

2023 SESSION POSITION PAPER

BILL NO: SB 648

COMMITTEE: Senate Finance Committee

POSITION: SUPPORT

TITLE: Electronic Health Networks and Electronic Medical Records - Nursing Homes - Release of Records

BILL ANALYSIS

SB 648 - Electronic Health Networks and Electronic Medical Records - Nursing Homes - Release of Records Electronic Health Network (“EHN,” “network,” or “health care clearinghouse”) requires EHNs operating in Maryland to submit certain transactions to the State designated health information exchange (HIE). This bill authorizes a nursing home that contracts with an EHN or electronic medical record vendor to direct the network or vendor to release electronic medical records and electronic health care transactions to a business associate of the nursing home.

POSITION AND RATIONALE

The Maryland Health Care Commission (“MHCC”) supports SB 648. EHNs route administrative transactions electronically between providers and payors.^{1,2} This includes nearly all health care claims (98.6 percent) for commercial and government payors in Maryland.³ EHNs are a value-add to providers and payors by validating transactions for completeness and accuracy, monitoring the status of each transaction, and retaining transaction backup files.⁴ Electronic health care claims routed through an EHN reduces administrative overhead cost by as much as seven percent of the paper cost for payors and 47 percent of the paper cost for providers.^{5,6}

COMAR 10.25.07, *Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses*, requires payors operating in the State to only accept transactions from MHCC

¹ Electronic Data Interchange (EDI) standards define the location and order of information in a document format. With this automated capability, data can be shared rapidly instead of over the hours, days or weeks required when using paper documents or other methods.

² EDI Basics. Available at: edibasics.com/edi-resources/document-standards/hipaa/.

³ Claims transactions are most common; other transactions include health care claim payment advice; health care claim status request; eligibility, coverage, or benefit inquiry/information; benefit enrollment and maintenance; health care service review information; and payment order/remittance advice.

⁴ The Centers for Medicare & Medicaid Services, *Remittance Advise and FAQs*. Available at: cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/ICN905367TextOnly.pdf.

⁵ Payor claim submission cost per transaction is \$1.18 for manual and \$0.08 for electronic. Provider claim submission cost per transaction is \$2.52 for manual and \$1.19 for electronic.

⁶ 2020 CAQH, *Closing the Gap: The Industry Continues to Improve, But Opportunities for Automation Remain*. Available at: caqh.org/sites/default/files/explorations/index/2020-caqh-index.pdf.

certified EHNs.⁷ To receive MHCC certification, EHNs must be accredited or certified by a nationally recognized organization where standards related to privacy and confidentiality, business practices, physical and human resources, technical performance, and security are evaluated.⁸ Approximately 30 EHNs operate in Maryland and are certified by MHCC.

COMAR 10.25.18, *Health Information Exchanges: Privacy and Security of Protected Health Information*, builds 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 2009.⁹ The regulations aim to ensure privacy and security of protected health information while improving access to health records by treating providers and supporting public health goals. Amendments to the regulations are underway to update and align with federal policy and incorporate requirements in Chapter 790 (HB 1022) and Chapter 791 (SB 791) of the 2021 Laws of Maryland that require EHNs to provide administrative transactions to the State designated HIE for certain purposes.¹⁰

The Cooperative Exchange, The National Clearinghouse Association¹¹ (EHN association), has raised concerns of a possible conflict between Maryland law and HIPAA. Specifically, the Cooperative Exchange argued to MHCC that HIPAA Administrative Simplification regulations (45 CFR Parts 160, 162, and 164) administered by United States Department of Health and Human Services, Office for Civil Rights (HHS-OCR), prohibit compliance with the Maryland statutory requirements for submitting electronic health care transactions to the State designated HIE. The issue is whether a health care clearinghouse acting as business associate of a health care provider would be in compliance with HIPAA if a health care clearinghouse also complied with Maryland Health-General §4-302.3(h)(1). The MHCC does not believe a conflict exists with Maryland’s law and HIPAA and notes that the Cooperative Exchange has not sought an opinion from HHS-OCR in support of their opinion.

The compliance issues asserted by the EHN association may pose challenges for implementing the law. The MHCC also believes that some EHNs will argue the applicability of SB 648, which prohibits EHNs from charging a fee to a provider, a payor, or the State designated HIE for providing the information as required by the Act. The MHCC is working to achieve EHNs conformance with the existing law and looks forward to advancing SB 648 if passed by the legislature.

⁷ Health General Article § 19-134 requires MHCC to establish standards for the operation of medical care electronic claims clearinghouses in Maryland and license clearinghouses meeting those standards.

⁸ Organizations include the Electronic Healthcare Network Accreditation Commission (EHNAC, now part of DirectTrust) and the Health Information Trust Alliance (HITRUST).

⁹ The HITECH Act was enacted under Title XIII of the American Recovery and Reinvestment Act of 2009. Available at: govinfo.gov/content/pkg/PLAW-111publ5/pdf/PLAW-111publ5.pdf.

¹⁰ For example, a State health improvement program, mitigation of a public health emergency, and improvement of patient safety.

¹¹ The Cooperative Exchange is the recognized resource and representative of the health care transaction clearinghouse industry. More information is available at: cooperativeexchange.org.

