

TO: The Honorable Delores Kelley, Chair
Senate Finance Committee

FROM: Pamela Rayne
Practice Group Leader & Chief Legal Counsel – Privacy
Johns Hopkins Health System Corporation

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Johns Hopkins urges an **unfavorable report** on **SB 385 – Health – Disclosure of Medical Records – Penalty**. Under Federal law, specifically HIPAA, patients currently have the right to request an accounting of certain disclosures. This right is limited to situations where information is disclosed outside of the provider’s workforce. This right does not require a provider to share information detailing who has had access to their medical record internally. The limitations on the current Federal law deliberately balanced the administrative burden on providers against the value this type of information would offer to patients. This proposed bill would substantially expand the current right granted to patients under Federal law by requiring providers to include, as part of a standard request for medical records, a full audit log or “access report” of every “transmission” of a patient’s health information.

In 2011, the Office for Civil Rights (“OCR”) issued a Notice of Proposed Rulemaking to require HIPAA Covered Entities to provide this type of “access report” to patients upon request. There was such substantial and legitimate concern raised by the health care industry over the significant costs and burden imposed on providers, the confusion such robust access logs may cause patients, and the risk to employee privacy, that OCR withdrew the proposed rule.

Given the complexity of the provision of health care at places like Johns Hopkins, even over a six-month period of time, these audit logs can be thousands of pages in length, with a file size of over 50MB, and contain tens of thousands of accesses by workforce members who are appropriately performing their job duties. These logs are difficult to read, are confusing and overwhelming to someone who does not have a thorough understanding of the way the electronic medical records system functions, and vary in structure depending on the electronic medical record system employed by the provider. Johns Hopkins receives over 1,000 requests for medical records per day, most of which request “all medical records.” Producing these logs is complicated and burdensome, and producing these logs with each request for medical records would delay a patient’s access to actual treatment information and increase the cost to patients for producing medical records. Additionally, it is presumed that once a patient receives a copy of this audit log, they will request assistance in interpreting it and understanding why each employee accessed their record. Adding this additional

requirement would be overwhelming to already overburdened staff.

In addition to the burden including these audit logs would place on providers, there are also significant employee and institutional privacy concerns. Providing a patient with the full name of every employee who accessed his or her medical record puts the employee at risk. Our staff is frequently the target of threats and violence and providing this detailed information to every patient who requests his or her medical record would increase the risk while offering very little benefit. Additionally, many of the accesses to a medical record may be the result of an internal quality improvement project or a privileged investigation into an adverse event, and disclosing this information could put any applicable privilege at risk and could have a chilling effect on these important activities.

To better protect patient privacy and to address any concerns patients may have as it relates to accesses to their records, each provider is already obligated under HIPAA to respond to privacy complaints issued by a patient. This typically includes an internal review of these audit logs by professionals who are specially trained in understanding what the logs mean and whether the accesses were appropriate or not. Complaints are then responded to with a comprehensive conclusion as to whether the patient's record has been appropriately accessed. We believe this process is sufficient and appropriately balances a patient's interest against the concerns outlined above.

For these reasons and others, Johns Hopkins Medicine recommends an **unfavorable report** of **SB 385 – Health – Disclosure of Medical Records – Penalty**.