

TO: The Honorable Shane Pendergrass  
Health and Government Operations

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Johns Hopkins urges an **unfavorable report** on **HB 643 – Health – Disclosure of Medical Records – Penalty**. Under Federal law, specifically HIPAA, patients have a right to access only “protected health information” that is maintained within a “designated record set.” A “designated record set” is a subset of health information that is comprised of medical records and billing records along with records used, in whole or in part, by or for a provider to make decisions about a patient. The Office for Civil Rights (OCR), the federal agency responsible for implementing HIPAA, specifically stated:

*We do not require a covered entity to provide access to all individually identifiable health information, because the benefits of access to information not used to make decisions about individuals is limited and is outweighed by the burdens on covered entities of locating, retrieving, and providing access to such information. Such information may be found in many types of records that include significant information not relevant to the individual as well as information about other persons. For example, a hospital’s peer review files that include protected health information about many patients but are used only to improve patient care at the hospital, and not to make decisions about individuals, are not part of that hospital’s designated record sets....*  
(65 FR 82554)

This balancing is essential to the operations of health care providers, and the bill being presented today goes well beyond this carefully structured federal standard.

Additionally, this bill would include, within the definition of a medical record, “audit logs” showing all electronic accesses to a patient’s record. In 2011, 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 burden imposed on providers, the confusion such robust access logs may cause patients, and the risk to employee privacy, that OCR withdrew the rule.

## Government and Community Affairs

Given the complexity of the provision of health care at places like Johns Hopkins, these audit logs can be thousands of pages in length and contain hundreds of thousands of accesses by workforce members who are appropriately performing their job duties. These logs are difficult to read, and are confusing and overwhelming to someone who does not have a robust understanding of the way the electronic medical records functions. Producing these logs is complicated and burdensome and will slow down and increase the cost to patients for producing medical records. These logs do not contribute to the provision of health care, so making them part of the patient's medical record is misplaced and will result in the production of these logs when patients are just looking for their treatment record. Additionally, these logs will clutter the medical record and create patient safety issues with downstream providers who will be challenged to quickly identify the pertinent health information needed to provide continuing care and treatment.

Finally, and most significantly, we are awaiting a final rule from OCR on changes to the HIPAA Privacy Rule that likely will change the definition of "electronic health record" under Federal law. We believe it is imperative to avoid inconsistencies between federal and state law on this very complex and challenging issue. Consequently, we believe the adoption of this bill prior to the finalization of this Federal Rule is premature and may require health care providers to change their current processes to accommodate the state law and then shortly undergo a similar change to comply with the new Federal Regulation imposing an unnecessary burden and cost on health care providers. We believe, therefore, that any change in state law be postponed until the final Federal Rule is published.

For these reasons and others, Johns Hopkins Medicine recommends an **unfavorable report** of **HB 643 – Health – Disclosure of Medical Records – Penalty**.