

2023 SESSION POSITION PAPER

BILL NO: SB 648

COMMITTEE: Senate Finance Committee

POSITION: OPPOSE

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

BILL ANALYSIS

Existing law requires electronic health networks (EHNs) operating in Maryland to submit certain transactions to the State designated health information exchange (CRISP). *SB 648 - Electronic Health Networks and Electronic Medical Records - Nursing Homes - Release of Records* bill authorizes a nursing home that contracts with an EHN or electronic medical record vendor (together referred to as vendors) to direct vendors 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”) opposes SB 648 as amended and supports advancing the bill as introduced. The MHCC believes the amendments make the bill untenable and has the following concerns.

The addition of a consent provision will impede information exchange between CRISP and EHNs for public health reporting and surveillance. HIPAA permits disclosures without patient authorization for public health purposes. HIPAA also does not prohibit business associates from making disclosures that are required by law. The consent provision added in (B)(1) will confuse patients and their representatives as most are not familiar with the role of a business associate in supporting health care activities. There is little likelihood that nursing homes can adequately explain the complexities around HIPAA and what the consent entails. As a result, consumer opt-outs of information sharing will be high. This will negatively impact the utility of the data for purpose of public health and improvements in patient safety. Ample data is essential for advancing prevention and control to combat disease and identify gaps in care and the quick remediation of those gaps.

The amendment added in (B)(2)(IV) regarding fees will have unintended consequences. The amendment prohibits vendors from charging a fee to a business associate of CRISP unless the fee is approved by CRISP. As a result, under certain circumstances, vendors will be permitted to assess fees to nursing homes. The bill establishes a precedent for CRISP to approve payment for clinical data that is required to be shared under Chapter 790 and 791 (HB 1022 | SB 748, 2021 session).

Existing law requires a nursing home to electronically submit clinical health care information to CRISP. The law authorizes CRISP to provide health information to health care providers, health information exchange users, and State and federal officials to facilitate a State health improvement program, mitigate a

public health emergency, and to improve patient safety. The law prevents vendors from charging a fee to a health care provider, health care payor or CRISP for providing the information. As amended, the bill conflicts with existing law.

For these reasons, MHCC encourages the Committee to strike the amendments and support SB 648 as introduced.

