

Support - SB 786- Protected Information- Jan Bird,

Uploaded by: Ashley Egan

Position: FAV



Unitarian Universalist Legislative Ministry of Maryland

Testimony in Support of SB 786 - Reproductive Health Services – Protected Information and Insurance Requirements

TO: Senator Melony Griffith, Chair and Members of the Finance Committee
FROM: Janice Bird, MD, Unitarian Universalist Legislative Ministry of Maryland
Lead Advocate for Reproductive Health Care Rights
DATE: March 1, 2023

The members of the Unitarian Universalist Legislative Ministry of Maryland UULM-MD ask for your **SUPPORT of SB 786 - Reproductive Health Services – Protected Information and Insurance Requirements.**

Our Unitarian Universalist faith believes in the worth and dignity of all, and the rights to liberty and equality including the fundamental right to reproductive freedom without intimidation or harm to us or our providers. We affirm that the decisions we make about our bodies are entitled to protection and privacy. We are each endowed with the gifts of agency and conscience and should have the power to decide what does and doesn't happen to our bodies at every moment of our lives because consent and bodily autonomy are sacred.

Reproductive freedom in Maryland depends on making sure we do not expose the personal information of providers and patients to those wishing to intimidate and harm them, and who depend upon having access to information about reproductive health care provided in our state. Protected health information in electronic health records—including reproductive health records—presently flows easily between states. Information sharing is allowed by law if it is related to coordination of care among a patient's providers. Under most circumstances, care coordination improves the health outcomes of patients. But in the case of reproductive health, information sharing is putting reproductive health providers and patients at great risk.

This legislation provides extra layers of protection for reproductive health information in electronic health record systems and ensures Maryland's state government protects personal information of patients and providers that may be stored in state databases. Legally protected health care means all reproductive health services, medications and supplies related to the direct provision or support of the provision of care related to pregnancy, contraception, assisted reproduction, and abortion that is lawful in Maryland.

Please vote YES for SB 786!

Sincerely,
Janice Bird, MD



Unitarian Universalist Legislative Ministry of Maryland

UULM-MD Lead Advocate for Reproductive Health Care Rights

Zubrzycki Written Testimony Senate Finance Committ

Uploaded by: Carleen zubrzycki

Position: FAV

Senate Finance Committee
SB 786 – Reproductive Health – Protected Information and Insurance Requirements
March 1, 2023
Favorable

I am a professor at the University of Connecticut School of Law who studies the privacy of medical records. I write to support SB786 because, as I have argued elsewhere, states that wish to maintain significant access to abortion within their borders and to protect in-state providers and others who help facilitate abortion need to take action to protect those medical records from being widely and near-automatically shared across state boundaries in ways that can put patients and those who help them at risk. For a more detailed analysis of these problems and potential solutions, see my recent article in the Yale Law Journal, *The Abortion Interoperability Trap*, <https://www.yalelawjournal.org/forum/the-abortion-interoperability-trap>.

The bottom line is that better protections for electronic medical records related to abortion (and other potentially at-risk care, including miscarriage management and various forms of assisted reproduction) are necessary to protect both patients and providers. State legislatures like Maryland's are especially well-situated to address the problem within their borders. In the absence of statutes like SB786, private entities face incentives to err on the side of *sharing* medical information even when it might pose risks to patients and providers.

Medical information—including the details of abortion procedures or medication—travels very widely throughout our medical system. Medical records move much more freely now than even a few years ago, because electronic records are far more interoperable thanks in part to recent federal regulations intended to promote widespread sharing. This means that if you receive an abortion in, say, Maryland, and subsequently go to a hospital in, say, Texas, for care, there is a good chance that the medical record for abortions will follow you and be accessible to a wide array of providers and treatment-adjacent practitioners (e.g. lab technicians, etc.) in Texas. Since there are significant forces that are seeking to go after out-of-state or cross-state abortions via creative litigation and prosecution (and those forces may well be strengthened after this spring legislative session), that easy flow of medical information is a problem for both patients and providers who might be targeted (pursuant to out-of-state laws) for performing or assisting with abortions that were legal in-state. This is especially important as travel for abortion-related care has significantly increased since *Dobbs*.

Requiring health information exchanges as well as the state health commission to take steps to protect information about protected reproductive care is an appropriate intervention that will protect patients and make it less likely for in-state providers and practitioners to find themselves in the cross-hairs of out-of-state vigilantes who seek to eliminate and punish abortion everywhere.

I do have one concern about the bill as currently drafted---Section 4-305 seems to expressly permit the sharing of private medical information in out-of-state investigations into abortions that are legal in Maryland. That seems out of keeping with the spirit of the rest of the statute. Section 4-305 reads “(b) a health care provider may disclose a medical record without the authorization of a person in interest . . . (2) If the person given access to the medical records

signs an acknowledgment of the duty under this Act not to redisclose any patient identifying information, to a person for . . . (iv) an out-of-state investigation of legally protected health care provided in the State.” This may be intended to enable providers to defend themselves in investigations by showing that what they did was lawful in a particular case. But I am concerned that it is currently phrased broadly enough that it would allow bounty-hunters under SB8-type statutes, or other future litigants to have a stronger argument for obtaining patient records than they would absent this language. It would seem more consistent with the statute's overall apparent purpose to more specifically clarify the circumstances under which such disclosures would be acceptable. But it might better protect providers and patients to eliminate this altogether.

That said, I am highly supportive of the statute’s overall effort to protect patient and provider personal information from exposure.

Carleen Zubrzycki

Associate Professor of Law

University of Connecticut School of Law

Christine SB 786.pdf

Uploaded by: Christine O'Donovan-Zavada

Position: FAV

Christine O'Donovan-Zavada
Allentown, PA 18102

Support
SB 786 - Health - Reproductive Health Services - Protected Information
and Insurance Requirements
Maryland Senate Finance Committee
March 1, 2023

In the summer of 2018, because of a broken condom and a failure of emergency contraception, I got pregnant. At first I didn't realize, and it took several weeks of violent nausea for me to realize the emergency contraception had likely failed. When my pregnancy test came back positive, I felt a horrible pit in my stomach. I felt a total lack of control, like my body had been hijacked without my consent. I knew immediately that I needed an abortion.

Pennsylvania has a politically motivated and paternalistic 24-hour waiting period that requires people who have to travel far distances to get to a clinic to go two days in a row - and 87% of Pennsylvania Counties do not have abortion clinics. So rather than drive two times to the nearest abortion clinic, I decided to drive a little farther, but just once, to Baltimore. When I arrived, the clinic staff were wonderful. They talked me through what I could expect, and made sure I felt safe and comfortable with my decision.

I also had an incredible network of friends that helped me both monetarily and emotionally, a job that supported me and provided time off, and a car I could rely on for travel. But now, with the overturn of *Roe*, that pit in my stomach has returned. I know to the core of my being that if I had been in a place where I couldn't legally access abortion, I would have found a way to end my pregnancy, at whatever risk to my life.

Twelve states have banned abortion outright, and several have added criminal and civil penalties for patients like me, clinic staff, and people like my friends who step up and help support patients like me. Since the fall of *Roe*, I have been thinking constantly about the people facing the same decision I did, with the same conviction I had, with fewer resources and less support than I had, making that same trip to Maryland for refuge, just like I did, to make the same choice I did. They deserve every protection this state can afford them.

Electronic health records are a great idea. They make care easier and more accessible. But 12 states see my experience as an illegal one. I acknowledge the reality that more states may follow, and even my home state of Pennsylvania may follow. I need to make sure that the record of my abortion care is controlled by me,

first and foremost, and does not end up in the hands of someone who would seek action against me, my friends, or my providers. I urge a favorable report on SB 786.

SB786_HadassahGB_FAV.pdf

Uploaded by: Harriet Rubinson

Position: FAV

**Testimony in Support of SB 786
Health - Reproductive Health Services - Protected Information and Insurance Requirements
Finance Committee
March 1, 2023**

FAVORABLE

TO: Chair Griffith, Vice Chair Klausmeier, and members of the Finance Committee

FROM: Kay Schuster and Ellen Sizemore, Co-Presidents
Hadassah Greater Baltimore

Hadassah, the Women's Zionist Organization of America, Inc. holds reproductive choice is an important issue to ensure all women have agency over their own bodies and the autonomy to make health decisions for themselves. As the Greater Baltimore Region of Hadassah, representing over 4,100 Marylanders, we are writing to urge you to support SB 786, a bill that will provide additional protections for reproductive health information in electronic health record systems and ensures that Maryland state government protects personal patient and provider information in state databases.

Hadassah has and always will stand unequivocally for reproductive choice and empowering women with the knowledge to make critical health decisions for themselves and their families. Any interference with the doctor-patient relationship – preventing doctors from discussing women's specific concerns, sharing expert medical guidance, or providing necessary care – poses a serious threat to women's health.

Reproductive freedom is critical to women's health and all women should be able to make reproductive health choices based on medical guidance and what they feel is best for their health, families, and future. This should be done with sharing health data that may put providers and patients at risk.

We strongly urge you to support SB 786 to protect reproductive freedom.

Thank you,
Kay Schuster and Ellen Sizemore
Co-Presidents, Hadassah Greater Baltimore
P.O. Box 21571
Pikesville, MD 21282-1571
kschuster@hadassah.org
Esizemore@hadassah.org
P 410.484.9590

HPP Testimony SB 786- FAV.pdf

Uploaded by: Jessica Emerson

Position: FAV

Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 786
TITLE: Health – Reproductive Health Services – Protected Information and Insurance Requirements
COMMITTEE: Finance
HEARING DATE: March 1, 2023
POSITION: **FAVORABLE**

Senate Bill 786 is aimed at preventing legally protected health care information from being used to instill fear and prosecute patients and providers, rather than further patient health. The Human Trafficking Prevention Project supports this bill because it will put the proper safeguards in place to prevent the exploitation of information and keep patients and providers focused on care. It is essential that HTPP clients, the majority of whom have survived all manner of sexual violence, are able to access reproductive care seamlessly, as access to this type of medical care is often an essential part of their healing.

In the wake of the Supreme Court’s ruling in *Dobbs v. Jackson Whole Women’s Health*, 14 states have already fully or nearly banned abortion, and another ten are expected to do so. Over 300 abortion-related bills have already been filed this year across the country, the majority of which are anti-abortion and include significant criminal penalties for providers of abortion care. The campaign to intimidate providers and patients in Maryland depends upon having access to information about reproductive health care provided in our state. Under electronic health record systems, protected health information – including reproductive health records - flows easily between states. Information sharing is allowed by law if it is related to coordination of care among a patient’s providers. Under most circumstances, care coordination improves the health outcomes of patients. But in the case of reproductive health, information sharing is putting reproductive health providers and patients at great risk.

This legislation provides extra layers of protection for reproductive health information in electronic health record systems, often called health information exchanges. The legislation also ensures Maryland’s state government protects personal information of patients and providers that may be stored in state databases. Reproductive freedom in Maryland depends on making sure we do not expose the personal information of providers *or* patients.

Passage of Senate Bill 786 will ensure that the forced birth ideology of other state governments will not be permitted to dictate the ability of any Marylander to make their own decisions about their bodies or their lives. For trafficking survivors, SB 786 will allow them access to the crucial health care they need and the support they deserve as they work to heal from the trauma of their trafficking experience. For these reasons, the Human Trafficking Prevention Project respectfully urges a favorable report on Senate Bill 786.

*For more information, please contact:
Jessica Emerson, LMSW, Esq.
Director, Human Trafficking Prevention Project
(E): jemerson@ubalt.edu*

WDC 2023 Testimony SB0786_Final.pdf

Uploaded by: JoAnne Koravos

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

Senate Bill 786
Health – Reproductive Health Services – Protected Information and Insurance
Requirements
Finance Committee – March 1, 2023
SUPPORT

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2023 legislative session. WDC is one of Maryland's largest and most active Democratic clubs with hundreds of politically active members, including many elected officials.

WDC urges the passage of SB0786. This bill will regulate the information that custodians of public records, health care providers, health information exchanges, and dispensers can disclose about legally protected health care. "Legally protected health care" includes all reproductive health services, medications, and supplies related to the provision of pregnancy care, contraception, assisted reproduction, and abortion that is lawful in Maryland. Protected information includes information about the patient or prescriber of medication used in a medical abortion, any identifying information about a patient's medical record relating to the provision of legally protected health care, and any identifying information about an ambulatory abortion care provider. A health information exchange is limited in the information that it can disclose to a provider or exchange located outside the state without the patient's consent. Knowing violations constitute a misdemeanor subject to a fine of up to \$10,000 per day. In addition, a dispenser may not submit information on mifepristone, misoprostol, or any medication used for a medical abortion to the state designated health exchange.

With the Supreme Court's decision to overturn the federal protections of *Roe v. Wade* and let individual states determine whether a woman can terminate her pregnancy, it is more critical than ever to protect all women's reproductive rights in Maryland, including the right to data privacy. The Court's decision increased the vulnerability of both the women who have abortions while living in states that ban abortion, and those who counsel them, promote travel to other states or sell abortion medications. Some states have already enacted laws that create liability for anyone assisting their residents obtain abortion care, including providers in states where abortion is legal. These laws are designed to intimidate people seeking abortion care, as well as the volunteers and health care providers supporting out-of-state patients. This privacy bill will protect information about who is seeking and providing abortion services in Maryland, including medical abortions, thereby providing needed protections from criminal, civil, and administrative liability from those states that ban abortion. It will also support continued access to care for Maryland residents by ensuring health care providers and supportive organizations can continue to operate without legal threats from other states.

A woman's right to reproductive health and freedom is a top priority of WDC. We ask for your support for SB0786 and strongly urge a favorable Committee report.

Diana E. Conway
WDC President

Ginger Macomber
WDC Advocacy Committee

Judy Testimony Protected Info_Insurance.pdf

Uploaded by: Judy A. Carbone

Position: FAV

POSITION: Favorable SB786, “Reproductive Health Services - Protected Information and Insurance Requirements”
TO: Senate Finance Committee
DATE: March 1, 2023
FROM: Judy A. Carbone, Swanton, Garrett County, MD
Mountain Maryland Alliance for Reproductive Freedom (MMARF)

My name is Judy Carbone, and I am from Garrett County. I am here to testify on behalf of the Mountain Maryland Alliance for Reproductive Freedom or MMARF, a non-partisan, grassroots organization of people in Allegany and Garrett Counties, committed to assuring and expanding reproductive healthcare in rural Mountain Maryland.

Our organization supports the entire package of Reproductive Healthcare provisions under consideration in this session. We believe that each bill complements the others, and that each and all support the protection of reproductive health care in Maryland in a post-Dobbs environment.

This bill would provide privacy protections for electronic medical records that are shared between healthcare providers across the Country, as part of the coordination between medical providers of patient care. In a pre-Dobbs world, this sharing of information about a patient receiving care in Maryland was unquestionably helpful to the patient and her doctors and other healthcare providers in whatever state those healthcare providers were located.

Now, however, this sharing of reproductive healthcare information across state lines has the potential to put our healthcare providers and patients at risk for litigation, prosecution, and intimidation by those who oppose reproductive rights outside of Maryland.

MMARF has a particular interest in this bill. Because our neighboring state of West Virginia has banned abortion in almost all cases, we know that many people from West Virginia (and other states with post-Dobbs bans) will likely seek reproductive health care and abortion in Maryland.

Moreover, in Garrett County, our hospital is part of the West Virginia University healthcare system. A woman receiving reproductive healthcare in our local hospital should not have to worry about whether her medical records will be available for possible legal action in West Virginia, or in any other state that makes abortion illegal.

We believe that patients need and deserve the greatest confidence that, if they seek reproductive healthcare in Maryland, information about their care will be private and protected.

We urge this Committee to support SB786.

Thank you.



Abortion - insurance info - testimony - senate - 2

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
mcasa.org

Testimony Supporting Senate Bill 786 **Lisae C. Jordan, Executive Director & Counsel** March 1, 2023

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. MCASA urges the Finance Committee to issue a favorable report on Senate Bill 786.

Senate Bill 786 - Protecting Reproductive Decision-making by Protecting Health Care Records

This bill provides extra layers of protection for reproductive health information in electronic health record systems, often called health information exchanges. The legislation also ensures that Maryland's state government protects personal information of patients and providers that may be stored in state databases. Reproductive freedom in Maryland depends on making sure we do not expose the personal information of our providers and patients.

Access to abortion care and information about reproductive options are vital to survivors of rape.

The CDC reports that almost 3 million women in the U.S. experienced Rape-Related Pregnancy (RRP) during their lifetime. <https://www.cdc.gov/violenceprevention/sexualviolence/understanding-RRP-inUS.html>

A three year longitudinal study of rape-related pregnancy in the U.S., published in the American Journal of Obstetrics and Gynecology (1996, vol. 175, pp. 320-325), found:

5% of rape victims of reproductive age (age 12-45) became pregnant as a result of rape, with the majority of pregnancies in adolescents. Of these, half terminated the pregnancy, 5.9% placed the child for adoption, and 32.2% kept the child.

These survivors need to be able to speak with their health care providers without risking civil or criminal prosecution.

Survivors of Reproductive Coercion Need Access to Abortion Care without Fear of Prosecution

Reproductive coercion is a form of intimate partner violence where a woman's partner tries to control reproductive decisions by preventing access to or tampering with birth control, or forcing sexual intercourse with the intent of causing pregnancy. Of women who were raped by an intimate partner,

30% experienced a form of reproductive coercion by the same partner. Specifically, about 20% reported that their partner had tried to get them pregnant when they did not want to or tried to stop them from using birth control. About 23% reported their partner refused to use a condom.

<https://www.cdc.gov/violenceprevention/sexualviolence/understanding-RRP-inUS.html>

These survivors need to be able to speak with their health care providers without risking civil or criminal prosecution.

Sharing reproductive health information only benefits patients and providers if it does not also put them at risk for civil litigation or criminal charges. SB786 will put the proper safeguards in place to prevent the exploitation of information and keep patients and providers focused on care.

**The Maryland Coalition Against Sexual Assault urges the
Finance Committee to
report favorably on Senate Bill 786**



SB0786_Reproductive Health_Protected Information_F

Uploaded by: Liz Enagonio

Position: FAV



Indivisible: Central Maryland

Susan Radke, Lead Advocate

Dsusan56@gmail.com

Liz Enagonio, Lead Advocate

lenagonio@icloud.com

TESTIMONY FOR SB0786

Health - Reproductive Health Services - Protected Information and Insurance Requirements

Bill Sponsor: Senator Hettleman

Committee: Finance

Organization Submitting: Indivisible Central Maryland

Person Submitting: Liz Enagonio, Lead Advocate and Susan Radke, lead advocates

Position: FAVORABLE

Our names are Liz Enagonio and Susan Radke, representing both ourselves and Indivisible Central Maryland, a grassroots organization of constituents dedicated to protecting progressive and democratic values. Indivisible Central Maryland **strongly supports SB0786**.

Since the Supreme Court of the United States overturned Roe v Wade, taking away a 50 year precedent of federal protection for the rights of reproductive freedom and bodily autonomy for women, many states have taken away the right to abortion, including post-miscarriage care, under all or almost all circumstances. As well, these state legislatures are attempting to restrict the rights of other states to provide reproductive care, including abortion care, by passing legislation that would allow them to prosecute providers in states that provide legally protected reproductive care to a resident from the restrictive state who seeks care in the less-restrictive state. This campaign by anti-choice legislatures to intimidate and prosecute providers and patients in Maryland depends on states having access to information about reproductive care via electronic health record systems. In most cases, cross-state access to health records improves health outcomes of patients; however, the sharing of information about reproductive health care puts patients and providers at risk under restrictive and harmful laws in other states.

SB0786 provides extra layers of protection for reproductive health information in electronic (or paper) health records. The bill also ensures that Maryland's state government protects personal information of patients and providers that may be stored in state databases. Reproductive freedom in Maryland depends on making sure we protect the data of our providers and patients. As advocates for reproductive freedom and bodily autonomy for all Marylanders (and others!), Indivisible Central Maryland **STRONGLY SUPPORTS SB0786**, and urges a favorable vote in committee. Thank you.

Madysyn Anderson SB 786.pdf

Uploaded by: MADYSYN ANDERSON

Position: FAV

Madysyn Anderson
Houston, TX 77204

Support
SB 786 - Health - Reproductive Health Services - Protected Information
and Insurance Requirements
Maryland Senate Finance Committee
March 1, 2023

My name is Mady Anderson, I'm 21 years old, and a senior at the University of Houston studying Human Resources Development with a minor in English.

I am juggling multiple things in my life, working my job selling bridal dresses, completing my mandatory 20 hours a week internship, being active and helping run my sorority, all while attending college full time.

I had just come out of a two-year relationship. So, I decided on September 15th, 2021, to take a pregnancy test. I remember taking the first one, and a line had developed immediately even before the control line. I called my friends to bring me more because I was in disbelief. At one point I had five positive tests in front of me.

After seeing multiple positive tests, I talked to my sorority sister about my options before me, and I knew that abortion was more than likely the choice I was going to make. I called Planned Parenthood the next day to schedule my first appointment. The nearest clinic was only five mins away from where I lived. While on the phone, the representative explained and informed me about SB8, which banned abortion after six weeks. The earliest they could bring me in was about a week later. At that moment, I was okay with it because I believed I was only about twelve days along.

My appointment was scheduled for September 23rd. During my appointment, I paid \$150, and after talking to my clinician, I estimated myself to be around four and a half weeks along. To my surprise, I measured in at 10.5/ 11 Weeks. That meant that I couldn't get my abortion in Texas.

I called 20 different clinics after my visit. Yes, 20. I called surrounding states and even as far as the Dakotas; no one could see me right away. The earliest I could be seen was two weeks after. I scheduled my appointment with Jackson Women's Health Organization in Mississippi.

I wasn't ready to tell my parents about my decision, but I had no choice; I needed help. I'm a college student, who took out student loans just to pay for my housing. I was saving for a new car, because any day now my car can break down. I'm fortunate that I worked hard and got a 2k paycheck that would cover the cost, but so much for saving money.

I also knew that because of the “bounty” portion of SB8, anyone I asked would be putting themselves at risk. My regular inner circle wasn’t available. I took a risk talking to my sorority sister because I wasn’t 100% sure about her feelings on abortion.

My dad immediately took off from work. He told his job that he had a family emergency. We drove a total of 720 miles roundtrip and spent 13 hours on the road. The total amount of gas was about \$350, and spent \$200 for one night at a hotel. We only *slept in the room for about 5 hours* before going to my appointment and turning around to drive back home that evening. I had to pay another \$150 for a sonogram during my appointment. I was informed at the MS clinic that they couldn't do my abortion that same day because it wasn't a procedure day. I was frustrated, sleep-deprived, angry to get the news that I had to return to Mississippi on another day to get my abortion.

My mom was able to find great deals for flight tickets. For the cost of both of us, it was \$450. We flew in at 7 am for my 10 am appointment. I had another sonogram and it measured me at 13 weeks and 5 days. The cost for that visit was \$750. Because I was farther along my pregnancy I had to do a D& E procedure. After my procedure, I waited in the recovery room for about 20 mins, and flew back to Houston that same evening.

I just told you about three different doctor’s appointments to get one procedure. I don’t know how they keep their records, but more and more providers are using electronic health records. If any one of those appointments kept an electronic health record, then there is a record that I was pregnant, and it’s apparent that I did not carry that pregnancy to term.

Texas has already put my support network at risk with SB 8. My sorority sister, my mother, my father, and the providers at Jackson Women’s Health Organization were all at risk of being sued for helping me. The same people who put those restrictions on my access to health care are back in session right now. I don’t know what they have planned for the future. I want to make sure as many places as possible are safe for people like me to seek health care.

Electronic health records are supposed to make health care easier to access. But knowing how my state feels about abortion care, electronic health records could put me at risk. The more control I have over my privacy, the safer it is for me, my family, and my providers. I urge a favorable report on SB 786. Thank you for your time.

SB 786_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: Senate Bill 786
TITLE: Health - Reproductive Health Services - Protected Information and Insurance Requirements
COMMITTEE: Finance
HEARING DATE: March 1, 2023
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Finance Committee to issue a favorable report on SB 786.**

Domestic violence is about power and control, and many abusers choose to weaponize a partner's bodily autonomy and reproductive choices as tools of violence. Reproductive justice is an essential component of gender equality and for victims of domestic violence abortion access is essential for their safety. The devastating Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* eviscerated the right to bodily autonomy and the right to have an abortion. Access to abortions can be a matter of life or death for victims of domestic violence and pregnant victims are at a higher risk of being killed by their abuser. Victims frequently experience forms of abuse that put them at an increased risk for unintended pregnancy, such as birth control sabotage, sexual assault, and reproductive coercion.

In the wake of the Supreme Court's ruling in *Dobbs v. Jackson Whole Women's Health*, 14 states have already fully or nearly banned abortion, and another ten are expected to do so. Over 300 abortion-related bills have already been filed this year across the country, the majority of which are anti-abortion and include significant criminal penalties for providers of abortion care. The campaign to intimidate providers and patients in Maryland depends upon having access to information about reproductive health care provided in our state. Under electronic health record systems, protected health information – including reproductive health records - flows easily between states. Information sharing is allowed by law if it is related to coordination of care among a patient's providers. Under most circumstances, care coordination improves the health outcomes of patients. But in the case of reproductive health, information sharing is putting reproductive health providers and patients at great risk.

This legislation provides extra layers of protection for reproductive health information in electronic health record systems, often called health information exchanges. The legislation also ensures Maryland's state government protects personal information of patients and providers that may be stored in state databases. Reproductive freedom in Maryland depends on making sure we do not expose the personal information of providers *or* patients.

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • mshapiro@mnadv.org

4601 Presidents Drive, Suite 300 • Lanham, MD 20706
Tel: 301-429-3601 • E-mail: info@mnadv.org • Website: www.mnadv.org



Passage of Senate Bill 786 will ensure that the forced birth ideology of other state governments will not be permitted to dictate the ability of any Marylander to make their own decisions about their bodies or their lives. SB 786 will allow victims of domestic violence access to the crucial health care they need and the support they deserve as they work to heal from the trauma of the abuse they experienced.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB 786.**

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • mshapiro@mnadv.org

4601 Presidents Drive, Suite 300 • Lanham, MD 20706
Tel: 301-429-3601 • E-mail: info@mnadv.org • Website: www.mnadv.org

SB 786 - WLCMD - FAV.pdf

Uploaded by: Michelle Siri

Position: FAV

| | |
|---------------|--|
| BILL NO: | Senate Bill 786 |
| TITLE: | Health - Reproductive Health Services - Protected Information and Insurance Requirements |
| COMMITTEE: | Finance |
| HEARING DATE: | March 1, 2023 |
| POSITION: | SUPPORT |

The Women's Law Center of Maryland (WLC) is a non-profit legal services and advocacy organization dedicated to ensuring the physical safety, economic security, and bodily autonomy of women in Maryland. While our direct representation projects are limited to primarily survivors of domestic violence, our advocacy is in support of gender justice as a whole, because all women are entitled to access to justice, equality, and autonomy. We recognize that all the issues we fight for are interconnected. Women cannot have bodily autonomy unless they have physical safety. They cannot have physical safety without economic security. And they cannot have economic security without bodily autonomy.

The WLC fully supports Senate Bill 786, aimed at preventing legally protected health care information from being used to instill fear and prosecute patients and providers, rather than further patient health. In the wake of the Supreme Court's ruling in *Dobbs v. Jackson Whole Women's Health*, 14 states have already fully or nearly banned abortion, and another ten are expected to do so. Over 300 abortion-related bills have already been filed this year across the country, the majority of which are anti-abortion and include significant criminal penalties for providers of abortion care. The campaign to intimidate providers and patients in Maryland depends upon having access to information about reproductive health care provided in our state. Under electronic health record systems, protected health information – including reproductive health records - flows easily between states. Information sharing is allowed by law if it is related to coordination of care among a patient's providers. Under most circumstances, care coordination improves the health outcomes of patients. But in the case of reproductive health, information sharing is putting reproductive health providers and patients at great risk.

This legislation provides extra layers of protection for reproductive health information in electronic health record systems, often called health information exchanges. The legislation also ensures Maryland's state government protects personal information of patients and providers that may be stored in state databases. Reproductive freedom in Maryland depends on making sure we do not expose the personal information of our providers and patients.

The sharing of reproductive health information only benefits patients and providers if it does not also put them at risk for civil litigation or criminal charges. SB 786 will put the proper safeguards in place to prevent the exploitation of information and keep patients and providers focused on care. For these reasons, the Women's Law Center of Maryland strongly urges a favorable report on Senate Bill 786.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.

SB0786-FIN-FAV.pdf

Uploaded by: Nina Themelis

Position: FAV



BRANDON M. SCOTT
MAYOR

*Office of Government Relations
88 State Circle
Annapolis, Maryland 21401*

SB0786

March 1, 2023

TO: Members of the Finance Committee

FROM: Nina Themelis, Interim Director of Mayor's Office of Government Relations

RE: Senate Bill 786 – Health – Reproductive Health Services – Protected Information and Insurance Requirements

POSITION: Support

Chair Griffith, Vice Chair Klausmeier, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate Bill 786.

SB 786 would regulate the disclosure of patients' medical records regarding legally protected health care. This "legally protected health care" would include all reproductive health services, medications, and supplies related to provision or support of the provision of care related to pregnancy, contraception, assisted reproduction, and abortion that is legal in the state of Maryland. This legislation would prevent clinical information related to patients who have obtained such care from being shared out of state by the State-designated exchange, and would alter the purpose of the Maryland Health Care Commission to include the establishment of policies and standards that protect the confidentiality of certain health care information.

Reproductive health care is an essential part of health and well-being. Currently, the reproductive health care services referenced in this bill remain protected by law in Maryland. Health information provides insight to personal and often very sensitive information including doctor visits and treatment information. In Maryland, as in every state, the Federal HIPAA Privacy Rule requires health care providers and health insurers to protect patients' privacy, restricting disclosure of protected health information (PHI).¹ Protecting this information can protect patients from discrimination, bias, violence, denial of services, and, possibly, in the case of certain reproductive health services, prosecution.

In the current climate of states restricting access to abortion care and other reproductive health services, Maryland has an opportunity to remain a safe place for people to receive abortion care and other reproductive services. So far, eighteen US states, "home to more than 25 million women of

¹ English, A., Mulligan, A., and Coleman, C. (2017). Protecting Patients' Privacy in Health Insurance Billing & Claims: A Maryland Profile. Retrieved from www.confidentialandcovered.com

reproductive age, have banned some or all access to abortion care.”² These bans not only force people to carry pregnancies to term against their wishes, but can lead to serious health complications and even death.² A study from the University of Colorado Boulder found that, if the US were to ban abortion entirely, the country would see a 24% increase in maternal deaths overall, with a 39% increase among Black women.³ Protecting the ability for people to seek abortion care in Maryland would be lifesaving.

In the coming years, individuals might come to Maryland to receive care that is lawful here but return home to states in which such care has been outlawed. It is important for Maryland to ensure that these patients’ data remains private, so they cannot be prosecuted for care that was lawfully obtained in our state.

All persons should be able to restrict access to their PHI and maintain their health care privacy, choosing to allow health care providers to access this data when needed. Historically, there is an overwhelming mistrust of the medical community among women – particularly women of color – due to a well-documented history of overlooking their medical needs.⁴ With so many states banning aborting care, women are – rightfully – feeling more vulnerable than ever.⁵ Passing SB 786 would send a clear message to all birthing people that Maryland is a state where they can safely seek care without threat of retribution. Keeping patient information confidential would build trust, and this bill would reduce challenges in keeping protected information protected.

For these reasons, the BCA respectfully requests a **favorable** report on SB 786.

² Spitzer, E., Weitz, T., and Buchanan, MJ. (2022). Abortion Bans Will Result in More Women Dying. Retrieved from <https://www.americanprogress.org/article/abortion-bans-will-result-in-more-women-dying/>

³ Stevenson, A., Root, L., and Menken, J. (2022). The maternal mortality consequences of losing abortion access. DOI: [10.31235/osf.io/7g29k](https://doi.org/10.31235/osf.io/7g29k)

⁴ Institute of Medicine (US) Committee on Understanding and Eliminating Racial and Ethnic Disparities in Health Care, Smedley, B. D., Stith, A. Y., & Nelson, A. R. (Eds.). (2003). *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*. National Academies Press (US).

⁵ Healy, J. (June 20, 2022). With Roe Set to End, Many Women Worry About High-Risk Pregnancies. The New York Times. Retrieved from <https://www.nytimes.com/2022/06/20/us/abortion-high-risk-pregnancy.html>

SB 786- LWVMD- FAV- Reproductive Health- Protected

Uploaded by: Nora Miller Smith

Position: FAV



TESTIMONY TO THE SENATE FINANCE COMMITTEE

SB0786: Reproductive Health Services- Protected Information and Insurance Requirements

POSITION: Support

BY: Nancy Soreng, President

DATE: March 1, 2023

The League of Women Voters Maryland supports **Senate Bill 786: Reproductive Health Services- Protected Information**, which would regulate the disclosure of private health information related to legally-protected health care, including abortion services, obtained in Maryland.

The League supports the rights of individuals to self-determination related to bodily autonomy, privacy, and reproductive health, including whether to prevent, continue, or end one's own pregnancy.

Following the Dobbs v. Jackson Women's Health Organization decision last year repealing the constitutional right to abortion, individual states were given the power to determine their residents' access to reproductive health care. While some states affirmed abortion rights, others instituted abortion restrictions or absolute bans. **And some of these latter states are attempting to regulate the delivery of reproductive health care services outside their borders. A key component of that regulation is attempts by state courts to gather protected medical information on procedures their residents undergo in other states: information to which the League believes they have no right.**

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 affirms the privacy of protected health information in any form: electronic, written, or oral. While the law gives patients, medical providers, and insurance companies the right to access certain medical records, it denies that access to entities which have no need of that information. But HIPAA regulations are not strong enough to protect patients, clinicians, and facilities from having reproductive health information used against them in civil or criminal prosecutions brought by out-of-state courts.

Passage of Senate Bill 786 would erect safeguards both for patients who are receiving legally-protected health care in Maryland, as well as for the clinicians providing it. States where abortion is illegal would be blocked from accessing, by subpoena or other means, any

confidential, private medical information related to care provided in Maryland. Some states have already passed laws preventing disclosure of private medical information related to legally-protected health care delivered within their borders that would be used in out-of-state civil or criminal proceedings. Maryland must enact this “shield” legislation as well.

The League affirms its support for an individual’s right to make reproductive choices. That must include prevention of the use of confidential medical information for out-of-state prosecution of both the patient who travels to Maryland for essential medical care, and of our medical providers who deliver it. For that reason, the League and its 1,500+ members urge the committee to give a favorable report to Senate Bill 786.

SB0786_FAV_MedChi, MDAAP, MACHC, MDACOG_Health - R

Uploaded by: Pam Kasemeyer

Position: FAV



MID-ATLANTIC ASSOCIATION OF
COMMUNITY HEALTH CENTERS



The Maryland State Medical Society
63711 Cathedral Street
Baltimore, MD 263701-5516
410.539.0872
Fax: 410.547.0915
1.800.492.1056
www.medchi.org

TO: The Honorable Melony Griffith, Chair
Members, Senate Finance Committee
The Honorable Shelly Hettleman

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Andrew G. Vetter
Christine K. Krone
410-244-7000

DATE: March 1, 2023

RE: **SUPPORT** – Senate Bill 786 – *Health – Reproductive Health Services – Protected Information and Insurance Requirements*

On behalf of the Maryland State Medical Society, the Maryland Chapter of the American Academy of Pediatrics, the Mid-Atlantic Association of Community Health Centers, and the Maryland Section of the American College of Obstetricians and Gynecologists, we submit this letter of **support** for Senate Bill 786.

As a result of the Supreme Court overturning *Roe v. Wade*. Many States have enacted laws to ban access to abortion care and other reproductive health care services. As a result, many residents of those States must travel out-of-state to access needed care. Many of the State laws not only ban access to services in their state but also seek to criminalize the care provided to their citizens in another State. The efforts to intimidate providers and patients in Maryland requires access to information about reproductive health care provided in our state.

Under electronic health record systems, protected health information, including reproductive health records, is easily transferred between states. Information sharing is allowed by law if it is related to coordination of care among a patient's providers. Under most circumstances, care coordination improves the health outcomes of patients. But in the case of reproductive health, information sharing is putting reproductive health providers and patients at great risk. Senate Bill 786 provides extra layers of protection for reproductive health information in electronic health record systems, often called health information exchanges. The legislation also ensures Maryland's state government protects personal information of patients and providers that may be stored in state databases.

Reproductive freedom in Maryland depends on protecting the personal information of our providers and patients. A favorable report is requested.

MPA Testimony 2023 - Support - Senate Bill 786 - R

Uploaded by: Pat Savage

Position: FAV



10480 Little Patuxent Parkway, Ste 910, Columbia, MD 21044. Office 410-992-4258. Fax: 410-992-7732. www.marylandpsychology.org

OFFICERS OF THE BOARD

President

Rebecca Resnick, PsyD,

President-elect

Brian Corrado, PsyD

Past President

Linda McGhee, PhD, JD

Secretary

Tanya Morrel, PhD

Treasurer

Melinda Capaldi, PsyD

Representatives-at-large

Jessica Rothstein, PsyD

Andrea Chisolm, Ph.D.

Representative to APA

Council Peter Smith, PsyD

COMMITTEE CHAIRS

Communications

Robyn Waxman, PhD

Diversity

Whitney Hobson, PsyD

Early Career Psychologist

Meghan Mattos, PsyD

Educational Affairs

Laurie Friedman Donze, PhD

Ethics

Colleen Byrne, PhD

Legislative

Pat Savage, PhD

Membership

Linda Herbert, PhD

Professional Practice

Karin Cleary, PhD

PROFESSIONAL AFFAIRS

OFFICER

Paul C. Berman, PhD

EXECUTIVE DIRECTOR

Thomas Cote, MBA, CAE

Senator Melony Griffith, Chair
Senator Katherine Klausmeier, Vice Chair
Senate Finance Committee
Miller Office Building
Annapolis, MD 21401

March 1, 2023

RE: Senate Bill 786 – Reproductive Health Services-Protected Information and Insurance Requirements

Position: Support

Dear Chair, Vice Chair, and Members of the Committee:

The Maryland Psychological Association, (MPA), which represents over 1,000 doctoral level psychologists throughout the state, is writing to express SUPPORT for **Senate Bill 786** – Reproductive Health Services Protected Information and Insurance Requirements, which will enable all healthcare providers, including those that provide mental health services, to be able to honor the confidentiality and privacy of the patients that we see, particularly those that have sought out reproductive care.

A fundamental part of the therapeutic relationship—the part that distinguishes it from a close friendship—is the guarantee that clinicians will keep all information shared with them private. This core concept of therapy enables a therapeutic alliance to be created: where a client can feel safe within the therapeutic space. This bill enables assurances to clients that their reproductive information isn't seen as separate or different than any other private confidence that a client might share with their clinician.

Psychologists are often allied health professionals that clients will turn to in order to help them understand and make important decisions, including those that pertain to reproduction. With the state of reproductive health so tenuous in other states, we applaud lawmakers in Maryland for adding protections for providers and patients rather than stripping them away. We strongly **SUPPORT Senate Bill 786**, and request that the bill receives a **FAVORABLE REPORT**.

Thank you for considering our comments on **Senate Bill 786**. If we can provide any additional information or be of any assistance, please do not hesitate to contact Dr. Pat Savage, MPA's Legislative Chair, at mpalegislativcommittee@gmail.com.

Respectfully submitted,

Rebecca Resnick, Psy.D.

Rebecca Resnick, Psy.D.
President

R. Patrick Savage, Jr., Ph.D.

R. Patrick Savage, Jr., Ph.D.
Chair, MPA Legislative Committee

cc: Richard Bloch, Esq., Counsel for Maryland Psychological Association
Barbara Brocato & Dan Shattuck, MPA Government Affairs

Emely Loscalzo SB 786.pdf

Uploaded by: Rahula Strohl

Position: FAV

Emely Loscalzo
Miami, FL 33016

Support
SB 786 – Health - Reproductive Health Services - Protected Information and Insurance
Requirements
Maryland Senate Finance Committee
March 1, 2023

My name is Emely Loscalzo, a senior at Johns Hopkins University and a resident of Miami, Florida. As you can imagine, the end of high school and beginning of college haven't exactly been the typical experience of most Hopkins students who came before me. But even with all that uncertainty, I never imagined I'd be concerned for my medical privacy.

Since Texas SB 8 went into effect in September 2021, I've just been waiting for the other shoe to drop in my home state. I'm grateful that I'm in Maryland eight months out of the year, where reproductive health care access has been affirmed and expanded, a state that still recognizes gaps in access and works to address them. But the other four months of the year, I'm in Florida, which is doing the opposite.

I am in college. I'm an adult. When I'm sexually active, I take precautions. But I also know that precautions are not 100% effective. Again, I'm grateful to spend the bulk of my year in Maryland, where providers aren't legally forced to lie to me about my options, where providers are not only allowed, but encouraged to give me a long factual list of *all* of my options. But whichever option I choose, it gets marked down in my electronic health records.

Electronic health records are a great idea. Especially for someone like me. I get stitches in a Baltimore urgent care facility, my primary care provider in Miami knows why I suddenly have a scar. But when it comes to reproductive health care, I'm not confident in the direction my state is taking.

Seeing criminal and civil penalties being threatened in other states for abortion care patients, providers, and support networks in other states, I know Florida is looking at those laws. I want to know *now* that whatever care I seek in Maryland, I have control over whether a provider in Florida sees it.

For the privacy and security of myself, all the other out-of-state students across Maryland, and for Marylanders who might need to seek health care while visiting other states, I strongly urge a favorable report on SB 786. Thank you for your time.

2022 ACNM SB 786 Senate Side FAV.pdf

Uploaded by: Robyn Elliott

Position: FAV



Senate Finance Committee
SB 786 – Reproductive Health – Protected Information and Insurance Requirements
March 1, 2023
Favorable

The Maryland Affiliate of the American College of Nurse Midwives (ACNM) supports *Senate Bill 786 – Reproductive Health – Protected Information and Insurance Requirements*. Without this legislation, Maryland patients and providers will be placed at great legal risk for the provision of abortion and other reproductive health care within our state borders.

On June 22, 2022, millions of Marylanders lost the fundamental right of bodily autonomy. With the *Dobbs* decision, the U.S. Supreme Court overturned *Roe v Wade* and eliminated constitutional protections for abortion rights. Justice Clarence Thomas also suggested that other protections, such as the right to birth control, may also be called into question.

Since the *Dobbs* decision, fourteen states have implemented abortion bans, including our neighboring state of West Virginia. By the end of this year, we could see about half the states banning or severely restricting abortion. These restrictive states, however, do not seem content to just stopping abortion within their states. Instead, they are adopting aggressive tactics to intimidate and even criminalize residents who travel out-of-state to seek abortion care. These tactics are creating a chilling effect on providers in states like Maryland. Abortion remains protected in our state, but our providers are frightened of attempts of restrictive states to impose criminal, civil, and administrative penalties.

We implore the Maryland General Assembly to protect Maryland abortion providers and their patients. Nurse-midwives, along with our physician and nurse practitioner colleagues, are struggling to provide reproductive health care to Marylanders and out-of-state patients alike. We are afraid of the long-arm of the law of states like Texas, and we no longer believe the Supreme Court will protect us.

We ask you to pass the 2023 Reproductive Freedom package, which includes this legislation along with *SB 859/HB 808 – Reproductive Health Protection Act*. The *Reproductive Health Protection Act* would protect us within the state of Maryland, as the state could not participate in out-of-state investigations of legally protected care. However, that bill cannot protect us beyond Maryland's borders. Electronic health records, which contain abortion information, flow routinely across state borders through health information exchange. This means that any restrictive state that issues a court order to one of our patient's out-of-state provider will be able to obtain abortion records – putting us, our provider colleagues, and our patients in legal jeopardy. We need SB 786/HB 812 to protect our patient's abortion records – and by doing so, protecting them and us.

We ask for a favorable report and to make this bill into emergency legislation. We and our patients are at great risk now. We cannot wait much longer for protection. If we can provide any additional information, please contact Robyn Elliott at relliott@policypartners.net.

2023 MCHS SB 786 Senate Side FAV.pdf

Uploaded by: Robyn Elliott

Position: FAV



Maryland Community Health System

Committee: Senate Finance Committee

Bill Number: Senate Bill 786- Privacy Electronic Health Records

Hearing Date: March 1, 2023

Position: Support

Maryland Community Health System (MCHS) supports *Senate Bill 786 – Privacy Electronic Health Records*. The bill creates safeguards in the sharing of electronic health records across state lines through health information exchanges. As a network of federally qualified health centers, we were early adopters of electronic health records as a tool to improve care coordination. However, the *Dobbs* decision means that data sharing about abortion and other reproductive health information could put patients and providers in great jeopardy if it is shared with health information exchanges in states like Missouri and Texas. District attorneys in those states would have a clear legal avenue to subpoena those records within their own state, and potentially subject Maryland patients and providers to criminal, civil, and administrative penalties. We want all Maryland patients and providers to be able to seek legally protected care without the fear of prosecution or threats of violence.

These threats are not theoretical. When a hospital in Texas reported a woman to law enforcement this summer for a self-induced abortion, she was charged with murder, and the story went viral. While the charges were later dropped, the safety of the woman and her family has been put at risk. We ask for a favorable report. We need this bill to ensure providers and patients remain safe in Maryland. If we can provide further information, please contact Robyn Elliott at relliott@policypartners.net.

2023 PPM SB 786 Senate Side FAV.pdf

Uploaded by: Robyn Elliott

Position: FAV

Senate Finance Committee**SB 786 - Reproductive Health – Protected Information and Insurance Requirements****Favorable****March 1, 2023**

Overview of the Bill

Electronic health records are an integral part of our health care system. They allow providers to share information about a patient’s health history through networks known as health information exchanges. These systems have allowed providers to significantly improve coordination of care and health outcomes.

In the wake of the *Dobbs* decision, however, these electronic health record systems have become one of the most significant sources of risk for patients and providers. Neither federal nor state rule offer adequate legal protections. States that are seeking to criminalize or otherwise intimidate abortion providers and patients have the legal tools at their disposal to obtain protected health information. Simply put, electronic health systems, originally designed to promote positive health outcomes, now pose a grave risk to abortion patients and providers.

Simply put, electronic health systems, originally designed to promote positive health outcomes, now pose a grave risk to abortion patients and providers.

This year, the Maryland General Assembly is considering a package of bills to protect reproductive health patients and providers. *SB 786/HB 812 – Reproductive Health – Protected Information and Insurance Requirements* is a key component of this legislative package. **This legislation is essential for Maryland to protect our patients, our providers, and access to reproductive health care in our state.**

Three Components of the Bill

The bill has three components:

Part I: The bill prevents abortion and other sensitive health information from being shared across state lines through health information exchanges. This provision is essential to shielding patients and providers from threats of criminal and civil penalties. The Maryland General Assembly is currently considering another bill – *SB 859/HB 808 – Reproductive Health Protection Act* -to shield Maryland patient and providers from out-of-state investigations of abortion and other legally protected care.

If enacted, the *Reproductive Health Protect Act* will prohibit Maryland from assisting in out-of-state investigations of abortion and other legally protected care. But the bill's protections cannot go beyond Maryland borders. Maryland routinely share thousands of patient records, including abortion care records, across state lines through health information exchanges. With aggressive states seeking to penalize Maryland patient and providers, these states may simply obtain a Maryland record by issuing a subpoena to a patient's out-of-state provider. For example, an out-of-state provider will likely have a nearly complete health record, including abortion information, of a Maryland patient, even if it is just because they have visited the out-of-state provider once while on vacation or a business trip. Maryland cannot control subpoenas in other states, but Maryland can control whether we send records about abortion and related sensitive services to a patient's out of state provider. This bill creates strict guardrails around sharing abortion and other sensitive data across state lines. Patients will retain the ability to choose when and to whom their data is shared.

Part II: The bill prevents widespread dissemination of information about who prescribes Mifepristone and other abortion medications. This provision protects the safety of Maryland abortion providers. By doing so, it will also protect access to abortion care in Maryland. If abortion providers face the risk for being identified, many of them will be too afraid to provide abortion care.

Right now, vendors routinely collect pharmacy dispensing data, including the prescriber's name. Vendors then sell this information to be integrated into electronic health records. This arrangement is legal under the federal privacy law known as HIPAA.

In the past, the practice of disseminating prescription dispensing data did not pose a risk to abortion providers. Mifepristone, the primary medication used in medication abortion, could not be dispensed by pharmacies because of a federal rule. Providers had to dispense the medication in their offices. But the Food and Drug Administration changed this rule in December 2022, and prescribers may send Mifepristone prescriptions to pharmacies, just as with any other medication. This rule change has the potential to significantly improve access in underserved areas. However, it does mean that information about Mifepristone, including the

prescriber's name, will soon be widely integrated into electronic health records in Maryland and across the country. This practice means that abortion providers face an exponentially higher risk of being identified – risking their employment if their health facilities do not support abortion. And even worse, abortion providers, their staff, and their families face a heightened risk of violence.

This risk is not theoretical. It is real and long-standing, existing since Mifepristone was first developed. There are long-standing practices of protecting providers and people affiliated with Mifepristone. In *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 153 (D.C. Cir. 2006),ⁱ the U.S. Court of Appeals heard a case about the Food and Drug Administration's policy of redacting identifying information under a freedom of information request for the names of the individuals involved in the review of the application for approval for Mifepristone. The Court found that:

“(the FDA has) fairly asserted abortion-related violence as a privacy interest for both the names and addresses of persons and businesses associated with mifepristone.”

In making this determination, the Court cited that,

“As its privacy interest, the FDA cited the danger of abortion-related violence to those who developed mifepristone, worked on its FDA approval, and continue to manufacture the drug. The supporting affidavits detail evidence of abortion clinic bombings. They also describe websites that encourage readers to look for mifepristone's manufacturing locations and then kill or kidnap employees once found. Based on these declarations, the FDA fairly asserted abortion-related violence as a privacy interest for both the names and addresses of persons and businesses associated with mifepristone. “

Part III: The bill prevents the disclosure of personal information about abortion providers and their staff in three additional areas:

1) Identifying information about abortion providers and staff at surgical abortion facility and ambulatory surgery center licensing records under the Public Information Act, in accordance with the Court of Appeals decision in *Glenn v DHMH*;

There is strong legal precedent for protecting identifying information of health care providers and their staff, including abortion providers. In the 2013 case of *Glenn v DHMH*, the Court of Appeals found that the Maryland Department of Health (MDH) could redact identifying information about abortion providers in responding to PIA requests for facility licensure records. The court cited DHMH's reasoning that:

“(T)here would be substantial injury to the public interest if the identities of medical directors, administrators, and owners of surgical abortion facilities were disclosed as

part of the response to a request for public inspection of the Department’s licensure records. First, disclosing these names could result in harassment, threats or actual violent harm to these individuals, as well as unwarranted invasion of their personal privacy and that of their family members. Second, the Department’s action in releasing these names could deter others from operating surgical abortion facilities or from applying for licensure, restricting access to legal health services and risking injury to public health.”ⁱⁱ

2) Home addresses of health care providers under health occupation licensure records through PIA requests, with certain narrow exceptions;

There is also precedent in Maryland law for preventing the disclosure of home addresses of licensure records. Under General Provisions § 4-320, the Motor Vehicles Administration cannot release the home address of the holder of a driver’s license with limited exceptions. This provision was designed to protect the safety of licensee holders. A similar provisions related to health occupations licensure would protect the safety of abortion providers as well as health professionals in general.

3) Records related to abortion data and similar sensitive information through health information exchanges and similar data sources under the oversight of the Maryland Health Care Commission

This provision simply reiterates the Maryland Health Care Commission’s responsibility for implementing provisions that provide extra layers of protection to personal health information about abortion and similar sensitive services.

How will this bill protect patients?

This bill will protect patients by ensuring their most sensitive health information is not share over state lines, as other states may not have the same safeguards as Maryland. The threat to patients is real and growing.

About half the states are expected to ban abortion, and fourteen states have already implemented bans. There are numerous proposals to criminalize abortion care for both patients and providers. For example, Kentucky and South Carolina are considering bills that would treat abortion as homicide for both patient and provider. Texas and two other states – Oklahoma and Idaho – have enacted SB 8 style laws which expose any person, including out-of-state individuals, to penalties.

Other states, such as Missouri, are considering how to block their residents from going over state lines. A law firm, the Thomas More Society has even developed model legislation to support states seeking to shut down access to out-of-state abortion care. ⁱⁱⁱ

How will hostile state identify individuals who have obtained abortion care? The most likely source of information is their health record:

- In Indiana, a physician is suing the Attorney General in Indiana to block him from accessing a patient record. The patient is a 10-year-old from Ohio. She had been raped, but since she was just past the 6-week mark in pregnancy, and had to travel for abortion care. Since then, Indiana has banned abortion care. ^{iv}
- In Texas last year^v, a hospital reported a 26-year-old patient to law enforcement for a self-induced abortion. The patient was charged with murder. While the charges were dropped ultimately, the patient spent time in jail and the story went viral on the internet - so her identity and circumstances are known worldwide.
- In a report by If/When/How, researchers documented 61 cases of individuals being criminally charged because of pregnancy outcomes – and 45% of those cases were the result of the patient’s providers reporting them. ^{vi}

How will this bill protect abortion providers and access in Maryland?

This bill will keep information about the identity of abortion providers and their patients private. This privacy is essential. **Otherwise, some Maryland providers may stop providing abortion care because of fear.** The aggressive tactics of Texas, in collaboration with anti-abortion activists, are designed not just to stop abortion within the borders of states with abortion bans. They are designed to create an intimidating, almost untenable, environment for abortion providers in states where abortion is legal.

Abortion providers are reporting an increase in concerns about the safety of themselves, their families, and their staff. As states ban abortion, there is deep concern that the focus of the anti-abortion activists will move to states, like Maryland, where abortion is legally protected. Even before *Dobbs*, incidents were rising. The National Abortion Federation reported its 2021 statistics demonstrated significant increase in violence towards abortion providers: a 600% increase in stalking, 450% increase in blockades, a 129% increase in invasions, and 128% increase in assaults.^{vii}

2021 statistics demonstrated significant increase in violence towards abortion providers: a 600% increase in stalking, 450% increase in blockades, a 129% increase in invasions, and 128% increase in assaults

Since the *Dobbs* decision was leaked, providers have reported a significant increase in violence in states where abortion is legal:

- In May 2022 just after the leak of the *Dobbs* decision, an arsonist set fire to Wyoming's only abortion clinic. Since then, Wyoming is trying to enforce an abortion ban, which has been enjoined by the Court.
- In July 2022, an arsonist set fire to an abortion provider's site in Kalamazoo, Michigan^{viii}
- In January 2023, a Planned Parenthood affiliation in Illinois was firebombed^{ix}

How will this bill interact with federal law?

HIPAA is not sufficient to protect abortion patients and providers for two reasons: 1) providers must still generally provide health record data under a court order; and 2) providers using electronic health records must share, with a few exceptions, a patient's entire medical record. Providers may be allowed to block certain information under the federal Information Blocking Rule, but they must evaluate each patient record on a case-by-case basis. For providers, this would be administratively infeasible to implement.

“The most effective legislative approach for states may be to prohibit electronic-health-record vendors and health-information exchanges from facilitating the transfer of abortion-related data across state

Under HIPAA, states are permitted to enact stricter privacy rules. A recent article in the Yale Law Review concluded that, “The most effective legislative approach for states may be to prohibit electronic-health-record vendors and health-information exchanges from facilitating the transfer of abortion-related data across state lines.”^{xi} *SB 786/HB 812 – Reproductive Health – Protected Information and Insurance Requirements* embodies this approach. Maryland would be the first state to enact such a measure, leading the way for other states that are carefully watching our progress so that they may replicate our efforts.

Conclusion

Planned Parenthood of Maryland requests a favorable report on *SB 786 - Reproductive Health – Protected Information and Insurance Requirements*. The bill's privacy protections are necessary to protect the safety of patients and providers. Without these protections, aggressive attempts to intimidate Maryland patients and providers will have a chilling effect on the provision of reproductive health care in Maryland.

We would be pleased to work with the sponsor and Committee on supporting this legislation moving forward. If we can provide any assistance, please contact Robyn Elliott at relliott@policypartners.net.

ⁱ *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 153 (D.C. Cir. 2006)

ⁱⁱ *Andrew Glenn v. Maryland Department of Health and Mental Hygiene*, No. 48, September Term, 2015. Opinion by Harrell, J.

ⁱⁱⁱ <https://www.culawreview.org/journal/the-post-dobbs-legality-of-out-of-state-abortion-travel-bans>

^{iv} <https://www.npr.org/2022/11/03/1133901526/indiana-doctor-sues-ag-to-block-him-from-obtaining-patient-abortion-records>

^v <https://www.nbcnews.com/think/opinion/lizelle-herrerass-texas-abortion-arrest-warning-rcna24639>

^{vi} https://www.documentcloud.org/documents/22129610-22_08_sma-criminalization-research-preliminary-release-findings-brief_final

^{vii} https://prochoice.org/wp-content/uploads/2021_NAF_VD_Stats_Final.pdf

^{viii} <https://www.wilx.com/2022/08/04/man-charged-with-arson-kalamazoo-planned-parenthood-fire/>

^{ix} <https://www.npr.org/2023/01/18/1149855905/officials-investigate-the-firebombing-on-an-illinois-planned-parenthood-facility>

^x https://www.yalelawjournal.org/pdf/F7.ZubrzyckiFinalDraftWEB_6jsh8oxp.pdf

^{xi} *Ibid.*

SB 786 Senate Side Roz Jonas Testimony.pdf

Uploaded by: Rosalyn Jonas

Position: FAV

Chair Melony Griffith
Senate Finance Committee
Miller Senate Office Building
11 Bladen St.
Annapolis, MD 21401

SUPPORT – SB 786
Health - Reproductive Health Services - Protected Information
and Insurance Requirements

Dear Honorable Chair Griffith:

My name is Rosalyn Levy Jonas, and I have been a Maryland resident for nearly 40 years. In 1966, 17 years before I would take up residency in Maryland, I had a difficult and challenging experience here. I was just 20 years old, single, pregnant, and desperate, I stood alone on Eutaw Street in downtown Baltimore, waiting to be picked up by a man I'd never met, whose job it was to deliver me to the place where I was scheduled to have an illegal abortion.

My abortion was performed in a farmhouse somewhere in rural Baltimore County, by a man whose face I never saw. For his services, I paid him \$600 in cash, and after a few hours, I was returned to Eutaw Street. I consider myself lucky; the people who transported me, provided my care, and took my money were trustworthy. No record of my care was accessible to anyone who might act in bad faith, and no health complications prevented me from later choosing to bring children into the world. I have two adult daughters whose reproductive rights I am determined to protect. On their behalf and on behalf of the women in this state and across the country, I have served on the boards of state and national organizations tasked with preserving their rights.

I had my abortion seven years before *Roe v. Wade* gave women the right to control their own reproductive destinies. Seven years before women, desperate to control their bodies and their lives, could stop using coat hangers and knitting needles and stop drinking poison—and stop standing alone on Eutaw Street, hoping to meet a man who was actually a doctor. Seven years before girls and women could stop their search for the underground networks that existed to connect them with abortion providers. And seven years before desperate women had to come up with the cash equivalent of \$5,200 today.

Today, abortion patients seeking care in Maryland can find a network of compassionate, qualified abortion care providers, something I was unable to do. But they *are* faced with the realities of coming up with large sums of money and fearing reprisal for an act considered illegal in twelve states. To ensure the security of abortion care patients and providers—and avoid a return to the reality I had to live in Maryland in 1966—I urge a favorable report on SB 786.

Sincerely,
Rosalyn Levy Jonas
Bethesda, MD 20814

SB786 favorable Repr insurance .pdf

Uploaded by: Sarah Miicke

Position: FAV

OFFICERS

ELIZABETH GREEN
President

ROBIN WEIMAN
1st Vice President

AMALIA HONICK

BENJAMIN ROSENBERG

RABBI STEVEN SCHWARTZ

RABBI JONATHAN SEIDEMANN

MELANIE SHAPIRO

RABBI ANDREW BUSCH
Past President

HOWARD LIBIT
Executive Director

WRITTEN TESTIMONY

Senate Bill 786 - Health – Reproductive Health Services – Protected Information and Insurance Requirements

Finance Committee

March 1, 2023

MEMBER ORGANIZATIONS

Adat Chaim Congregation
American Jewish Committee
Americans for Peace Now
 Baltimore Chapter
American Israel Public Affairs Committee
American Red Magen David for Israel
American Zionist Movement
Amit Women
Association of Reform Zionists of America
Baltimore Board of Rabbis
Baltimore Hebrew Congregation
Baltimore Jewish Green and Just Alliance
Baltimore Men's ORT
Baltimore Zionist District
Beth Am Congregation
Beth El Congregation
Beth Israel Congregation
Beth Shalom Congregation of
 Howard County
Beth Tfiloh Congregation
B'nai B'rith, Chesapeake Bay Region
B'nai Israel Congregation
B'nai Jacob Shaarei Zion Congregation
Bolton Street Synagogue
Chevra Ahavas Chesed, Inc.
Chevrei Tzedek Congregation
Chizuk Amuno Congregation
Congregation Beit Tikvah
Congregation Tiferes Yisroel
Federation of Jewish Women's
 Organizations of Maryland
Hadassah
Har Sinai - Oheb Shalom Congregation
J Street
Jewish Federation of Howard County
Jewish Labor Committee
Jewish War Veterans
Jewish War Veterans, Ladies Auxiliary
Jewish Women International
Jews For Judaism
Moses Montefiore Anshe Emunah
 Hebrew Congregation
National Council of Jewish Women
Ner Tamid Congregation
Rabbinical Council of America
Religious Zionists of America
Shaarei Tfiloh Congregation
Shomrei Emunah Congregation
Suburban Orthodox Congregation
Temple Beth Shalom
Temple Isaiah
Zionist Organization of America
 Baltimore District

Background: Senate Bill 786 (SB786) would protect abortion providers and out of state patients by reducing the risk of criminal, civil or administrative liability from outside states by providing additional privacy protections of the healthcare, insurance and medical records of the patients.

Written Comments: The Baltimore Jewish Council's position in support of reproductive freedom is clear: "The Baltimore Jewish Council opposes government interference with the decision of a woman, in voluntary consultation with her family, her doctor, or her clergy, to determine all aspects of her reproductive life." Jewish law is also clear that when the life of the mother is at stake, Jewish law not only permits, but also actually compels, the mother to abort the fetus to save her own life.

This community consensus statement was adopted nearly 40 years ago by the Baltimore Jewish Council, and it continues to govern our actions.

While Maryland legislators have enshrined many protections of reproductive rights into law, the Baltimore Jewish Council will continue to support governmental efforts to protect reproductive rights in accordance with our long-standing policy.

For these reasons we ask for a favorable report on SB786.

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of The Associated: Jewish Community Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

TESTIMONY IN SUPPORT OF Senate Bill 786.pdf

Uploaded by: Sharon Blugis

Position: FAV



**TESTIMONY IN SUPPORT OF SENATE BILL 786:
Reproductive Health Services – Protected Information and Insurance Requirements.**

TO: Chair Melanie Griffith and Vice Chair Katherine Klausmeier of the Finance Committee

FROM: Sharon Blugis, Interim Executive Director, Pro-Choice Maryland

DATE: Tuesday, February 28, 2023

Pro-Choice Maryland is an independent, nonprofit organization that develops and advocates for policies that protect reproductive freedom and that advance reproductive justice. **Pro-Choice Maryland strongly supports the right of ALL individuals to full bodily autonomy and to unequivocal control over their own health and healthcare decisions including their private health records.**

The campaign to intimidate providers and patients in Maryland depends on having access to information about reproductive health care provided in our state. Under electronic health record systems, protected health information – including reproductive health records - flows easily between states. Information sharing is allowed by law if it is related to coordination of care among a patient’s providers. Under most circumstances, care coordination improves the health outcomes of patients. But in the case of reproductive health, information sharing is putting reproductive health providers and patients at great risk.

This legislation provides extra layers of protection for reproductive health information in electronic health record systems, often called health information exchanges, The legislation also ensures Maryland’s state government protects personal information of patient and providers that may be stored in state databases.

Reproductive freedom in Maryland depends on making sure we do not expose the personal information or our providers and patients. Just recently, an abortion facility was attacked by a homemade bomb in Illinois. And that is just one of example of the threats faced by reproductive health providers and patients.

We applaud this common-sense effort to further enshrine the right to reproductive freedom in Maryland and **we strongly urge the committee to lead the way, honor abortion access as essential, vital healthcare, and to return a favorable report on Senate Bill 786.**

SB786_FAV_Hettleman.pdf

Uploaded by: Shelly Hettleman

Position: FAV

SHELLY HETTLEMAN
Legislative District 11
Baltimore County

Budget and Taxation Committee

Health and Human Services Subcommittee

Pensions Subcommittee

Vice Chair
Rules Committee



James Senate Office Building
11 Bladen Street, Room 203
Annapolis, Maryland 21401
410-841-3131 · 301-858-3131
800-492-7122 Ext. 3131
Shelly.Hettleman@senate.state.md.us

The Senate of Maryland
ANNAPOLIS, MARYLAND 21401

TESTIMONY OF SENATOR SHELLY HETTLEMAN
SB786

Reproductive Health Services- Protected Information and Insurance Requirements

On June 22, 2022 millions lost the fundamental right of bodily autonomy when the Supreme Court overturned *Roe v Wade* in the *Dobbs* decision and abolished the constitutional right to an abortion. Since that day, fourteen states have implemented abortion bans and the number is growing. Not satisfied to put an end to abortion in their own states, some state officials have begun, and others have threatened, to restrict the ability of their constituents to seek services in other states that provide abortion care.

This is not theoretical. In one example, a prominent law firm was threatened by a Texas legislative caucus with criminal liability for paying for employees' abortion-related travel costs. And, it's not just Texas. States, like Missouri, Oklahoma, and Idaho, that have already severely restricted abortion within their states, have considered legislation that would penalize anyone assisting a resident to obtain abortion care outside that state.

This bill is about protecting patients and providers. It is about closing loopholes and protecting information that put our providers and patients at risk - and potentially at risk beyond our borders. It's about protecting information that could be used by others outside of our state to punish someone who has received reproductive care inside our state. In order to fully protect our patients and providers, we need to:

- Prohibit health records about abortion care and other reproductive health services from flowing across state lines through health information exchanges. If someone who has obtained an abortion in Maryland seeks healthcare in another state, it's extremely likely that provider will have access to that patient's complete record - including the abortion - through a health information exchange. We can stop that at our border. The bill would permit the patient to consent to sharing their record.
- Prohibit the sharing of information about the medicine Mifepristone from being shared without consent. This drug is one of the main medications used in medication abortion and the Food and Drug Administration just recently allowed physicians to prescribe it. Because pharmacy data is routinely integrated into electronic health records, this too will be information shared across state lines. Moreover, out-of-state officials (some of whom are required under their state laws to report on their patients who have received abortions) will know the identities of the prescribing physicians. In addition to posing a threat to these physicians, it will also pose a chilling effect on access to care. The threat of violence is not theoretical. Since the leak of *Dobbs* last spring, three abortion facilities have been set on fire.

- Craft more guardrails to protect providers' personal information under the Maryland Public Information Act. Threats to our health care workers have grown substantially over the years and we have recognized this in recent legislation to protect them in the workplace. This continues our efforts to protect healthcare workers.

Technology has made information sharing unbelievably easy and quick and few of us realize how far and wide our very personal information is being shared. This bill allows us to have control over our own information and protects it as well as protecting the providers who deliver our care. Now, more than ever, we must do all we can to ensure that Maryland remains a safe haven - both for people who seek reproductive care here and for those who provide it. I respectfully request a favorable report on SB 786. Thank you.

SB786_SenChrisVanHollen_FAV

Uploaded by: U.S. Senator Chris Van Hollen

Position: FAV

CHRIS VAN HOLLEN
MARYLAND

SH-110 HART SENATE OFFICE
BUILDING WASHINGTON DC 20510
OFFICE (202) 224-4654
FAX (202) 228-0629

United States Senate

APPROPRIATIONS
BANKING, HOUSING, AND
URBAN AFFAIRS
BUDGET
FOREIGN RELATIONS

March 1, 2023

Chair Melony G. Griffith
Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen Street
Annapolis, MD 21401

RE: Letter of Support – Senate Finance Committee, SB 786 – Reproductive Health – Protected Information and Insurance Requirements, Favorable

Dear Chair Griffith:

I am pleased to support Senator Hettleman's legislation, *Senate Bill 786 – Reproductive Health – Protected Information and Insurance Requirements*, which would strengthen protections for Maryland's health care providers working to preserve patient access to reproductive health care. *Senate Bill 786* would regulate the disclosure of certain information related to legally protected health care by health care providers, require that the Maryland Health Care Commission adopt new regulations to restrict access to the data and protected health information (PHI) of patients who have obtained legally protected health care in the state of Maryland.

Since the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, health care providers have faced significant challenges while navigating new barriers to providing comprehensive reproductive health care. In September 2022, I joined Senator Patty Murray (D-WA) and 28 of our colleagues to urge the U.S. Department of Health and Human Services (HHS) to take immediate action to safeguard patient privacy, safety, and confidentiality by strengthening federal protections under the *Health Information Portability and Accountability Act (HIPAA)* to prevent health care providers from being investigated by state law enforcement or through legal proceedings on abortion care. *Senate Bill 786* would support health care providers serving women and families who continue to face barriers when seeking comprehensive reproductive health care services in Maryland, especially in communities disproportionately affected by inequitable access to quality health care.

Widespread confusion among health care providers has caused delays and disruptions in reproductive health care access. As providers face mounting uncertainty about potential requirements to

STATE OFFICES

ROCKVILLE OFFICE
111 ROCKVILLE PIKE
SUITE 960
ROCKVILLE, MD 20850
PHONE (301) 545-1500
FAX (301) 545-1512

ANNAPOLIS OFFICE
60 WEST STREET
SUITE 107
ANNAPOLIS, MD 21401
PHONE (410) 263-1325

CAMBRIDGE OFFICE
204 CEDAR STREET
SUITE 200C
CAMBRIDGE, MD 21613

BALTIMORE OFFICE
1900 NORTH HOWARD STREET
SUITE 100
BALTIMORE, MD 21218
PHONE (667) 212-4610
FAX (667) 212-4618

HAGERSTOWN OFFICE
32 WEST WASHINGTON STREET
SUITE 203
HAGERSTOWN, MD 21750
PHONE (301) 797-2826

LARGO OFFICE
1101 MERCANTILE LANE
SUITE 210
LARGO, MD 20774
PHONE (301) 322-6560

disclose patients' health information to state law enforcement officials outside of Maryland, patients have experienced severe, life-threatening pregnancy complications with limited access to emergency care. Concerns about serving out-of-state patients fundamentally threaten women's health, as patients may delay or avoid seeking the care that they need out of fear their sensitive health information could be weaponized against them.

In the 117th Congress, I cosponsored S. 4723, the *Let Doctors Provide Reproductive Health Care Act*, which would allow the U.S. Department of Justice (DOJ) to provide more protection for health care providers serving patients in states that support access to comprehensive reproductive health care services. This legislation would prohibit individuals, entities, and states from preventing, restricting, or otherwise interfering with the work of health care providers who are lawfully providing reproductive health care services. Specifically, the *Let Doctors Provide Reproductive Health Care Act* would allow the DOJ to enforce these protections by a federal lawsuit to ensure that these health care providers are not held liable for providing reproductive health care to out-of-state patients. By protecting both providers and patients, *SB 786* would preserve access to quality reproductive health care in Maryland and enable health care providers and advocates throughout the state to continue serving vulnerable patients and their families.

I would like to thank Senator Hettleman, Senator Kelly, and Delegate Rosenberg for their commitment to protecting reproductive health and rights through their work in the Maryland General Assembly. I would like to request a favorable report on *Senate Bill 786 – Reproductive Health – Protected Information and Insurance Requirements* to reduce the barriers impacting health care providers in Maryland who serve patients seeking reproductive health care.

Sincerely,



Chris Van Hollen
United States Senator

SB786.LOSWA.pdf

Uploaded by: Heather Forsyth

Position: FWA

ANTHONY G. BROWN
Attorney General



CANDACE McLAREN LANHAM
Chief of Staff

CAROLYN A. QUATROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

410.576.6571

WRITER'S DIRECT DIAL NO.

410.576.6513

February 28, 2023

To: The Honorable Melony Griffith
Chair, Senate Finance Committee
From: The Office of the Attorney General
Re: SB0786 – Health – Reproductive Health Services – Protected Information and Insurance Requirements: **Letter of Support with Amendments**

The Office of the Attorney General writes in support of SB0786 with amendments to address concerns noted herein. This bill furthers Maryland's efforts to ensure high quality, affordable reproductive health services are available to Marylanders and shields the identifying information of anyone who obtains or provides reproductive health services in the state from out-of-state investigations that could threaten their privacy, safety, and liberty.

The bill proposes to amend certain sections of the General Provisions, Health, and Insurance articles to shield "legally protected health care data," defined as "all reproductive health services, medications, and supplies related to the direct provision or support of the provision of care related to pregnancy, contraception, assisted reproduction, and abortion that is lawful in the state." The bill also shields and defines a "protected medication record," (identifying information regarding medication used in a medical abortion) and "protected services record" (identifying information related to the provision of legally protected healthcare).

The bill directs the Maryland Health Care Commission to adopt regulations to restrict the flow of data of patients who have obtained legally protected health care (LPHC), and to establish policies and standards to protect the confidentiality of patient and healthcare practitioner information related to LPHC. The bill also prohibits a dispenser from submitting information about any medication used for a medical abortion to the state designated exchange and prohibits a health information exchange from disclosing protected records to anyone outside the state, subject to criminal penalties, except for the adjudication of claims or to a specific treating provider with the patient's

written consent. Furthermore, the bill removes from disclosure through PIA requests the name or other identifying information related to an ambulatory surgery center or a surgical abortion facility or information relating to an investigation of a licensee or certificate holder regarding the provision of LPHC pending a final order.

We support the goals of this bill. Marylanders or others seeking legally protected reproductive healthcare in Maryland, and their healthcare providers, should not be subject to out-of-state investigations, harassment, or potential harm for exercising their rights to seek and provide LPHC. Those obtaining and providing such care legally in Maryland generally cannot do so without the creation of a medical record and having that information shared on a health information exchange. This bill seeks to prevent the flow of that information, which necessarily means such patients will lose the benefits afforded by having their information available to treating providers without written consent.

We have identified several concerns with the bill that we have discussed with the proponent and look forward to continuing to work on language to best balance the goals of this bill with the needs for appropriate information sharing. For example:

1. On page 2, lines 22-25, we do not support a PIA custodian denying identifying information about Ambulatory Surgery Centers or Surgical Abortion Facilities. We would support redacting the names of the owner, administrator, and medical director of each facility in light of the well-documented history of harassment and violence perpetrated against abortion providers across the country. However, an alternative method for service of process should be afforded to consumers.
2. On page 2, lines 32-33, we support the protection of home addresses if an alternative method for service of process is afforded.
3. On page 12, lines 1-2, we support having LPHC data restricted but believe the language could be read broadly to prevent the flow of any data about a patient receiving LPHC—not just the data related to the LPHC—from flowing. This provision is worthy of additional risk/benefit discussion.
4. On page 14, lines 5-6, we oppose this provision which would allow the sharing of information, without an authorization to an out-of-state investigator. We have been advised by the proponent that this was not intended.
5. On page 23, lines 12-13, we await a response from the proponent about the intent of this change in the Insurance article.

The Office of the Attorney General in concert with key stakeholders will continue to work on detailed language to clarify content and correct drafting errors in the bill. In the meantime, we urge the Committee to provide a favorable report for SB786. As the Committee is aware, a bill to enshrine reproductive freedom in the state's constitution is also working its way through the General Assembly. The U.S. Supreme Court's decision to roll back fundamental reproductive rights has divided the country – states like

Maryland where reproductive health rights are protected, and anti-abortion states who are now considering legislation in an attempt to extend the effect of their laws outside their own borders, including criminalizing abortion services provided in other states. It is vitally important to those who provide, support, or access reproductive healthcare in Maryland that we provide the highest possible guardrails for their safety, privacy, and liberty.

Letter of Support with Amendment_SB786_02_27_2023.

Uploaded by: Nicole Sweeney

Position: FWA



February 27, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen Street
Annapolis, MD 21401

Dear Madam Chair Griffith –

On behalf of Chesapeake Regional Information System for our Patients (CRISP), the designated health information exchange (HIE) and health data utility (HDU) for Maryland, I am writing to express our concern for SB786 *Health – Reproductive Health Services – Protected Information and Insurance Requirements*. Although we are supportive of the intent of the bill, we believe that the bill should be re-written to ensure clarity and flexibility for its implementation to be successful.

From a technological perspective, at this time, it is not feasible to block, segment, or filter data based on a general category of “reproductive health services.” In our experience, unless certain medical codes or diagnoses are proactively identified as being a part of protected health data, entities cannot filter-out “reproductive health services” from the remainder of the health records. As a result, as written, this bill would most likely be implemented by blocking *entire* records at the patient-level or at the department level (e.g., all information from obstetrics departments), meaning that patients’ records that include any type of “reproductive health services” would not be shared when entities exchange data for the allowable purposes under state and federal laws.

Therefore, we encourage the Senate to amend the bill to include specific medical or diagnosis codes that should be filtered from a record. To ensure flexibility, we recommend that the legislation allow for the list of codes to be updated through a regulatory or sub-regulatory process. Attached, we submit our suggested amendments.

As a strong proponent of patient consent, privacy, and shared decision-making, CRISP supports the overall intent of this bill; however, to ensure technological implementation that also allows other types of health data to flow as allowed by state and federal law, we encourage the Committee to take into consideration our proposed amendments.



CRISP

Thank you for your consideration and the opportunity to express our concerns regarding the current language in SB786.

Best,

Nichole Ellis Sweeney, JD
General Counsel and Chief Privacy Officer
CRISP

ATTACHMENT
PROPOSED AMENDMENT TO SB786

*HEALTH – REPRODUCTIVE HEALTH SERVICES – PROTECTED INFORMATION AND INSURANCE
REQUIREMENTS*

SENATE BILL 786

J1, J5

3lr2403
CF HB 812

By: **Senator Hettleman**

Introduced and read first time: February 6, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health – Reproductive Health Services – Protected Information and Insurance**
3 **Requirements**

4 FOR the purpose of regulating the disclosure of certain information related to
5 legally protected health care by custodians of public records, health care providers,
6 health information exchanges, and dispensers; repealing a provision of law
7 authorizing a custodian to allow inspection of the part of a public record that gives
8 the home address of a licensee under certain circumstances; requiring that the
9 regulations adopted by the Maryland Health Care Commission regarding clinical
10 information to be exchanged through the State–designated exchange restrict data of
11 patients who have obtained legally protected health care; altering the purpose of the
12 Maryland Health Care Commission to include the establishment of policies and
13 standards that protect the confidentiality of certain health care information;
14 clarifying that certain insurance requirements regarding abortion care services
15 apply notwithstanding a certain restriction; and generally relating to health
16 information and reproductive health services.

17 BY repealing and reenacting, with amendments,
18 Article – General Provisions
19 Section 4–333
20 Annotated Code of Maryland
21 (2019 Replacement Volume and 2022 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Health – General
24 Section 4–301, 4–302.3, 4–305, 4–309, 19–103, and 19–145
25 Annotated Code of Maryland
26 (2019 Replacement Volume and 2022 Supplement)

27 BY adding to
28 Article – Health – General
Section 4–302.5

1 Annotated Code of Maryland
2 (2019 Replacement Volume and 2022 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Insurance
5 Section 15–857
6 Annotated Code of Maryland
7 (2017 Replacement Volume and 2022 Supplement)

8 BY repealing and reenacting, without amendments,
9 Article – Insurance
10 Section 31–116(a)
11 Annotated Code of Maryland
12 (2017 Replacement Volume and 2022 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article – General Provisions**

17 4–333.

18 (a) Subject to subsections (b) through (d) of this section, a custodian shall deny
19 inspection of the part of a public record that:

20 (1) contains information about the licensing of an individual in an
21 occupation or a profession;

22 (2) CONTAINS THE NAME OF AN INDIVIDUAL OR OTHER IDENTIFYING
23 INFORMATION RELATED TO AN AMBULATORY SURGERY CENTER LICENSED UNDER §
24 19–3B–01 OF THE HEALTH – GENERAL ARTICLE OR A SURGICAL ABORTION
25 FACILITY LICENSED UNDER § 20–209 OF THE HEALTH – GENERAL ARTICLE; OR

26 (3) RELATES TO AN INVESTIGATION OF A LICENSEE OR CERTIFICATE
27 HOLDER REGARDING THE PROVISION OF LEGALLY PROTECTED HEALTH CARE, AS
28 DEFINED IN § 4–301 OF THE HEALTH – GENERAL ARTICLE, PENDING A FINAL
29 ORDER.

30 (b) A custodian shall allow inspection of the part of a public record that gives:

31 (1) the name of the licensee;

32 (2) the business address of the licensee [or, if the business address is not
1 available, the home address of the licensee after the custodian redacts any information that
2 identifies the location as the home address of an individual with a disability as defined in
§ 20–701 of the State Government Article];

3 (3) the business telephone number of the licensee;

4 (4) the educational and occupational background of the licensee;

5 (5) the professional qualifications of the licensee;

6 (6) any orders and findings that result from formal disciplinary actions;
7 and

8 (7) any evidence that has been provided to the custodian to meet the
9 requirements of a statute as to financial responsibility.

10 (c) A custodian may allow inspection of other information about a licensee if:

11 (1) the custodian finds a compelling public purpose; and

12 (2) the rules or regulations of the official custodian allow the inspection.

13 (d) Except as otherwise provided by this section or other law, a custodian shall
14 allow inspection by the person in interest.

15 (e) A custodian who sells lists of licensees shall omit from the lists the name of
16 any licensee, on written request of the licensee.

17 **Article – Health – General**

18 4–301.

19 (a) In this subtitle the following words have the meanings indicated.

20 (b) “Common ownership” means ownership of a health care entity:

21 (1) By two or more health care providers;

22 (2) By two or more health care providers employed by a mutual employer
23 for a wage, salary, fee, or payment to perform work for the employer;

24 (3) By health care organizations operating as an organized health care
25 arrangement, as defined in 45 C.F.R. § 160.103;

26 (4) By a health care entity or health care entities that possess an ownership
27 or equity interest of 5% or more in another health care entity; or

- (5) By affiliated providers operating under the same trade name.

1 (c) "Directory information" means information concerning the presence and
2 general health condition of a patient who has been admitted to a health care facility or who
3 is currently receiving emergency health care in a health care facility.

4 (d) "Disclose" or "disclosure" means the transmission or communication of
5 information in a medical record, including an acknowledgment that a medical record on a
6 particular patient or recipient exists.

7 (e) "Emergency" means a situation when, in the professional opinion of the health
8 care provider, a clear and significant risk of death or imminent serious injury or harm to a
9 patient or recipient exists.

10 (f) "General health condition" means the health status of a patient described in
11 terms of "critical", "poor", "fair", "good", "excellent", or terms denoting similar conditions.

12 (g) "Health care" means any care, treatment, or procedure by a health care
13 provider:

14 (1) To diagnose, evaluate, rehabilitate, manage, treat, or maintain the
15 physical or mental condition of a patient or recipient; or

16 (2) That affects the structure or any function of the human body.

17 (h) (1) "Health care provider" means:

18 (i) A person who is licensed, certified, or otherwise authorized under
19 the Health Occupations Article or § 13–516 of the Education Article to provide health care
20 in the ordinary course of business or practice of a profession or in an approved education or
21 training program; or

22 (ii) A facility where health care is provided to patients or recipients,
23 including a facility as defined in § 10–101(g) of this article, a hospital as defined in §
24 19–301 of this article, a related institution as defined in § 19–301 of this article, a health
25 maintenance organization as defined in § 19–701(g) of this article, an outpatient clinic, a
26 medical laboratory, a comprehensive crisis response center, a crisis stabilization center,
27 and a crisis treatment center established under § 7.5–207 of this article.

28 (2) "Health care provider" includes the agents, employees, officers, and
29 directors of a facility and the agents and employees of a health care provider.

30 (i) (1) "Health information exchange" means:

31 (i) An individual or entity that determines, controls, or has the
32 discretion to administer any requirement, policy, or agreement that allows, enables, or
33 requires the use of any technology or services for access, exchange, or use of electronic
34 protected health care information:

1 1. Among more than two unaffiliated individuals or entities
2 that are enabled to exchange electronic protected health information with each other; and

3 2. That is for a treatment, payment, or health care
4 operations purpose, as those terms are defined in 45 C.F.R. § 164.501, regardless of whether
5 the individuals or entities are subject to the requirements of 45 C.F.R. parts 160 and 164;
6 or

7 (ii) A health information technology developer of certified health
8 information technology that develops or offers health information technology, as that term
9 is defined in 42 U.S.C. 300jj(5), and has one or more Health Information Technology
10 Modules certified under a program for the voluntary certification of health information
11 technology that is kept or recognized by the National Coordinator in accordance with 42
12 U.S.C. 300jj–11(c)(5).

13 (2) “Health information exchange” does not include:

14 (i) An entity composed of health care providers under common
15 ownership if the organizational and technical processes the entity provides or governs are
16 for health care treatment, payment, or health care operations purposes, as those terms are
17 defined in 45 C.F.R. § 164.501;

18 (ii) A carrier, as defined in § 15–1301 of the Insurance Article if the
19 organizational and technical processes the carrier provides or governs are for health care
20 treatment, payment, or health care operations purposes, as those terms are defined in 45
21 C.F.R. § 164.501;

22 (iii) An administrator, as defined in § 8–301 of the Insurance Article,
23 if the organizational and technical processes the administrator provides or governs are for
24 health care treatment, payment, or health care operations purposes, as those terms are
25 defined in 45 C.F.R. § 164.501;

26 (iv) A health care provider, as defined in subsection (h) of this section,
27 if the organizational and technical processes the health care provider provides or governs
28 are for health care treatment, payment, or health care operations purposes, as those terms
29 are defined in 45 C.F.R. § 164.501;

30 (v) A carrier’s business associate, as defined in 45 C.F.R. § 160.103,
31 if the organizational and technical processes provided or governed by the business associate
32 are transactions, as defined in 45 C.F.R. § 160.103; or

33 (vi) A carrier exchanging information as required by 45 C.F.R. §
34 156.221.

35 (j) **“LEGALLY PROTECTED HEALTH CARE” MEANS ALL**
36 **HEALTH SERVICES, MEDICATIONS, AND SUPPLIES LISTED BY DIAGNOSIS CODE BY THE**

PROTECTED HEALTH COMMISSION.

1 **(K)** (1) “Medical record” means any oral, written, or other transmission in any
2 form or medium of information that:

- 3 (i) Is entered in the record of a patient or recipient;
- 4 (ii) Identifies or can readily be associated with the identity of a
5 patient or recipient; and
- 6 (iii) Relates to the health care of the patient or recipient.

7 (2) “Medical record” includes any:

- 8 (i) Documentation of disclosures of a medical record to any person
9 who is not an employee, agent, or consultant of the health care provider;
- 10 (ii) File or record maintained under § 12–403(c)(13) of the Health
11 Occupations Article by a pharmacy of a prescription order for drugs, medicines, or devices
12 that identifies or may be readily associated with the identity of a patient;
- 13 (iii) Documentation of an examination of a patient regardless of who:
- 14 1. Requested the examination; or
- 15 2. Is making payment for the examination; and
- 16 (iv) File or record received from another health care provider that:
- 17 1. Relates to the health care of a patient or recipient received
18 from that health care provider; and
- 22 2. Identifies or can readily be associated with the identity of
23 the patient or recipient.

24 **[(k)] (L)** (1) “Mental health services” means health care rendered to a
25 recipient primarily in connection with the diagnosis, evaluation, treatment, case
26 management, or rehabilitation of any mental disorder.

27 (2) For acute general hospital services, mental health services are
28 considered to be the primarily rendered service only if service is provided pursuant to Title
29 10, Subtitle 6 of this article or Title 3 of the Criminal Procedure Article.

1 **[(l)] (M)** “Patient” means a person who receives health care and on whom a
2 medical record is maintained.

3 **[(m)] (N)** “Person in interest” means:

4 (1) An adult on whom a health care provider maintains a medical record;

5 (2) A person authorized to consent to health care for an adult consistent
6 with the authority granted;

7 (3) A duly appointed personal representative of a deceased person;

8 (4) (i) A minor, if the medical record concerns treatment to which the
9 minor has the right to consent and has consented under Title 20, Subtitle 1 of this article;
10 or

11 (ii) A parent, guardian, custodian, or a representative of the minor
12 designated by a court, in the discretion of the attending physician who provided the
13 treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

14 (5) If item (4) of this subsection does not apply to a minor:

15 (i) A parent of the minor, except if the parent’s authority to consent
16 to health care for the minor has been specifically limited by a court order or a valid
17 separation agreement entered into by the parents of the minor; or

18 (ii) A person authorized to consent to health care for the minor
19 consistent with the authority granted; or

20 (6) An attorney appointed in writing by a person listed in item (1), (2), (3),
21 (4), or (5) of this subsection.

22 **[(n)] (O)** “Primary provider of mental health services” means the designated
23 mental health services provider who:

24 (1) Has primary responsibility for the development of the mental health
25 treatment plan for the recipient; and

26 (2) Is actively involved in providing that treatment.

27 **[(o)] (P)** “**PROTECTED HEALTH COMMISSION**” IS A COMMISSION COMPRISED OF THE
FOLLOWING INDIVIDUALS:

30 **(1) THE EXECUTIVE DIRECTOR OF THE MARYLAND HEALTH CARE COMMISSION;**

31 **(2) THE DEPUTY SECRETARY FOR PUBLIC HEALTH, OR THE DEPUTY SECRETARY’S**
DESIGNEE;

32 **(3) THE DIRECTOR OF THE OFFICE OF MINORITY HEALTH AND HEALTH DISPARITIES,**

OR THE DIRECTOR'S DESIGNEE;

33 **(4) THE FOLLOWING MEMBERS, APPOINTED BY THE GOVERNOR:**

34 **(A) A STATE RESIDENT WITH CREDENTIALS BY THE AMERICAN COLLEGE OF**
OBSTETRICIANS AND GYNECOLOGISTS:

35 **(B) A STATE RESIDENT WITH EXPERTISE IN INTERSTATE HEALTH DATA EXCHANGE;**

AND

36 **(C) A CONSUMER HEALTH ADVOCATE.**

1 **(Q) "Protected health information" means all individually identifiable**
2 **health information held or transmitted by a covered entity or its business associate**
3 **protected under the U.S. Department of Health and Human Services Privacy Rule.**

1 **(R) “PROTECTED MEDICATION RECORD” MEANS ANY IDENTIFYING**
2 **INFORMATION ABOUT THE PATIENT OR PRESCRIBER OF MEDICATION USED IN A**
3 **MEDICAL ABORTION IF THE MEDICATION:**

4 **(1) HAS BEEN APPROVED BY THE FEDERAL FOOD AND DRUG**
5 **ADMINISTRATION FOR MEDICAL ABORTION; OR**

6 **(2) IS RECOGNIZED BY THE SECRETARY.**

7 **(S) (1) “PROTECTED SERVICES RECORD” MEANS ANY IDENTIFYING**
8 **INFORMATION CONTAINED IN A PATIENT’S MEDICAL RECORD RELATING TO THE**
9 **PROVISION OF LEGALLY PROTECTED HEALTH CARE.**

10 **(2) “PROTECTED SERVICES RECORD” DOES NOT INCLUDE A**
11 **PROTECTED MEDICATION RECORD.**

12 **[(p)] (T) “Recipient” means a person who has applied for, for whom an**
13 **application has been submitted, or who has received mental health services.**

14 **[(q)] (U) “State–designated health information exchange” means the health**
15 **information exchange designated by the Maryland Health Care Commission and the**
16 **Health Services Cost Review Commission under § 19–143 of this article.**

17 4–302.3.

18 (a) (1) In this section the following words have the meanings indicated.

19 (2) “Electronic health care transactions” means health care transactions
20 that have been approved by a nationally recognized health care standards development
21 organization to support health care informatics, information exchange, systems
22 integration, and other health care applications.

23 (3) “Electronic health network” means an entity:

24 (i) Involved in the exchange of electronic health care transactions
25 between a payor, health care provider, vendor, and any other entity; and

26 (ii) Certified by the Maryland Health Care Commission.

27 (4) “Nursing home” has the meaning stated in § 19–1401 of this article.

28 (5) “Standard request” means a request for clinical information from a
29 health information exchange that conforms to the major standards version specified by the
30 Office of the National Coordinator for Health Information Technology.

1 (b) This section applies to:

2 (1) Except for the State–designated health information exchange, a health
3 information exchange operating in the State; and

4 (2) A payor that:

5 (i) Holds a valid certificate of authority issued by the Maryland
6 Insurance Commissioner; and

7 (ii) Acts as, operates, or owns a health information exchange.

8 (c) An entity to which this section applies shall connect to the State–designated
9 health information exchange in a manner consistent with applicable federal and State
10 privacy laws.

11 (d) When a standard request for clinical information is received through the
12 State–designated health information exchange, an entity to which this section applies
13 shall:

14 (1) Respond to the request to the extent authorized under federal and State
15 privacy laws; and

16 (2) Transmit the response to the State–designated health information
17 exchange in the manner specified in the regulations adopted under subsection (g) of this
18 section.

19 (e) A consent from a patient to release clinical information to a provider obtained
20 by an entity to which this section applies shall apply to information transmitted through
21 the State–designated health information exchange or by other means.

22 (f) (1) On request of the Department, a nursing home shall submit
23 electronically clinical information to the State–designated health information exchange to
24 facilitate the objectives stated in paragraph (3) of this subsection.

25 (2) In accordance with State and federal law and to facilitate the objectives
26 stated in paragraph (3) of this subsection, the State–designated health information
27 exchange may provide the information submitted under paragraph (1) of this subsection to:

28 (i) A health care provider;

29 (ii) An authorized health information exchange user;

30 (iii) A health information exchange authorized by the Maryland
31 Health Care Commission;

32 (iv) A federal official; and

1 (v) A State official.

2 (3) (i) If approved by the Maryland Health Care Commission, the
3 information submitted under paragraph (1) of this subsection may be combined with other
4 data maintained by the State–designated health information exchange to facilitate:

- 5 1. A State health improvement program;
- 6 2. Mitigation of a public health emergency; and
- 7 3. Improvement of patient safety.

8 (ii) The information submitted by a nursing home under paragraph
9 (1) of this subsection may be used only to facilitate the objectives stated in subparagraph
10 (i) of this paragraph and may not be used for any other purpose, including licensing and
11 certification.

12 (g) (1) The State–designated health information exchange shall:

13 (i) Participate in the advisory committee established under §
14 13–4306(a)(1) of this article; and

15 (ii) Maintain a data set for the Maryland Commission on Health
16 Equity and provide data from the data set consistent with the parameters defined by the
17 advisory committee.

18 (2) If approved by the Maryland Commission on Health Equity, the
19 State–designated health information exchange may use the data set maintained under
20 paragraph (1) of this subsection to improve health outcomes for patients.

21 (h) (1) An electronic health network shall provide electronic health care
22 transactions to the State–designated health information exchange for the following public
23 health and clinical purposes:

- 24 (i) A State health improvement program;
- 25 (ii) Mitigation of a public health emergency; and
- 26 (iii) Improvement of patient safety.

27 (2) An electronic health network may not charge a fee to a health care
28 provider, health care payor, or to the State–designated health information exchange for
29 providing the information as required under paragraph (1) of this subsection.

1 (3) The State–designated health information exchange shall develop and
2 implement policies and procedures to implement paragraph (1) of this subsection that are
3 consistent with regulations adopted by the Maryland Health Care Commission.

4 (i) The Maryland Health Care Commission:

5 (1) Shall adopt regulations for implementing the connectivity to the
6 State–designated health information exchange required under this section; and

7 (2) Shall seek, through any regulations adopted under item (1) of this
8 subsection, to promote technology standards and formats that conform to those specified by
9 the Office of the National Coordinator for Health Information Technology.

10 (j) (1) The Maryland Health Care Commission shall adopt regulations that:

11 (i) Specify the scope of clinical information to be exchanged or sent
12 under this section; and

13 (ii) Provide for a uniform, gradual implementation of the exchange
14 of clinical information under this section.

15 (2) Any regulations adopted under paragraph (1) of this subsection shall
16 limit the scope of the clinical information to purposes that:

17 (i) Improve treatment, including improved access to clinical records
18 by treating clinicians;

19 (ii) Promote uses of the State–designated health information
20 exchange important to public health; or

21 (iii) The protection of the electronic health information of a person in
22 interest who has opted out of having electronic health information shared or disclosed by a
23 health information exchange.

24 (3) Regulations adopted under paragraph (1) of this subsection shall:

25 (i) Limit redisclosure of financial information, including billed or
26 paid amounts available in electronic claims transactions;

27 (ii) Restrict data of patients who have opted out of records sharing
28 through the State–designated health information exchange or a health information
29 exchange authorized by the Maryland Health Care Commission; **[and]**

30 (iii) Restrict data from health care providers that possess sensitive
31 health care information; **AND**

1 **(IV) RESTRICT DATA OF PATIENTS WHO HAVE OBTAINED**
2 **LEGALLY PROTECTED HEALTH CARE.**

3 (k) This section does not:

4 (1) Require an entity to which this section applies to collect clinical
5 information or obtain any authorizations, not otherwise required by federal or State law,
6 relating to information to be sent or received through the State–designated health
7 information exchange;

8 (2) Prohibit an entity to which this section applies from directly receiving
9 or sending information to providers or subscribers outside of the State–designated health
10 information exchange; or

11 (3) Prohibit an entity to which this section applies from connecting and
12 interoperating with the State–designated health information exchange in a manner and
13 scope beyond that required under this section.

14 **4–302.5.**

15 **(A) A HEALTH INFORMATION EXCHANGE MAY NOT DISCLOSE A PROTECTED**
16 **SERVICES RECORD OR PROTECTED MEDICATION RECORD TO A TREATING**
17 **PROVIDER, BUSINESS ENTITY, OR HEALTH INFORMATION EXCHANGE LOCATED**
18 **OUTSIDE THE STATE UNLESS THE DISCLOSURE IS:**

19 **(1) FOR THE ADJUDICATION OF CLAIMS; OR**

20 **(2) TO A SPECIFIC TREATING PROVIDER AT THE WRITTEN REQUEST**
21 **OF AND WITH THE CONSENT OF:**

22 **(i) A PATIENT, FOR SERVICES FOR WHICH THE PATIENT CAN**
23 **PROVIDE CONSENT UNDER STATE LAW; OR**

24 **(ii) A PARENT OR GUARDIAN OF A PATIENT, FOR SERVICES FOR**
25 **WHICH THE PARENT OR GUARDIAN CAN PROVIDE CONSENT UNDER STATE LAW.**

26 **(B) (1) A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY**
27 **OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT TO EXCEED**
28 **\$10,000 PER DAY.**

29 **(2) IN DETERMINING THE FINE TO BE IMPOSED UNDER PARAGRAPH**
30 **(1) OF THIS SUBSECTION, THE FOLLOWING FACTORS SHALL BE CONSIDERED:**

31 **(i) THE EXTENT OF ACTUAL OR POTENTIAL PUBLIC HARM**
32 **CAUSED BY THE VIOLATION;**

1 (II) THE COST OF INVESTIGATING THE VIOLATION; AND

2 (III) WHETHER THE PERSON PREVIOUSLY VIOLATED THIS
3 SECTION.

4 (C) THE SECRETARY SHALL:

5 (1) ADOPT REGULATIONS THAT IDENTIFY THE MEDICATIONS AND
RELATED CODES TO BE CONSIDERED A MEDICATION USED IN A MEDICAL
ABORTION FOR PURPOSES OF
6 DETERMINING IF A RECORD IS A PROTECTED MEDICATION RECORD; AND

7 (2) FOLLOW GUIDELINES OF THE AMERICAN COLLEGE OF
8 OBSTETRICIANS AND GYNECOLOGISTS, THE WORLD HEALTH ORGANIZATION, AND
9 THE SOCIETY OF FAMILY PLANNING IN DETERMINING WHICH MEDICATIONS TO
10 IDENTIFY IN THE REGULATIONS ADOPTED UNDER ITEM (1) OF THIS SUBSECTION.

11

(D) A PROTECTED HEALTH COMMISSION IS CREATED.

(1) THE PURPOSE OF THIS COMMISSION IS TO PRODUCE A SENSITIVE DIAGNOSIS CODE LIST FOR PURPOSES OF DEFINING "LEGALLY PROTECTED HEALTH CARE" UNDER THIS TITLE.

(2) WITHIN 60 DAYS OF THE ADOPTION OF THIS SUBTITLE THE SECRETARY WILL RELEASE AN INITIAL DIAGNOSIS CODE LIST DEFINING "LEGALLY PROTECTED HEALTH CARE" UNDER THIS TITLE.

(3) THE COMMISSION MUST MEET AT LEAST THREE TIMES PER YEAR TO UPDATE THE SENSITIVE DIAGNOSIS CODE LIST.

12 4-305.

13 (a) This section may not be construed to impose an obligation on a health care
14 provider to disclose a medical record.

15 (b) A health care provider may disclose a medical record without the
16 authorization of a person in interest:

17 (1) (i) To the provider's authorized employees, agents, medical staff,
18 medical students, or consultants for the sole purpose of offering, providing, evaluating, or
19 seeking payment for health care to patients or recipients by the provider;

20 (ii) To the provider's legal counsel regarding only the information in
21 the medical record that relates to the subject matter of the representation; or

22 (iii) To any provider's insurer or legal counsel, or the authorized
23 employees or agents of a provider's insurer or legal counsel, for the sole purpose of handling
24 a potential or actual claim against any provider if the medical record is maintained on the
25 claimant and relates to the subject matter of the claim;

26 (2) If the person given access to the medical record signs an
27 acknowledgment of the duty under this Act not to redisclose any patient identifying
28 information, to a person for:

29 (i) Educational or research purposes, subject to the applicable
30 requirements of an institutional review board;

- 1 (ii) Evaluation and management of health care delivery systems;
2 [or]
3 (iii) Accreditation of a facility by professional standard setting
4 entities; **OR**

5 (IV) AN OUT-OF-STATE INVESTIGATION OF LEGALLY
6 PROTECTED HEALTH CARE PROVIDED IN THE STATE;

7 (3) Subject to the additional limitations for a medical record developed
8 primarily in connection with the provision of mental health services in § 4-307 of this
9 subtitle, to a government agency performing its lawful duties as authorized by an act of the
10 Maryland General Assembly or the United States Congress;

11 (4) Subject to the additional limitations for a medical record developed
12 primarily in connection with the provision of mental health services in § 4-307 of this
13 subtitle, to another health care provider for the sole purpose of treating the patient or
14 recipient on whom the medical record is kept;

15 (5) If a claim has been or may be filed by, or with the authorization of a
16 patient or recipient on behalf of the patient or recipient, for covered insureds, covered
17 beneficiaries, or enrolled recipients only, to third party payors and their agents, if the
18 payors or agents have met the applicable provisions of §§ 15-10B-01 to 15-10B-18 of the
19 Insurance Article, including nonprofit health service plans, health maintenance
20 organizations, fiscal intermediaries and carriers, the Department and its agents, the
21 United States Department of Health and Human Services and its agents, or any other
22 person obligated by contract or law to pay for the health care rendered for the sole purposes
23 of:

- 24 (i) Submitting a bill to the third party payor;
- 25 (ii) Reasonable prospective, concurrent, or retrospective utilization
26 review or predetermination of benefit coverage;
- 27 (iii) Review, audit, and investigation of a specific claim for payment
28 of benefits; or
- 29 (iv) Coordinating benefit payments in accordance with the provisions
30 of the Insurance Article under more than one sickness and accident, dental, or hospital and
31 medical insurance policy;

32 (6) If a health care provider makes a professional determination that an
33 immediate disclosure is necessary, to provide for the emergency health care needs of a
34 patient or recipient;

1 (7) To immediate family members of the patient or any other individual
2 with whom the patient is known to have a close personal relationship, provided that:

3 (i) The disclosure is limited to information that is directly relevant
4 to the individual's involvement in the patient's health care; and

5 (ii) 1. If the patient is present or otherwise available before the
6 disclosure and has the capacity to make health care decisions:

7 A. The patient has been provided with an opportunity to
8 object to the disclosure and the patient has not objected; or

9 B. The health care provider reasonably infers from the
10 circumstances that, based on the health care provider's professional judgment, the patient
11 does not object to the disclosure; or

12 2. If the patient is not present or otherwise available before
13 the disclosure is made, or providing the patient with an opportunity to object to the
14 disclosure is not practicable because of the patient's incapacity or need for emergency care
15 or treatment, the health care provider determines, based on the health care provider's
16 professional judgment, that the disclosure is in the best interests of the patient;

17 (8) To an appropriate organ, tissue, or eye recovery agency under the
18 restrictions of § 5–408 of this article for a patient whose organs and tissues may be donated
19 for the purpose of evaluating the patient for possible organ and tissue donation;

20 (9) To the Department or an organ, tissue, or eye recovery agency
21 designated by the Department for the purpose of conducting death record reviews under §
22 19–310 of this article;

23 (10) Subject to subsection (c) of this section, if the purpose of the medical
24 record disclosure is for the coordination of services and record retention within the
25 Montgomery County Department of Health and Human Services; [or]

26 (11) To a carrier, as defined in § 15–1301 of the Insurance Article, or an
27 accountable care organization, as defined in § 3022 of the Patient Protection and Affordable
28 Care Act, for the sole purposes of enhancing or coordinating patient care, provided that:

29 (i) A disclosure under this item is subject to the additional
30 limitations in § 4–307 of this subtitle on disclosure of a medical record developed primarily
31 in connection with the provision of mental health services;

32 (ii) A medical record may be disclosed only in accordance with the
33 federal Health Insurance Portability and Accountability Act of 1996, any regulations
34 adopted under the Act, and any other applicable federal privacy laws, and disclosures under
35 this item may not be made in violation of the prohibited uses or disclosures under the
36 federal Health Insurance Portability and Accountability Act of 1996;

1 (iii) A disclosure under this item may not be used for underwriting or
2 utilization review purposes;

3 (iv) A health care provider that discloses a medical record in
4 accordance with this item shall provide a notice consistent with the requirements of 45
5 C.F.R. § 164.520 specifying the information to be shared, with whom it will be shared, and
6 the specific types of uses and disclosures that the health care provider may make in
7 accordance with this item;

8 (v) The notice required by item (iv) of this item shall include an
9 opportunity for the individual to opt out of the sharing of the individual's medical record
10 with a carrier or an accountable care organization for the purposes identified in this item;
11 [and]

12 (vi) If a health care provider discloses medical information or medical
13 data to a carrier or accountable care organization through an infrastructure that provides
14 organizational and technical capabilities for the exchange of protected health information
15 among entities not under common ownership, the health care providers are subject to the
16 requirements of §§ 4-302.2 and 4-302.3 of this subtitle; AND

17 **(VII) IF THE DISCLOSURE IS OF A PROTECTED SERVICES RECORD**
18 **OR A PROTECTED MEDICATION RECORD, THE DISCLOSURE IS SUBJECT TO THE**
19 **REQUIREMENTS FOR A PROTECTED SERVICES RECORD AND PROTECTED**
20 **MEDICATION RECORD UNDER § 4-302.5 OF THIS SUBTITLE; OR**

21 **(12) SUBJECT TO THE REQUIREMENTS FOR A PROTECTED SERVICES**
22 **RECORD AND PROTECTED MEDICATION RECORD UNDER § 4-302.5 OF THIS**
23 **SUBTITLE, TO ANOTHER HEALTH CARE PROVIDER FOR THE SOLE PURPOSE OF**
24 **TREATING THE PATIENT FOR WHOM THE MEDICAL RECORD IS KEPT.**

25 (c) (1) The disclosure of medical records under subsection (b)(10) of this
26 section to a person that is not employed by or under contract with the Montgomery County
27 Department of Health and Human Services shall be conducted in accordance with this
28 subtitle.

29 (2) Under provisions of State law regarding confidentiality, the
30 Montgomery County Department of Health and Human Services shall be considered to be
31 one agency.

32 4-309.

33 (a) **THIS SECTION DOES NOT APPLY TO A VIOLATION OF § 4-302.5 OF THIS**
34 **SUBTITLE.**

1 **(B)** If a health care provider knowingly refuses to disclose a medical record within
2 a reasonable time but no more than 21 working days after the date a person in interest
3 requests the disclosure, the health care provider is liable for actual damages.

4 **[(b)] (C)** A health care provider may not refuse to disclose a medical record on
5 the request of a person in interest because of the failure of the person in interest to pay for
6 health care rendered by the health care provider.

7 **[(c)] (D)** A health care provider or any other person is in violation of this subtitle
8 if the health care provider or any other person:

9 (1) Requests or obtains a medical record under false pretenses or through
10 deception; or

11 (2) Discloses a medical record in violation of this subtitle.

12 **[(d)] (E)** Except as otherwise provided in subsection **[(e)] (F)** of this section, a
13 health care provider or any other person, including an officer or employee of a governmental
14 unit, who knowingly and willfully violates any provision of this subtitle is guilty of a
15 misdemeanor and on conviction is subject to a fine not exceeding \$1,000 for the first offense
16 and not exceeding \$5,000 for each subsequent conviction for a violation of any provision of
17 this subtitle.

18 **[(e)] (F)** (1) A health care provider or any other person, including an officer
19 or employee of a governmental unit, who knowingly and willfully requests or obtains a
20 medical record under false pretenses or through deception or knowingly and willfully
21 discloses a medical record in violation of this subtitle is guilty of a misdemeanor and on
22 conviction is subject to the following penalties:

23 (i) A fine not exceeding \$50,000, imprisonment for not more than 1
24 year, or both;

25 (ii) If the offense is committed under false pretenses, a fine not
26 exceeding \$100,000, imprisonment for not more than 5 years, or both; and

27 (iii) If the offense is committed with intent to sell, transfer, or use
28 individually identifiable health information for commercial advantage, personal gain, or
29 malicious harm, a fine not exceeding \$250,000, imprisonment for not more than 10 years,
30 or both.

31 (2) This subsection does not apply to an officer or employee of a
32 governmental unit that is conducting a criminal investigation.

33 **[(f)] (G)** A health care provider or any other person who knowingly violates any
34 provision of this subtitle is liable for actual damages.

1 19–103.

2 (a) There is a Maryland Health Care Commission.

3 (b) The Commission is an independent commission that functions in the
4 Department.

5 (c) The purpose of the Commission is to:

6 (1) Develop health care cost containment strategies to help provide access
7 to appropriate quality health care services for all Marylanders, after consulting with the
8 Health Services Cost Review Commission;

9 (2) Promote the development of a health regulatory system that provides,
10 for all Marylanders, financial and geographic access to quality health care services at a
11 reasonable cost by:

12 (i) Advocating policies and systems to promote the efficient delivery
13 of and improved access to health care services; and

14 (ii) Enhancing the strengths of the current health care service
15 delivery and regulatory system;

16 (3) Facilitate the public disclosure of medical claims data for the
17 development of public policy;

18 (4) Establish and develop a medical care database on health care services
19 rendered by health care practitioners;

20 (5) Encourage the development of clinical resource management systems
21 to permit the comparison of costs between various treatment settings and the availability
22 of information to consumers, providers, and purchasers of health care services;

23 (6) In accordance with Title 15, Subtitle 12 of the Insurance Article,
24 develop a uniform set of effective benefits to be included in the Comprehensive Standard
25 Health Benefit Plan;

26 (7) Analyze the medical care database and provide, in aggregate form, an
27 annual report on the variations in costs associated with health care practitioners;

28 (8) Ensure utilization of the medical care database as a primary means to
29 compile data and information and annually report on trends and variances regarding fees
30 for service, cost of care, regional and national comparisons, and indications of malpractice
31 situations;

32 (9) Establish standards for the operation and licensing of medical care
33 electronic claims clearinghouses in Maryland;

1 (10) Reduce the costs of claims submission and the administration of claims
2 for health care practitioners and payors;

3 (11) Determine the cost of mandated health insurance services in the State
4 in accordance with Title 15, Subtitle 15 of the Insurance Article;

5 (12) Promote the availability of information to consumers on charges by
6 practitioners and reimbursements from payors; [and]

7 (13) Oversee and administer the Maryland Trauma Physician Services
8 Fund in conjunction with the Health Services Cost Review Commission; AND

9 **(14) ESTABLISH POLICIES AND STANDARDS TO PROTECT THE**
10 **CONFIDENTIALITY OF PATIENT AND HEALTH CARE PRACTITIONER INFORMATION**
11 **RELATED TO LEGALLY PROTECTED HEALTH CARE AS DEFINED IN § 4-301 OF THIS**
12 **ARTICLE.**

13 (d) The Commission shall coordinate the exercise of its functions with the
14 Department and the Health Services Cost Review Commission to ensure an integrated,
15 effective health care policy for the State.

16 19–145.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) “Dispenser” means a person authorized by law to dispense, as defined
19 in § 12–101 of the Health Occupations Article, a prescription drug to a patient or the
20 patient’s agent in the State.

21 (3) “Noncontrolled prescription drug” means a prescription drug, as
22 defined in § 21–201 of this article, that is not a controlled dangerous substance designated
23 under Title 5, Subtitle 4 of the Criminal Law Article.

24 (4) “State designated exchange” has the meaning stated in § 4–302.3 of this
25 article.

26 (b) The State designated exchange shall operate as a health data utility for the
27 State.

28 (c) The purposes of the health data utility include:

29 (1) The collection, aggregation, and analysis of clinical information, public
30 health data, and health administrative and operations data to assist the Department, local
31 health departments, the Commission, and the Health Services Cost Review Commission in

32 the evaluation of public health interventions and health equity;

1 (2) The communication of data between public health officials and health
2 care providers to advance disease control and health equity; and

3 (3) The enhancement and acceleration of the interoperability of health
4 information throughout the State.

5 (d) [Dispensers] **EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS**
6 **SECTION, EACH DISPENSER** shall provide data to the State designated exchange.

7 **(E) (1) A DISPENSER MAY NOT SUBMIT INFORMATION RELATED TO THE**
8 **PRESCRIBING PROVIDER FOR ANY DISPENSES OF MIFEPRISTONE,**
9 **MISOPROSTOL, OR ANY MEDICATION USED FOR A MEDICAL ABORTION, AS**
10 **DETERMINED BY THE SECRETARY, TO THE STATE DESIGNATED EXCHANGE.**

11 **(2) THE SECRETARY SHALL FOLLOW GUIDELINES OF THE AMERICAN**
12 **COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, THE WORLD HEALTH**
13 **ORGANIZATION, AND THE SOCIETY OF FAMILY PLANNING IN DETERMINING THE**
14 **MEDICATIONS TO BE INCLUDED AMONG THE MEDICATIONS USED IN A MEDICAL**
15 **ABORTION ABOUT WHICH A DISPENSER MAY NOT SUBMIT INFORMATION UNDER**
16 **PARAGRAPH (1) OF THIS SUBSECTION.**

17 **[(e)] (F) (1)** The purpose of this subsection is to:

18 (i) Authorize individuals and organizations involved in the
19 treatment and care coordination of patients to access, as legally authorized, a patient's
20 medication history, including medications prescribed for the patient; and

21 (ii) Assist health care providers, care managers, the Department,
22 and local health departments to understand and promote matters of health equity and
23 treatment efficacy.

24 (2) After dispensing a noncontrolled prescription drug, a dispenser shall
25 submit prescription information to the State designated
26 exchange.

27 (3) The prescription information shall be submitted:

28 (i) By electronic means;

29 (ii) Without unduly increasing the workload and expense on a
30 dispenser;

31 (iii) In a manner that minimizes burden and duplication by being as
32 compatible as possible with existing federal standards for data submission practices,

33 including technology software of dispensers; and

1 (iv) As otherwise required by regulations adopted by the
2 Commission.

3 (4) The State designated exchange may not impose any fees or other
4 assessments on dispensers to support the operation of the exchange.

5 (5) The State designated exchange shall make prescription information
6 submitted under this subsection available for purposes of treatment and care coordination
7 of a patient.

8 **[(f)] (G)** The State designated exchange may provide data, as allowed by law, for
9 public health purposes that may include:

10 (1) Improving health equity through access to prescription medications,
11 including for the treatment of infectious disease;

12 (2) Assisting programs led by health care providers and the Department,
13 local health departments, the Commission, and the Health Services Cost Review
14 Commission to identify opportunities for quality improvement, including for stewardship
15 of antibiotic medications; and

16 (3) Conducting case investigations and related activities.

17 **[(g)] (H)** Information submitted to the State information exchange or provided
18 by the State information exchange under this section shall be submitted or provided, to the
19 extent practicable, in as near to real time as possible.

20 **[(h)] (I)** (1) The Commission, in consultation with appropriate stakeholders,
21 shall adopt regulations to carry out this section.

22 (2) The regulations shall take into account consumer perspective and
23 include:

24 (i) The specific data required to be provided under subsection (d) of
25 this section;

26 (ii) The specific prescription information required to be submitted
27 under subsection **[(e)] (F)** of this section;

28 (iii) The time frame for submitting prescription information under
29 subsection **[(e)] (F)** of this section;

30 (iv) The electronic means and manner by which prescription
31 information is to be submitted under subsection **[(e)] (F)** of this section;

1 (v) Prescription information submission requirements that align
2 with the data submission requirements on dispensers of monitored prescription drugs
3 under Title 21, Subtitle 2A of this article; and

4 (vi) Identification and necessary suppression of information related
5 to providers or medications that are determined to have significant potential to cause harm.

6 **[(i)] (J)** (1) The State designated exchange shall establish a consumer
7 advisory council to bring the perspectives of individuals and organizations with an interest
8 in protecting consumers into the delivery of services provided by the State designated
9 exchange.

10 (2) In selecting members, the State designated exchange shall consider
11 diversity of experience.

12 (3) The consumer advisory council established under paragraph (1) of this
13 subsection shall:

14 (i) Consist of a minimum of six members, including at least four
15 consumer representatives and two staff representatives, and maintain a ratio of consumer
16 representatives to nonconsumer representatives of at least two to one;

17 (ii) Identify and report consumer privacy concerns to senior
18 leadership of the State designated exchange;

19 (iii) Advise on efforts to educate consumers on data exchange policies,
20 including options for consumers to opt out of disclosure of protected health information;

21 (iv) Meet at least 3 times each year; and

22 (v) Adopt and maintain a charter to be posted online that includes
23 the purpose, members, and meeting schedule of the consumer advisory council.

24 **Article – Insurance**

25 15–857.

26 (a) (1) This section applies to:

27 (i) insurers and nonprofit health service plans that provide labor
28 and delivery coverage to individuals or groups on an expense-incurred basis under health
29 insurance policies or contracts that are issued or delivered in the State; and

30 (ii) health maintenance organizations that provide labor and
31 delivery coverage to individuals or groups under contracts that are issued or delivered in
32 the State.

1 (2) This section does not apply to:

2 (i) a multistate plan that does not provide coverage for abortions in
3 accordance with 42 U.S.C. § 18054(a)(6); or

4 (ii) a high-deductible plan, as defined in 26 U.S.C. § 223(c)(2)(C) of
5 the Internal Revenue Code, unless the Commissioner determines that abortion care is not
6 excluded from the safe harbor provisions for preventive care under § 223(c)(2)(C) of the
7 Internal Revenue Code.

8 (3) An organization that is eligible to obtain an exclusion from the coverage
9 requirements under § 15-826 of this subtitle may obtain from an entity subject to this
10 section an exclusion from the coverage and notice requirements of this section if the
11 requirements conflict with the organization's bona fide religious beliefs and practices.

12 (b) Except as provided in subsection (c) of this section **AND NOTWITHSTANDING**
13 **§ 31-116(A) OF THIS ARTICLE**, an entity subject to this section shall:

14 (1) cover abortion care services without:

15 (i) a deductible, coinsurance, copayment, or any other cost-sharing
16 requirement; and

17 (ii) restrictions that are inconsistent with the protected rights under

18 Title 20, Subtitle 2 of the Health – General Article; and

19 (2) provide information to consumers about abortion care
20 coverage using
21 the terminology “abortion care” to describe coverage.

22 (c) If the Commissioner determines that enforcement of this
23 section may
24 adversely affect the allocation of federal funds to the State, the
25 Commissioner may grant
26 an exemption to the requirements of this section to the minimum extent
27 necessary to
28 ensure the continued receipt of federal funds.

29 31–116.

30 (a) The essential health benefits required under § 1302(a) of the
31 Affordable Care
32 Act:

33 (1) shall be the benefits in the State benchmark plan,
34 selected in
35 accordance with this section; and

36 (2) notwithstanding any other benefits mandated by State law,
37 shall be the
38 benefits required in:

39 (i) subject to subsection (f) of this section, all
40 individual health
41 benefit plans and health benefit plans offered to small employers, except for
42 grandfathered
43 health plans, as defined in the Affordable Care Act, offered outside the
44 Exchange; and

45 (ii) subject to § 31–115(c) of this subtitle, all qualified
46 health plans
47 offered in the Exchange.

48 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall
49 take effect
50 October 1, 2023.

2023 Legislation - SB 786 Health Reproductive Heal

Uploaded by: Ben Steffen

Position: UNF



March 1, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB 786 – Health-Reproductive Health Services-Protected Information and Insurance Requirements – Letter of Concern

Dear Chair Griffith and Committee Members:

The Maryland Health Care Commission (“Commission”) is submitting this letter of concern on *SB 786 – Health – Reproductive Health Services – Protected Information and Insurance Requirements*. The bill seeks to implement additional privacy measures related to data on reproductive health services. A national survey (“survey”) on patient perspectives toward the privacy of their medical information found that about 75 percent of respondents are concerned about protecting the privacy of their health data and around 80 percent want to be able to opt-out of sharing some or all their health information.¹ The survey also found that patients are generally unclear about rules to protect their privacy, and have concerns about who has access to their medical information; about 59 percent of patients worry their health data could be used to discriminate against them or their family members.²

The Supreme Court’s decision on June 24, 2022, in *Dobbs v Jackson’s Women’s Health Organization*,³ eliminated federal protections for reproductive health overturning *Roe v. Wade* in 1973⁴ and *Planned Parenthood of Pennsylvania v. Case* in 1992.⁵ Arguably, the most pressing concerns for health care providers are how to minimize the adverse effects on patients and provide access to quality reproductive health care.⁶ The Commission recognizes the bill will help address racial and ethnic disparities in women’s reproductive health that have existed for decades^{7, 8} while being wary about the impact of moving too quickly to address complex privacy issues.

The bill aims to regulate the disclosure of certain information related to legally protected health care by custodians of public records, health care providers, health information exchanges (“HIEs”), and

¹ American Medical Association, “*Patient perspectives around data privacy*,” 2022. Available at: ama-assn.org/system/files/ama-patient-data-privacy-survey-results.pdf.

² American Medical Association, “*Patient perspectives around data privacy*,” 2022. Available at: ama-assn.org/system/files/ama-patient-data-privacy-survey-results.pdf.

³ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022).

⁴ *Roe v. Wade*, 410 U.S. 113 (1973).

⁵ *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

⁶ Harris LH. *Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade*. *The New England Journal of Medicine*, 2022; 386(22):2061-2064. Available at: [nejm.org/doi/10.1056/NEJMp2206246](https://doi.org/10.1056/NEJMp2206246).

⁷ Murray Horwitz ME, Pace LE, Ross-Degnan D. *Trends and Disparities in Sexual and Reproductive Health Behaviors and Service Use Among Young Adult Women (Aged 18–25 Years) in the United States, 2002–2015*. *American Journal of Public Health*, 2018; 108:S336–43. Available at: ncbi.nlm.nih.gov/pmc/articles/PMC6215367/.

⁸ Paltrow LM, Flavin J. *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*. *Journal of Health Politics, Policy, and Law*, 2013; 38:299-343. Available at: doi.org/10.1215/03616878-1966324.

dispensers. The Commission believes there is a need to understand the effects of this legislation on consumers, health care providers, HIEs, and dispensers. The bill requires the Commission to adopt regulations regarding clinical information exchanged through the State designated HIE to restrict data of patients who have obtained legally protected health care. It also alters the purpose of the Commission to include the establishment of policies and standards that protect the confidentiality of certain health care information.

The Commission supports broader privacy protections for patients and health care providers that provide reproductive health services. Regulations are the vehicle to support patients' rights to privacy and build trust in information sharing that facilitates accessible, equitable health care. Existing regulations, COMAR 10.25.18, *Health Information Exchanges: Privacy and Security of Protected Health Information*, ("regulations") build upon protections established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) in 2009. The regulations seek to ensure privacy and security of protected health information while improving access to health records by treating providers and supporting public health goals. The regulations are a framework to increase privacy protections, including information on dispenses of noncontrolled prescription drugs such as those for reproductive health.

Comprehensive health information enables better decision-making at the point of care and improves patient safety by reducing medication and medical errors.⁹ HIEs support reproductive health by enabling authorized users to access patient information.¹⁰ Approximately 14 HIEs operate in Maryland; this includes the State designated HIE and developers of health information technology (e.g., electronic health record vendors). Chapter 296 of the 2022 Laws of Maryland (HB 1127, *Public Health – State Designated Exchange – Health Data Utility*) requires a dispenser, after dispensing a non-controlled prescription drug, to submit information on the dispense to the State designated HIE. Amendments to COMAR 10.25.18 to support implementation of Chapter 296 are in development in collaboration with stakeholders. The Act requires the Secretary of Health for the Maryland Department of Health to identify medications for the purpose of determining a protected medication record.

The Commission has five concerns regarding the legislation as introduced.

- The legislation would interfere with HIEs data sharing responsibilities in unintended manners. HIEs located outside the State would be significantly limited from receiving protected information and dispensers would be prohibited from reporting this information to the State designated HIE for clinical and public health purposes.
- The legislation permits sharing reproductive health data if the patient chooses to opt-in. Opt-in rights are poorly understood by patients, and it is possible that information may be inadvertently blocked when a patient had no such intention.
- Clarification is needed pertaining to what is meant by reference of "located outside the state" in revisions to §4-302.5 prohibiting the disclosure of a "protected services record or protected medication record to a treating provider, business entity, or health information exchange *located*

⁹ Alotaibi YK, Federico F. The impact of health information technology on patient safety. *Saudi Med J.* 2017 Dec;38(12):1173-1180. doi: 10.15537/smj.2017.12.20631. PMID: 29209664; PMCID: PMC5787626.

¹⁰ The Office of the National Coordinator for Health Information Technology. Available at: healthit.gov/topic/health-it-and-health-information-exchange-basics.

outside the state.”

- The amendments to prohibit a custodian from allowing inspection of a public record that “contains the name of an individual or other identifying information related to an ambulatory surgery center” (center) licensed under Health-General §19-3B-01 is overly broad. While §4-333(b) and (c) of the General Provisions article permits disclosure of specified information regarding a licensee and other information about a licensee if the custodian finds a compelling public purpose, these subsections only apply to information about a licensee, not other individuals who may be “related to” a licensed entity. The amendments may have unintended consequences for health planning as it appears to prohibit the disclosure of individual owners, consultants, primary contacts, or attorneys who submit to the Commission Certificate of Need (or “CON”) applications or acquisition notices on behalf of an ambulatory surgery center. The Commission suggests adding clarity about what it means to be related to a center and what information about these individuals could be disclosed.
- The legislation is unclear about the coverage of different types of freestanding ambulatory surgical facilities. Health-General §19-3B-01 addresses the licensure of “freestanding ambulatory care facilities,” rather than ambulatory surgery centers. The term “freestanding ambulatory surgical facility,” defined at Health-General §19-3B-01 and in COMAR 10.05.05.01, is a general licensure category in Maryland Department of Health statute and regulations that includes both an ambulatory surgical facility, a CON-regulated, statutorily-defined health care facility that contains three or more operating rooms, as well as an ambulatory surgical center, which may have only procedure rooms or procedure rooms and up to two operating rooms that is issued a determination of coverage by the Commission. It is unclear whether the legislation covers all freestanding ambulatory surgical facilities including those with only procedure rooms or procedure rooms and fewer than three operating rooms or only ambulatory surgical facilities, which have three or more operating rooms.
- The Commission will need more time to adopt regulations that meet the intent of SB 786, while permitting other information exchange to flow unimpeded. HIEs and dispensers will need time to implement and operationalize the requirements while stakeholders build awareness of these requirements among health care providers. If the bill advances, the Commission recommends delaying certain requirements in §4-302.5 (G)(14) and (E)(1) of this section until January 1, 2025.

The Commission believes that our concerns can be resolved in a workgroup, we are willing to participate if the Committee decides to convene one. If you have any questions, please do not hesitate to contact me at 410-764-3566 or ben.steffen@maryland.gov or Tracey DeShields, Director of Policy Development and External Affairs, at tracey.deshields2@maryland.gov.

Sincerely,



Ben Steffen,
Executive Director

UNFAVORABLE.SB786.MDRTL.L.Bogley.pdf

Uploaded by: Laura Bogley

Position: UNF



Unfavorable Statement SB786/HB812

Reproductive Health Services- Protected Information and Insurance
Laura Bogley, JD
Executive Director, Maryland Right to Life

On behalf of our Board of Directors and in the interest of public health and safety, we strongly oppose this bill that enables abortionists to exploit women for profit. By enacting this legislation, the Maryland General Assembly will be abrogating your responsibilities to provide for the public welfare and to ensure the state is meeting the reproductive health needs of women in Maryland.

Abortion Shield Laws Hurt Women

Abortion will never be accepted as legitimate healthcare while the state fails to assign to abortion practices, the medical standards of care that apply to all other health care services.

The state has a duty under the Commercial Law Article and the Health Occupations Article, to protect consumers from dangerous products and to implement medical standards and disciplinary measures for individuals licensed or certified to provide health services. Instead this bill would shield negligent abortion providers and unregulated abortion drug manufacturers from liability for any harm or death caused to women.

If it is possible for an abortionist seeking Medicaid reimbursement to report the number and reasons for abortions committed, redacting personally identifying patient information, it is possible for the state to collect and report abortion metrics without violating patient privacy. But this bill will limit the state's ability to compile abortion metrics to ensure the health and safety of women obtaining abortion, including to properly measure **the correlation between abortion and maternal mortality**.

Of great concern to women's health is the fact that this bill will prevent emergency medical providers from accessing **patient medical histories** to assist them in providing critical care for women seeking emergency treatment for abortion complications. Data is being collected through hospital emergency room personnel that women are arriving with abortion injuries without revealing that they have undergone abortion procedures or consumed abortion drugs. These injuries are often falsely reported as "spontaneous miscarriage". Complications, injuries and deaths related to chemical abortion drugs, are dramatically under-reported leaving the state ill-equipped to provide for women's health and safety.

Abortion is Unsafe for Women in Maryland

Despite the Supreme Court 2022 *Dobbs* decision overturning *Roe v. Wade* (1973), abortion remains legal through all nine months of pregnancy and for any reason, under the *Maryland Freedom of Choice Act* (1991). The Maryland General Assembly has repealed all legal safeguards for women's health and safety and deregulated abortion practices.

Limited regulations on abortion clinics and practices are complaint-driven and not routinely enforced—even after two women were nearly killed in Bethesda in 2020 after parts of their babies were shoved into

their abdominal cavities during late term abortion procedures. Because state law left them no little legal recourse, the survivors were forced to settle civil suits against the reckless abortionist. The state has allowed this dangerous abortionist to remain in practice. This bill would make that the norm.

Through the enactment of the *Maryland Abortion Care Access Act of 2022*, the Maryland General Assembly has **removed abortion from the spectrum of healthcare** by repealing the requirement that only a licensed physician may perform abortion. Now any “certified provider” may provide chemical or surgical abortion through birth. Physicians now serve only a tangential role on paper *if at all*, either as remote medical directors for abortion clinics or as remote prescribers of abortion pills.

As a result of these pernicious policies, the practice of abortion in Maryland has become the “red light district” of medicine, populated by dangerous, substandard providers.

Chemical Abortion Drugs are Unsafe

Through “telaboration” and the unregulated proliferation of abortion drugs, the abortion industry itself has exposed women to “back alley” style abortions, where they bleed alone without medical supervision or assistance, then flush their babies down toilets. Chemical abortion pills are 4 times more dangerous than surgical abortion and emergency room visits related to abortion pill complications has increased by 500% since the drugs were first approved for use in abortion.

The Biden administration has put abortion politics before patients by demanding the Food and Drug Administration remove all regulatory safeguards for women using abortion drugs and putting women at elevated risk of injury and death. Women and girls may now obtain abortion drugs remotely through any “certified provider” without a physician’s examination. A physician’s examination is essential to determine gestational stage and medical contraindications including ectopic pregnancy or RH-negative blood.

It is important to note that the FDA only approves domestically-manufactured abortion drugs, but many abortion drugs are made in China and are completely unregulated.

Abortion Regulation Protects Women

Common sense regulations of abortion practices protect women and girls seeking abortion in multiple ways. Abortion restrictions and safeguards protect women and girls from abortion coercion at the hands of abusive partners, sex traffickers and other authority figures.

Informed consent laws ensure that women and girls have the right to know of all the physical and psychological risks associated with abortion including post-abortion stress syndrome, depression and suicidal ideation, as well as future infertility or pregnancy complications, uterine or cervical incapacity, miscarriage, preterm birth, and even infant or maternal mortality.

Reporting requirements allow the state to measure not only the correlation between abortion and risks to maternal and infant health, but also to measure the extent to which the state is meeting the legitimate healthcare needs of women and families. Maryland is one of only three states that shield the abortionists by waiving abortion reporting requirements to the Centers for Disease Control.

Abortion is not Medically Necessary

Pregnancy is not a disease and 95% of biologists agree that a unique human life begins at the moment of fertilization. Abortion is not healthcare as evidenced by the fact that 85% of obstetricians and gynecologists in a national survey refuse to participate in abortion practices. Medical intervention necessary to save the life of the mother, including for ectopic pregnancy and miscarriage, is not prohibited by the law of this or any other state.

MDH is Failing Pregnant Women and Families

The Maryland Department of Health has consistently failed to meet the needs of pregnant women and families in Maryland and any appropriation should be withheld until the Department provides the annual report to the Centers for Disease Control to measure the number of abortions committed each year in Maryland, abortion reasons, funding sources and related health complications or injuries.

- The Department has routinely failed to enforce existing state health and safety regulations of abortion clinics, even after two women were near fatally injured in botched abortions.
- The Department has routinely failed to provide women with information and access to abortion alternatives, including the Maryland Safe Haven Program (Department of Human Services), affordable adoption programs or referral to quality prenatal care and family planning services that do not promote abortion.
- The Department has demonstrated systemic bias in favor of abortion providers, engaging in active partnerships with Planned Parenthood and other abortion organizations to develop and implement public programs, curriculum and training. In doing so the Department is failing to provide medically accurate information on pregnancy and abortion.
- The Department systemically discriminates against any reproductive health and educational providers who are unwilling to promote abortion and in doing so, suppresses pro-life speech and action in community-based programs and public education.
- The Department fails to collect, aggregate and report data about abortion and the correlation between abortion and maternal mortality, maternal injury, subsequent pre-term birth, miscarriage and infertility.
- The Department is failing to protect the Constitutionally-guaranteed rights of freedom of conscience and religion for health care workers, contributing to the scarcity of medical professions and personnel in Maryland.
- The Department is failing to protect women and girls from sexual abuse and sex trafficking by waiving annual reporting requirements for abortionists, waiving mandatory reporter requirements for abortionists, and failing to regulate abortion practices.

Abortion is the Leading Killer of Black Lives

Abortion has reached epidemic proportions among people of color with half of all pregnancies of Black women ending in abortion. The Black population has long been targeted for elimination through sterilization and abortion. Even today, 78% of abortion clinics are located in minority communities. As a result abortion has become the leading killer of Black lives. Abortion is the greatest human and civil rights abuse of our time and as a civilized people we cannot continue to justify or subsidize this genocide.

Abortion is a Failed Policy

50 years of legal abortion never ended childhood poverty, rape and incest or unplanned pregnancies. In fact, the amount of abortions has increased proportionately to the increase in public funding for abortion. The abortion industry is financially invested in unplanned pregnancy and cannot be entrusted to provide for the reproductive health needs of Maryland women and families.

For these reasons, we respectfully urge you to put patients before abortion politics and to ensure that there is transparency in reporting abortion data to advance women's health and safety in Maryland. The state should protect patient privacy while ensuring sound medical reporting and consumer safety practices.

7b - SB 786 - FIN - PHARM - LOC.pdf

Uploaded by: Maryland State of

Position: UNF



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

MARYLAND BOARD OF PHARMACY

Jennifer L. Hardesty, PharmD, FASCP, Board President — Deena Speights-Napata, MA, Executive Director

March 1, 2023

The Honorable Melony Griffith
Chair, Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: Senate Bill 786 – Health – Reproductive Health Services – Protected Information and Insurance Requirements

Dear Chairwoman Griffith and Committee Members:

The Maryland Board of Pharmacy (Board) respectfully submits this letter of concern for Senate Bill (SB) 786 – Health – Reproductive Health Services – Protected Information and Insurance Requirements.

SB 786 would prohibit a pharmacist from submitting information on mifepristone, misoprostol, or any medication used for a medical abortion to (1) the State designated exchange or in (2) any medical record in order to protect the confidentiality of patient and health care practitioner information related to “legally protected health care.” §§ 4-301(j), 4-305(b)(11)(vii), 19-103(14), 19-145(e). SB 786 provides that a health care provider may provide restricted information to another health care provider for the sole purpose of treating the patient for whom the medical record is kept. § 4-305(b)(12). SB 786 would require the Maryland Department of Health to identify the medications that are considered a medication used in a medical abortion for the purpose of determining whether a pharmacist would be prohibited from making a disclosure. § 19-145(e).

Note, mifepristone is prescribed for non-related conditions, such as hyperglycemia. SB 786 would potentially restrict clinically relevant information related to the prescribing and dispensing of this drug from being included in a patient’s health record. Mifepristone is also a treatment option for endometriosis. Again, SB 786 would potentially restrict clinically relevant information related to the prescribing and dispensing of this drug from being documented in a patient’s health record. Misoprostol is frequently prescribed for the treatment of stomach ulcers. Here, SB 786 would potentially restrict clinically relevant information related to the prescribing and dispensing of this drug from being recorded in a patient’s electronic health record.

Shielding clinically relevant data related to abortion and non-abortion uses may prove costly should the patient require emergency services. The carve-out provided in § 4-305(b)(12) may

not provide the required information in a timely fashion and may cause the health care provider to engage in a costly “need” analysis. Pharmacists rely on accurate and up-to-date information when making judgments related to drug therapy management. Without accurate data, a pharmacist is placed in the unfortunate position of making decisions with intentionally limited information. Finally, the administrative burden of manually removing or redacting this information for a patient’s record may significantly hamper some pharmacy operators.

The Board encourages the committee to consider the impact that missing information may have on a patient’s health and a provider’s decision-making, and explore options that would not implement potentially dangerous silos within the health care arena.

If you would like to discuss this further, please do not hesitate to contact Deena Speights-Napata, MA, Executive Director at deena.speights-napata@maryland.gov or (410) 764-4753.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deena".

Deena Speights-Napata, MA
Executive Director

7a - SB 786 - FIN - MHCC - LOC.pdf

Uploaded by: State of Maryland (MD)

Position: UNF



March 1, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB 786 – Health-Reproductive Health Services-Protected Information and Insurance Requirements – Letter of Concern

Dear Chair Griffith and Committee Members:

The Maryland Health Care Commission (“Commission”) is submitting this letter of concern on *SB 786 – Health – Reproductive Health Services – Protected Information and Insurance Requirements*. The bill seeks to implement additional privacy measures related to data on reproductive health services. A national survey (“survey”) on patient perspectives toward the privacy of their medical information found that about 75 percent of respondents are concerned about protecting the privacy of their health data and around 80 percent want to be able to opt-out of sharing some or all their health information.¹ The survey also found that patients are generally unclear about rules to protect their privacy, and have concerns about who has access to their medical information; about 59 percent of patients worry their health data could be used to discriminate against them or their family members.²

The Supreme Court’s decision on June 24, 2022, in *Dobbs v Jackson’s Women’s Health Organization*,³ eliminated federal protections for reproductive health overturning *Roe v. Wade* in 1973⁴ and *Planned Parenthood of Pennsylvania v. Case* in 1992.⁵ Arguably, the most pressing concerns for health care providers are how to minimize the adverse effects on patients and provide access to quality reproductive health care.⁶ The Commission recognizes the bill will help address racial and ethnic disparities in women’s reproductive health that have existed for decades^{7, 8} while being wary about the impact of moving too quickly to address complex privacy issues.

The bill aims to regulate the disclosure of certain information related to legally protected health care by custodians of public records, health care providers, health information exchanges (“HIEs”), and

¹ American Medical Association, “*Patient perspectives around data privacy*,” 2022. Available at: ama-assn.org/system/files/ama-patient-data-privacy-survey-results.pdf.

² American Medical Association, “*Patient perspectives around data privacy*,” 2022. Available at: ama-assn.org/system/files/ama-patient-data-privacy-survey-results.pdf.

³ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022).

⁴ *Roe v. Wade*, 410 U.S. 113 (1973).

⁵ *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

⁶ Harris LH. *Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade*. *The New England Journal of Medicine*, 2022; 386(22):2061-2064. Available at: [nejm.org/doi/10.1056/NEJMp2206246](https://doi.org/10.1056/NEJMp2206246).

⁷ Murray Horwitz ME, Pace LE, Ross-Degnan D. *Trends and Disparities in Sexual and Reproductive Health Behaviors and Service Use Among Young Adult Women (Aged 18–25 Years) in the United States, 2002–2015*. *American Journal of Public Health*, 2018; 108:S336–43. Available at: ncbi.nlm.nih.gov/pmc/articles/PMC6215367/.

⁸ Paltrow LM, Flavin J. *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*. *Journal of Health Politics, Policy, and Law*, 2013; 38:299-343. Available at: doi.org/10.1215/03616878-1966324.

dispensers. The Commission believes there is a need to understand the effects of this legislation on consumers, health care providers, HIEs, and dispensers. The bill requires the Commission to adopt regulations regarding clinical information exchanged through the State designated HIE to restrict data of patients who have obtained legally protected health care. It also alters the purpose of the Commission to include the establishment of policies and standards that protect the confidentiality of certain health care information.

The Commission supports broader privacy protections for patients and health care providers that provide reproductive health services. Regulations are the vehicle to support patients' rights to privacy and build trust in information sharing that facilitates accessible, equitable health care. Existing regulations, COMAR 10.25.18, *Health Information Exchanges: Privacy and Security of Protected Health Information*, ("regulations") build upon protections established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) in 2009. The regulations seek to ensure privacy and security of protected health information while improving access to health records by treating providers and supporting public health goals. The regulations are a framework to increase privacy protections, including information on dispenses of noncontrolled prescription drugs such as those for reproductive health.

Comprehensive health information enables better decision-making at the point of care and improves patient safety by reducing medication and medical errors.⁹ HIEs support reproductive health by enabling authorized users to access patient information.¹⁰ Approximately 14 HIEs operate in Maryland; this includes the State designated HIE and developers of health information technology (e.g., electronic health record vendors). Chapter 296 of the 2022 Laws of Maryland (HB 1127, *Public Health – State Designated Exchange – Health Data Utility*) requires a dispenser, after dispensing a non-controlled prescription drug, to submit information on the dispense to the State designated HIE. Amendments to COMAR 10.25.18 to support implementation of Chapter 296 are in development in collaboration with stakeholders. The Act requires the Secretary of Health for the Maryland Department of Health to identify medications for the purpose of determining a protected medication record.

The Commission has five concerns regarding the legislation as introduced.

- The legislation would interfere with HIEs data sharing responsibilities in unintended manners. HIEs located outside the State would be significantly limited from receiving protected information and dispensers would be prohibited from reporting this information to the State designated HIE for clinical and public health purposes.
- The legislation permits sharing reproductive health data if the patient chooses to opt-in. Opt-in rights are poorly understood by patients, and it is possible that information may be inadvertently blocked when a patient had no such intention.
- Clarification is needed pertaining to what is meant by reference of "located outside the state" in revisions to §4-302.5 prohibiting the disclosure of a "protected services record or protected medication record to a treating provider, business entity, or health information exchange *located*

⁹ Alotaibi YK, Federico F. The impact of health information technology on patient safety. *Saudi Med J.* 2017 Dec;38(12):1173-1180. doi: 10.15537/smj.2017.12.20631. PMID: 29209664; PMCID: PMC5787626.

¹⁰ The Office of the National Coordinator for Health Information Technology. Available at: healthit.gov/topic/health-it-and-health-information-exchange-basics.

outside the state.”

- The amendments to prohibit a custodian from allowing inspection of a public record that “contains the name of an individual or other identifying information related to an ambulatory surgery center” (center) licensed under Health-General §19-3B-01 is overly broad. While §4-333(b) and (c) of the General Provisions article permits disclosure of specified information regarding a licensee and other information about a licensee if the custodian finds a compelling public purpose, these subsections only apply to information about a licensee, not other individuals who may be “related to” a licensed entity. The amendments may have unintended consequences for health planning as it appears to prohibit the disclosure of individual owners, consultants, primary contacts, or attorneys who submit to the Commission Certificate of Need (or “CON”) applications or acquisition notices on behalf of an ambulatory surgery center. The Commission suggests adding clarity about what it means to be related to a center and what information about these individuals could be disclosed.
- The legislation is unclear about the coverage of different types of freestanding ambulatory surgical facilities. Health-General §19-3B-01 addresses the licensure of “freestanding ambulatory care facilities,” rather than ambulatory surgery centers. The term “freestanding ambulatory surgical facility,” defined at Health-General §19-3B-01 and in COMAR 10.05.05.01, is a general licensure category in Maryland Department of Health statute and regulations that includes both an ambulatory surgical facility, a CON-regulated, statutorily-defined health care facility that contains three or more operating rooms, as well as an ambulatory surgical center, which may have only procedure rooms or procedure rooms and up to two operating rooms that is issued a determination of coverage by the Commission. It is unclear whether the legislation covers all freestanding ambulatory surgical facilities including those with only procedure rooms or procedure rooms and fewer than three operating rooms or only ambulatory surgical facilities, which have three or more operating rooms.
- The Commission will need more time to adopt regulations that meet the intent of SB 786, while permitting other information exchange to flow unimpeded. HIEs and dispensers will need time to implement and operationalize the requirements while stakeholders build awareness of these requirements among health care providers. If the bill advances, the Commission recommends delaying certain requirements in §4-302.5 (G)(14) and (E)(1) of this section until January 1, 2025.

The Commission believes that our concerns can be resolved in a workgroup, we are willing to participate if the Committee decides to convene one. If you have any questions, please do not hesitate to contact me at 410-764-3566 or ben.steffen@maryland.gov or Tracey DeShields, Director of Policy Development and External Affairs, at tracey.deshields2@maryland.gov.

Sincerely,



Ben Steffen,
Executive Director

SB0786_Tom and Tina Wilson_Unfavorable.pdf

Uploaded by: Thomas Wilson

Position: UNF

Written Testimony of Thomas P. and Tina M. Wilson

**RE: In Opposition to Senate Bill SB0786 - Health - Reproductive Health Services -
Protected Information and Insurance Requirements**

February 28, 2023

As citizens of the state of Maryland, we are opposed to **Maryland Senate Bill SB-0786** on both legal and moral grounds. This testimony seeks to express our concerns around **SB-0786**.

SB-0786 seeks to implement an abortion shield law that seals records of surgical and chemical abortions occurring in the state of Maryland. This law will further hide information about the volume of abortions being conducted in Maryland, and inhibit attempts by other states that may be seeking to enforce their own laws on their citizens who crossed state lines to obtain an abortion. This bill is in keeping with the Maryland legislature's drive to make the state an abortion destination. These types of laws have been passed in several states but remain to be tested in the courts. We oppose all efforts to expand abortion in the state of Maryland, including those to extend their services to people outside the state.

Respectfully,

Thomas P. and Tina M. Wilson
Long-time residents of MD District 17

UNFAV SB786.pdf

Uploaded by: vince mcavoy

Position: UNF

SB0786 Health - Reproductive Death Services

Hello Committee~

This sponsor seems to have an eye toward disparity, somehow rationalizing a bill aiming to inflict

A \$10,000 per day fine regarding abortion data

(B) (1) A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT TO EXCEED \$10,000 PER DAY.

...yet feel adversarial and combative about calling abortion “needed” “healthcare”.

Abortion by definition is an “end”. Abortion is not “healthcare”; it is deathcare.

No care shown by the sponsor on killing, just that monetary fine. Why always the aim to hide data relating to how many abortions and who gets them in Maryland?

This part of the bill, aligning with World Economic Forum’s and World Health Organization’s aims to depopulate America and the world, doesn’t imbue one with a sense of balance or care for humankind.

FOLLOW GUIDELINES OF THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, THE **WORLD HEALTH ORGANIZATION**, AND THE SOCIETY OF FAMILY PLANNING IN DETERMINING WHICH MEDICATIONS TO IDENTIFY IN THE REGULATIONS ADOPTED UNDER ITEM (1) OF THIS SUBSECTION.

Finally, this part of the bill is problematic because radical abortion-advocates are likely to vote for dispensing abortion-causing pills via dispensers, like one would buy candy.

(E) (1) A DISPENSER MAY NOT SUBMIT INFORMATION ON MIFEPRISTONE, MISOPROSTOL, OR ANY MEDICATION USED FOR A MEDICAL ABORTION,

Please vote this imbalanced, flawed bill down.

humbly

~vince

Baltimore Maryland

SB0786.pdf

Uploaded by: Virginia Kolakoski

Position: UNF

SB0786 Unfavorable

We need to separate ourselves from The WHO. There are too many financial influencers; it's no longer unbiased.

7c - SB 786 - FIN - MBON - LOI.docx.pdf

Uploaded by: State of Maryland

Position: INFO



Board of Nursing

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

March 1, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 786 – Health – Reproductive Health Services – Protected Information and Insurance Requirements – Letter of Information

Dear Chair Griffith and Committee Members:

The Maryland Board of Nursing (the Board) respectfully submits this letter of information for Senate Bill (SB) 786 – Health – Reproductive Health Services – Protected Information and Insurance Requirements. This bill regulates the disclosure of certain information related to legally protected health care by custodians of public records, health care providers, health information exchanges, and dispensers; repeals a provision of law authorizing a custodian to allow inspection of the part of a public record that gives the home address of a licensee under certain circumstances; requires that the regulations adopted by the Maryland Health Care Commission regarding clinical information to be exchanged through the State – designated exchange restrict data of patients who have obtained legally protected health care; alters the purpose of the Maryland Health Care Commission to include the establishment of policies and standards that protect the confidentiality of certain health care information; and clarifies that insurance requirements regarding abortion care services apply notwithstanding a certain restriction.

The Board finds Section 4 – 333 (a)(3) under the General Provisions Article to be duplicative and redundant, as the Public Information Act prohibits information that is part of an investigative file from being subject to public disclosure. This provision is further bolstered by the Nurse Practice Act and Section 4–333 (b)(6), which allows “a custodian to allow inspection of the part of a public record that gives any orders and findings that result from formal disciplinary actions”. Section 4 – 333 (a)(3) may also potentially lead to confusion and the assumption that information unrelated to an investigation of a licensee may be subject to public disclosure. The Board follows the provisions of the Public Information Act closely and ensures all investigative materials remain confidential.

For the reasons discussed above, the Maryland Board of Nursing respectfully submits this letter of information for SB 786.

For more information, please contact Ms. Iman Farid, Health Planning and Development Administrator, at iman.farid@maryland.gov or Ms. Rhonda Scott, Deputy Director, at (410) 585 – 1953 (rhonda.scott2@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "G. Hicks", with a stylized flourish at the end.

Gary N. Hicks
Board President

The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.