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March 17, 2021

To: The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee

From: The Office of the Attorney General's Health Education and Advocacy Unit

Re: House Bill 1375 (Health Information Exchanges - Electronic Health Information - Sharing and Disclosure): Letter of Concern

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) has concerns about House Bill 1375 without additional information about why the bill so broadly expands the entities, including unaffiliated entities, given new access to patient information for broadly expanded purposes, including "purposes that are important to public health functions." (p. 7, l. 14-15) The patient opt-out provisions appear to be straightforward and beneficial to patients and we welcome the streamlined process. But the carve out to allow information sharing despite the consumer's objection for "purposes that are important to public health functions" is concerning particularly because it is not limited by entity and could be expansively construed. We believe narrower provisions regarding entities and purposes are important to preserve vitally important privacy and security protections for patients.

We also want to inform the Committee that proposed changes to the HIPAA Privacy Rule are pending before the Office of Civil Rights (OCR) in the U.S. Department of Health and Human Services. On March 9, 2021, OCR extended the time for public comment to May 6, 2021, in acknowledgement of the impact the HIPAA Privacy Rule has on the lives of all patients. We think this bill deserves the same careful consideration. The provisions of this bill appear to overlap with the pending rule changes described by OCR:

The proposed changes to the HIPAA Privacy Rule include strengthening

individuals' rights to access their own health information, including electronic information; improving information sharing for care coordination and case management for individuals; facilitating greater family and caregiver involvement in the care of individuals experiencing emergencies or health crises; enhancing flexibilities for disclosures in emergency or threatening circumstances, such as the Opioid and COVID-19 public health emergencies; and reducing administrative burdens on HIPAA covered health care providers and health plans, while continuing to protect individuals' health information privacy interests.

<https://www.hhs.gov/about/news/2021/03/09/extension-public-comment-period-proposed-modifications-hipaa-privacy-rule.html>

We are concerned that altering state law (with the exception of the opt-out provisions) before the proposed changes to the HIPAA Privacy Rule are finalized could create preemption issues and confusion.

cc: Sponsor