

Senate Bill 385 – Health – Disclosure of Medical Records - Penalty**Position: *Oppose***February 9, 2022
Senate Finance Committee**Luminis Health, Inc.’s Position:**

Luminis Health is concerned with language in Senate Bill 385 – Health- Disclosure of Medical Records – Penalty. While it is unclear what problem the legislation intends to solve, it is clear that the bill would significantly expand the definition of a medical record beyond what is considered standard in the health care industry. This proposed expansion would make managing the “medical record” extraordinarily complicated and would likely have an adverse impact on patient care.

First, Maryland hospitals must adhere to the Conditions of Participation (“CoPs”) promulgated in federal regulations by the Centers for Medicare and Medicaid Services and applicable accreditation standards from entities such as The Joint Commission. Likely most Maryland hospitals, if not all of them, comply with the CoP codified at 42 CFR §482.24 – Condition of participation: Medical record services and The Joint Commission Hospital accreditation standards cited as Standard RC.01.01.01 et. seq. These standards set forth specific criteria for the maintenance and content of a patient medical record.

Second, the expanded definition in the bill would arguably be at odds with other legal requirements, such as peer review and utilization records that are privileged and not discoverable, psychotherapy notes that are excluded from discovery under HIPAA (45 CFR §164.524) and certain information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding (45 CFR §164.524). Therefore, passage of Senate Bill 385 would put Maryland hospitals in an impossible position to choose between compliance with peer review privilege laws and this new Maryland state law.

Third, the bill would have a chilling effect on providers’ using secure electronic modalities such as secured texting platforms, to efficiently communicate with other providers on patient care issues due to an interpretation that those text messages constitute “data or information relating to any electronic, oral, written, or other transmission regarding” health care.

Finally, the treatment of data or information relating to audits as 'medical records' merely because it relates a patient's health care is a seismic expansion of what federal and state law treat as responsive to a patient's request for medical records. This expansion no doubt will increase Maryland health care providers' collective burden to respond to patient requests and the requests of patient's interested persons.

Sincerely,



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