALL PROVIDE THE INDIVIDUAL ACCESS TO THE DISCLOSED RECORDS UPON REQUEST.”

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**TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
SENATE FINANCE COMMITTEE**

JANUARY 14, 2020

**SENATE BILL 112 – HEALTH INSURANCE - HEALTH INFORMATION - DISCLOSURES BETWEEN
CARRIERS**

POSITION: SUPPORT WITH AMENDMENTS

Thank you for the opportunity to provide written comments regarding Senate Bill 112. Senate Bill 112 requires an insurance carrier, on the request of an individual, to disclose protected health information (PHI) to another carrier for case management and care coordination. Senate Bill 112 provides that the disclosure is required if both carriers have had a relationship with the individual who is making the PHI request, the PHI relates to the relationship between the individual and the new carrier, the PHI only relates to case management and care coordination records and the individual has provided the appropriate authorization to the carrier. Further, Senate Bill 112 reaffirms that any request for the disclosure of PHI must comply with the federal health Insurance Portability and Accountability Act of 1996 (HIPAA) and the federal Health Information Technology for Economic and Clinical Health Act of 2009.

Currently, under HIPAA a carrier is only required to disclose PHI when required by the Secretary of Health and Human Services to investigate or determine compliance, and to the individual who is the subject of the PHI when requested by that individual. A carrier is also permitted to use or disclose PHI under additional circumstances, including for treatment, payment or health care operations, such as case management and care coordination. Under HIPAA, a carrier is currently permitted to disclose PHI to another carrier under the circumstances described in Senate Bill 112, but is not required to do so. A carrier is currently not required to disclose PHI to another carrier even when the individual whose PHI it is, makes the request to transfer the PHI from the original carrier to the new carrier.

By requiring the disclosure of PHI on request of an individual between carriers, in regards to case management and care coordination records, it is expected that this will improve the ability of a carrier to manage an individual's course of care. Additionally, by adding this language into Maryland state law, the Maryland Insurance Administration has the regulatory authority to take action in the event that a carrier does not comply.

The Maryland Insurance Administration supports Senate Bill 112 as amended and urges the Committee to give Senate Bill 112 a favorable report.

BY: Maryland Insurance Administration

AMENDMENTS TO SENATE BILL 112
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, after Line 18, insert:

“ (2) “CARRIER” MEANS:

(I) AN INSURER;

(II) A NONPROFIT HEALTH SERVICE PLAN;

(III) A HEALTH MAINTENANCE ORGANIZATION;

(IV) A DENTAL PLAN ORGANIZATION; OR

(V) ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT PLANS SUBJECT TO REGULATION BY THE STATE.”

AMENDMENT NO. 2

On page 1, strike lines 19 and 20

AMENDMENT NO. 3

On page 2, on Line 4, strike “HEALTH CARE OPERATIONS” and insert “CASE MANAGEMENT AND CARE COORDINATION”

On Page 2, strike Lines 9 through 12 and insert “ (2) THE PROTECTED HEALTH INFORMATION PERTAINS TO SUCH RELATIONSHIP;”

AMENDMENT NO. 4

On Page 2, on Line 14, strike “THAT RELATES TO” and insert “IN”

On page 2, on Line 15, strike “ACTIVITIES PROVIDE TO” and insert “RECORDS OF”

On page 2, Line 16, strike “.” and insert “AND;”

AMENDMENT NO. 5

On page 2, after Line 16, insert “**(4) THE INDIVIDUAL HAS PROVIDED THE CARRIER WITH AN AUTHORIZATION THAT COPMLIES WITH 45 C.F.R § 164.508(C).**”

AMENDMENT NO. 6

On page 2, after Line 18, insert “**(D) THE CARRIER SHALL PROVIDE THE INDIVIDUAL ACCESS TO THE DISCLOSED RECORDS UPON REQUEST.**”