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February 27, 2023

The Honorable C.T. Wilson, Esq.
Taylor House Office Building, Room 231
6 Bladen Street, Annapolis, MD 21401

RE: HB 995 - Commercial Law - Health Data Privacy

Dear Chair Wilson and Members of the Economic Matters Committee,

On behalf of TechNet's member companies, I respectfully submit this letter of opposition to HB 995, regarding health data privacy.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over five million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, and Washington, D.C.

TechNet agrees that the protection of consumer health data is of critical importance; however, we are opposed to this bill's approach for several reasons.

First, the protections suggested in HB 995, including health data and biometric data, would be covered and receive protection as "sensitive" data under a comprehensive privacy framework, such as the **Connecticut model**. The definition of "biometric data" in this bill is inconsistent with other suggested biometrics definitions, which further underscores the need for a single, comprehensive approach, like Connecticut's, for compliance purposes.

The definition of "health data," when read in tandem with the even broader definition of "personal information," makes the universe of covered data extremely broad and would seem to include data about any product or

service *considered* that might relate to physical or mental health. TechNet has concerns that this category would include various search and browsing-related activities, even when there is not any health information provided. Legislation should have clear exemptions for entities covered by, or compliant with, HIPAA's privacy rules and framework. HIPAA rules provide detailed and appropriate protections for the confidentiality of protected health information. Imposing additional, duplicative, and potentially inconsistent regulations on these entities would create unnecessary and inappropriate burdens and cost.

Section 14-4506 creates a complete ban on the "sale, lease, or trade" of consumer health data. While we agree that a consumer should be able to decide whether such data can be sold or not, a complete ban removes the consumer's ability to control their own data. In many instances, consumers may want their data to be used so that they can learn about new products and services. Such an authorization is available under HIPAA and should be available as a matter of consumer preference.

On the disclosure of data, the bill suggests that a private entity may not collect, use, disclose, redisclose, or otherwise disseminate health data of a consumer unless the consumer, or a consumer's legally authorized representative, gives consent. It is a very difficult task to ensure that an individual has authorized a representative to execute their rights on their behalf, and it is likely that language allowing an authorized representative to act on a consumer's behalf will lead to countless fraudulent attempts to get data under the guise of this provision. This potentially puts consumer information in the hands of bad actors even while a company is attempting to operate in good faith.

The withdraw of consent is essentially a requirement to also delete the consumer's data even if that is not the intent of the consumer. Because of the way data processing is defined, it would require the entity to stop the collection, retention, or use of any such data, thus leading to deletion. In turn, this would destroy the entity's ability to offer the service to the consumer.

Regarding consumer notification, most companies already publish a Privacy Policy to consumers with information on data collection processes. This bill would require those entities to create new systems to inform consumers of a detailed list of all entities to whom such information may be disclosed. The bill also restricts a private entity from geofencing around any entity that provides in-person health care services. This is too broad of a restriction.

Often, entire zip codes or regions are geofenced and would inevitably include at least one health care facility. We support the assumed intent of the restriction; however, the language needs to be narrowed to not ban geofencing altogether.

Finally, private rights of action are not effective methods of enforcement, as they can very easily be misused and lead to frivolous lawsuits. Litigation leads to uneven and inconsistent outcomes, with different companies choosing to limit the immense exposure this bill will create in different ways. These extreme liability risks could likely result in companies severely limiting or eliminating products and services usually enjoyed by consumers. The Attorney General is the only appropriate entity to enforce such action.

Again, TechNet would suggest shifting the focus to an omnibus privacy solution, such as Connecticut's model. Other states' omnibus privacy laws cover personal data, health data, and biometrics. Other rights in comprehensive privacy laws include rights to access, correct, port, and delete personal data. An omnibus privacy law to cover the protection of health data would provide for increased flexibility for Maryland businesses and consumers, as well as the interoperability between states.

Consumer health data protection requires a thoughtful and consistent approach. For the above stated reasons, TechNet is opposed to HB 995 and would recommend that lawmakers focus on enacting omnibus privacy standards, similar to what exists in other states. Thank you for your time and we look forward to continuing these discussions with you.

Sincerely,

Margaret Durkin

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