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**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

March 1, 2023

**TO:** The Honorable C.T. Wilson, Chair  
Economic Matters Committee

The Honorable Joseline A. Pena-Melnyk, Chair  
Health and Government Operations Committee

**FROM:** Hanna Abrams, Assistant Attorney General  
Consumer Protection Division

Heather Forsyth, Deputy Director  
Health Education and Advocacy Unit

**RE:** House Bill 995 – Commercial Law – Health Data Privacy (SUPPORT  
WITH AMENDMENT)

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The Consumer Protection Division of the Office of the Attorney General supports House Bill 995 (“HB 995”), sponsored by Delegate Love and thirty-two other delegates. House Bill 995 empowers individuals to control their health information and limits what businesses can do with health data.

As you have probably heard repeatedly this session, privacy is a looming concern. This is even more critical in the area of healthcare. When it comes to health information in particular, consumers want to ensure highly-personal health information is kept private, maintain control over that personal information, and determine which companies have access to this information.

Currently, tech giants offer online tracking services—including cookies, web beacons or tracking pixels—to organizations who embed them in the code of the organizations’ websites and mobile applications. These services are used by many types of entities, including healthcare organizations. For example, it was reported last year that one third of the top 100 ranked U.S. hospitals were using tracking code, and that code – Meta Pixel – transmitted patient information collected from appointment scheduling pages and patient portals to Meta.<sup>1</sup>

And personal health information is not just culled from an individual’s online activities. Location data might not seem to implicate health privacy, but it can reveal the most sensitive

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<sup>1</sup> T. Feathers et al., *Facebook Is Receiving Sensitive Medical Information from Hospital Websites*, The Markup (June 16, 2022), <https://themarkup.org/pixel-hunt/2022/06/16/facebook-is-receiving-sensitive-medical-information-from-hospital-websites>.

characteristics about a person, including physical and mental health conditions, treatments, and what health services they seek.

These concerns are not theoretical. Companies have used these tracking services to influence consumer medical choices and to profit. In 2017, a digital advertising company used geofencing<sup>2</sup> to digitally harass individuals seeking medical care by directing advertisements about medical treatment to their phones when they came in the vicinity of certain healthcare facilities.<sup>3</sup> Geofencing and location data can be used to identify individuals going to rehab or obtaining reproductive health services. In states that have criminalized abortion this may have very real consequences. It's not hard to imagine a scenario where a woman goes to a different state to obtain medical care and is prosecuted upon return for obtaining reproductive healthcare. And the invasion of health privacy goes beyond geolocation data. Mobile applications have been caught sharing everything from fertility cycle information<sup>4</sup> to prescription drug usage<sup>5</sup> with third parties without consumer knowledge.

These third parties build personal profiles on every consumer based on their online activities, location, and purchases. Recently, a Duke University study found that data brokers were selling everything from a list of individuals suffering from anxiety to a spreadsheet entitled "Consumers with Clinical Depression in the United States."<sup>6</sup>

To avoid confusion, however, we think it is important to ensure that definitions are consistent across related statutes. Because the defined term, "Personal Information," already exists in Maryland's Personal Information Protection Act (Md. Com. Law §14-3501(e)), and the definition proposed here is different, we recommend using another term, such as "Personal Health Data," throughout HB 995.

Confidentiality of treatment encourages patients to seek the most accurate, and therefore best possible care by promoting a trusting and frank relationship between patient and provider. It also promotes medical autonomy by shielding those seeking sensitive medical care from external interference. House Bill 995 ensures that consumer's medical information remains private and in their control.

We urge the Economic Matters Committee and Health and Government Operations Committee to issue a favorable report on HB 995.

cc: Members, Economic Matters Committee  
Members, Health and Government Operations Committee  
The Honorable Sara Love  
Co-sponsors

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<sup>2</sup> Geofencing creates a virtual geographical boundary that triggers a marketing action to a mobile device when a user enters or exits that boundary.

<sup>3</sup> Press Release, *AG Reaches Settlement with Advertising Company Prohibiting "Geofencing" Around Massachusetts Healthcare Facilities*, (Apr. 4, 2017), <https://www.mass.gov/news/ag-reaches-settlement-with-advertising-company-prohibiting-geofencing-around-massachusetts-healthcare-facilities>.

<sup>4</sup> *FTC Finalizes Order with Flo Health, a Fertility-Tracking App that Shared Sensitive Health Data with Facebook, Google, and Others* (June 22, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-finalizes-order-flo-health-fertility-tracking-app-shared-sensitive-health-data-facebook-google>.

<sup>5</sup> N. Singer, *GoodRx Leaked User Health Data to Facebook and Google, FTC says* (Feb. 1, 2023), <https://www.nytimes.com/2023/02/01/business/goodrx-user-data-facebook-google.html>.

<sup>6</sup> Drew Harwell, *Now For Sale: Data on Your Mental Health*, Washington Post (Feb. 14, 2023), <https://www.washingtonpost.com/technology/2023/02/13/mental-health-data-brokers/>.