CHANGE HEALTHCARE

February 24, 2021

Honorable Shane E. Pendergrass

Chair, House Health and Government Operations Committee

Room 241

House Office Building

Annapolis, Maryland 21401

RE: Commentary in Opposition to on House Bill 1022 (the "Bill"); An Act concerning Public Health – State Designated Exchange – Clinical Information.

Dear Chair Pendergrass and Members of the Health & Government Operations Committee:

Change Healthcare is one of the largest electronic health networks (EHNs) in the United States, with 2,400 payer connections serving over 1 million providers with electronic health care transaction processing solutions. We connect providers, payers, and technology partners with one of the nation's largest health information networks for eligibility and benefits verification, claims submission and processing, remittance, and payments. We process over 15 billion transactions annually nationwide. In Maryland, we process over 8.7 million transactions with most large providers and health plans. Change Healthcare has been a valued partner to both hospitals and health plans serving beneficiaries in the State of Maryland and we have been a State certified EHN for over 10 years.

Change Healthcare supports the work of the State of Maryland to ensure secure statewide access to clinical information at the point of care and for essential public health surveillance and response. Maryland is a model for a robust statewide health information exchange (HIE), and we applaud the work of the Committee and State agencies, like the Maryland Health Care Commission (MHCC) and the Health Services Cost Review Commission, in these efforts.

On behalf of Change Healthcare, I am writing to provide commentary on the Bill, which proposes to amend Md. Code Ann. § 302.3(g) by requiring an EHN to "provide administrative transactions to the state designated exchange for public health and clinical purposes," while prohibiting the EHN from charging "a fee to a health care

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provider or to the state designated exchange for providing the information[.]" Change Healthcare's concerns with these proposed requirements are set forth below.

Broad mandate without a cost-based mechanism or financial sustainability model

The mandate on EHNs to provided administrative transactions to the state designated exchange will impose a financial burden on Change Healthcare. Compliance with the mandate will require Change Healthcare to establish and maintain a data feed to the state designated exchange. As the Bill prohibits an EHN from charging providers or the state designated exchange a fee for this service, Change Healthcare will be required to bear this cost. The State has always been mindful of the need to ensure the financial sustainability of statewide health information exchange and has taken significant measures to create a clear financial model for the statewide HIE. However, the Bill proposes to impose the cost of increased clinical and public health information availability on private entities in the State. While other HIE users and data providers receive certain value from participating in the HIE, there is no similar value proposition to EHNs.

Provides a competitive advantage to a single non-governmental entity

Change Healthcare provides valuable technical services and solutions to the healthcare industry. Our competitive advantage is realized through the data to which we have access. In partnership with providers and payers, we can leverage the data to offer services and solutions that create efficiencies for our customers. This Bill will create a mechanism by which this data (i.e., administrative transactions) is handed over to a single non-governmental entity, the state designed exchange. Doing so allows for the state designed exchange to have direct access to the same data free of charge, giving it a competitive advantage in the market.

Threatens data use agreements, data governance, and is incompatible with Federal and State regulations

Change Healthcare customers include providers and health plans and Change Healthcare functions as a business associate to these covered entity customers. Our customers entrust us to process administrative transactions in a secure and private manner, and to only use data for appropriately authorized uses, as outlined in our business associate agreements with them. As a business associate, Change Healthcare is only permitted to disclose administrative transactions (i.e., protected health information) as permitted or required by the contract with a covered entity, or as required by law. (See 45 CFR § 164.504(e)).

HIPAA generally permits, but does not require, a covered entity to use or disclose protected health information, without patient authorization, for treatment, payment, healthcare operation, and public health purposes (See 45 CFR §§ 164.506, 164.512). The proposed Bill attempts to make an end run around HIPAA requirements by attempting to force business associates to make disclosures of data that covered entities themselves would not be required to make under HIPAA without the proper

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authorizations or agreements in place. Disclosing the administrative transactions as proposed by the Bill may require amendments with our covered entity clients. Otherwise, Change Healthcare would be in breach of its contractual agreements and with Federal HIPAA rules.

The Bill allows for very broad use of administrative transactions "for public health and clinical purposes." This means that transactions from our health plan and provider customers will be re-disclosed to users of the HIE. The Bill does not provide specifics on how this information will be used or protected. Moreover, disclosures of PHI for public health purposes are subject to the "minimum necessary" rules. (See 45 CFR §§ 164.504(b); 164.514(d)). The Bill does not make any statement on which a covered entity may reasonably rely that the Bill satisfies the "minimum necessary" standard. (See 45 CFR § 64.514(d)(3)(iii)(A)). Accordingly, our customers may be reluctant to agree to the broad disclosures required under the Bill.

Finally, Maryland regulations, COMAR 10.25.18.05, specifically authorizes only "participating organizations" to exchange information through the HIE. A "participating organization" is defined as "a covered entity that enters into an agreement with an HIE that governs the terms and conditions under which its authorized users may use, access, or disclose protected health information through the HIE" (COMAR 10.25.18.02B(43)). Generally, EHNs like Change Healthcare are business associates. This Bill would require a business that is not a covered entity to participate in the HIE, which violates the State of Maryland's own regulations.

Noteworthy historical context of industry recommendation to the state

Maryland Senate Bill 896, which the legislature passed in 2018, required the MHCC to establish an advisory committee to study the feasibility of creating a health record and payment integration program and report to the Governor and General Assembly any findings and recommendations. Specifically, the Advisory Committee was asked to assess the *feasibility of incorporating administrative health care claim transactions into the State–Designated HIE, the Chesapeake Regional Information System for our Patients.* The Advisory Committee consisted of 43 members with strong subject matter expertise, representing stakeholder groups with a range of interests and positions as it relates to health record and payment integration.

In its May 2019 final report on Senate Bill 896, the MHCC concluded that "[t]he concept of a health record and payment integration program proposed in Senate Bill 896 is laudable; though, it's inconsistent with the evolution of the industry and many stakeholders' vision of the future."[1] The report identified the following themes: "Unclear value proposition absent specific use cases to justify investment cost", "Accountability and legal obligations for the data by HIPAA-covered entities and their business associates, including adherence to Confidentiality of Substance Use Disorder Patient

[1] Report available here: https://mhcc.maryland.gov/mhcc/pages/hit/hit/documents/HIT_HRPI_Rpt_20190521.pdf.

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Records, 42 Code of Federal Regulations (CFR) Part 2", and "Timeliness and accuracy of claims data as compared to clinical data."

Conclusion

We recommend the above-referenced proposed revisions to Md. Code Ann. § 302.3(g) be removed from the Bill and the state re-assess this requirement to determine an appropriate financial and data governance mechanism that does not disrupt the free-market competitive marketplace.

Change Healthcare strongly supports the efforts of the state to enhance public health surveillance and response and has made available innovative data solutions to support COVID-19 response throughout the U.S. We stand ready to work with the state to provide best practices and solutions that could be helpful in this regard.

We thank you in advance for your consideration of our comments. We are happy to speak with you or your staff on this matter and would welcome any opportunity to provide any assistance if needed.

Regards,

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Change Healthcare

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Cc:

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