



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