

March 7, 2023

**The Honorable Joseline Peña-Melnyk**

Chair, House Health and Government Operations Committee  
Room 241  
House Office Building  
Annapolis, Maryland 21401

Testimony before the Health and Government Operations Committee

Position: Favorable with Amendments

Dear Chair Peña-Melnyk:

Thank you for your time and consideration of our position on HB786 – Electronic Health Networks and Eletronic Medical Records – Nursing Homes – Release of Records. This bill intends to promote and increase interoperability between Skilled Nursing Facilities (SNFs) and other providers that are part of the resident’s care team. We agree that this goal is a necessity to improve care and lower healthcare costs across care settings. PointClickCare favorably supports the legislation with amendments due to concerns about patient data privacy as well as conflicting federal regulations regarding implementation of the proposed legislation.

PointClickCare is the leading technology partner for SNFs both in Maryland and the United States as a whole. This includes serving as the SNFs Electronic Health Record (EHR) as well as a partner in providing care coordination for residents that rely on their SNF for clinical care and activities of daily living. SNF residents comprise some of the most clinically vulnerable people with a wide range of acuity that SNFs provide care for while also managing the implications of complex reimbursement models across Medicare, Medicaid, private insurance, and private pay.

SNFs choose to partner with PointClickCare because we provide the tools and solutions that improve quality and clinical outcomes, increase efficiencies, and ease the administrative burden of clinical care teams, especially in the midst of a historic clinical staffing shortage. PointClickCare is able to provide these tools because our solutions go beyond the four walls of the SNF and connect with all points of an individual’s care journey, abiding by the same responsibilities and requirements required by the federal government across the healthcare spectrum. Included in this responsibility, is the necessity of protecting the resident’s clinical and financial data. PointClickCare undergoes rigorous security testing and monitoring to ensure that resident’s information is secure. The protection of a resident’s confidential clinical and financial records are instrumental in building trust both with the resident and the SNF in which they are receiving care.

Through this lens, we believe that we are uniquely situated to provide insight into effective application of interoperability principles and clinical data information sharing standards.

PointClickCare unequivocally supports the principles of interoperability and information sharing of clinical records with the individual as well as that individual's appropriate clinical care team whether that is in the acute, post-acute or ambulatory setting. This includes creating resident clinical portals so that they and their loved ones who are authorized to access the data are able to do so. PointClickCare recognizes that transitions of care by patients are primary drivers of negative clinical outcomes and lead to significant costs added to our healthcare system which is why we have taken significant steps to increase our network to seamlessly share data along the patient journey. Interoperability, and the federal standards put forth in the 21<sup>st</sup> Century Cures Act (Cures Act) creating the requirements for information sharing, are driving principles that our platform is built upon because these requirements apply to most providers and their technology partners, including SNFs.

Our concerns with HB 786 as introduced is that it creates redundant and potentially conflicting key terms with what is established in federal law. It does this by possibly creating a new class of loosely defined third-party vendors with access to patient data that may or may not have a Treatment, Payment, or Operations (TPO) relationship with the patient or their care teams as put forth under the Health Insurance Portability and Accountability Act (HIPAA). Allowing undefined vendors access to patient data creates security risks that may lead to unintended consequences regarding unlawful access of that data. Any additional parties that are granted access to clinical data should have clearly defined requirements for accessing clinical or financial data and the technical standards to ensure that they do not create possible exposure of that data. Additionally, it is also unclear why the language as written seemingly does not include resident's choice as there is no reference to a resident's ability to control their clinical data. Removing consideration of a resident's right to their own clinical data does not provide additional protections or support for residents of their families. There should be clear language included in the legislation of a patient's right to their data.

It is also unclear why specific legislation is required for SNFs as it relates to interoperability standards set forth in federal law. SNFs and their technology partners are subject to the same information sharing laws put forth in the Cures Act as acute hospitals and other applicable provider types. As a result, these providers' technology partners must also adhere to the same principles as each other which is exactly how information sharing and the Cures Act was intended to be implemented. By creating separate and siloed regulations that apply to only portions of the healthcare ecosystem it will exacerbate the issues surrounding siloed data that the Cures Act was implemented to resolve. If the intent is to reinforce federal law with this legislation, then the inclusion of all EHRs subject to the Cures Act should be included.

Additionally, the Cures Act explicitly contemplates and approves of the collection of reasonable fees under 45 CFR 171.302 because The Office of the National Coordinator for Health Information Technology (ONC) identified that it will increase innovation and the further development of technologies that benefit patients. There are specific criteria that Health Information Technology (HIT) vendors must comply with to be considered for this exception as well as already established avenues for filing complaints to ONC for not being compliant. Creating state law that contradicts federal law will create unnecessary and significant confusion and instability for residents, clinical care teams and administrative staff working on behalf of the federal government, Maryland government, and providers of all types subject to the Cures Act. Any consideration of costs should be viewed through the lens of already established federal law.

PointClickCare welcomes the opportunity to discuss any of these issues with you or the committee in order to refine amendments to the legislation that will best serve the citizens of Maryland and their clinical care choices.

Sincerely,

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