

The Honorable Joseline Peña-Melnyk  
Taylor House Office Building, Room 241  
6 Bladen St., Annapolis, MD 21401

March 24, 2023

POSITION: FAVORABLE WITH AMENDMENT

*Re: SB 648 – Electronic Health Networks and Electronic Medical Records – Nursing Homes – Release of Records (As Amended)*

Dear Chair Peña-Melnyk:

Thank you for your time and consideration as you review our comments on SB 648 – Electronic Health Networks and Electronic Medical Records – Nursing Homes – Release of Records as amended in the Senate. We especially appreciate the Health and Government Operations subcommittee on Health Operations and Long-Term Care for holding the House crossfile (HB 786) in its meeting on March 17, 2023 after we raised our concerns in the meeting.

Though we support the intent of the bill to improve interoperability and access to health care information including electronic medical records, we remain concerned with the bill as amended and are respectfully requesting that we are permitted to continue to work with the proponents and the committee within the relevant subcommittee.

We do appreciate that proponents amended SB 648 in the Senate in an effort to address our concerns and believe that the bill is an improvement from the bill as initially introduced; however, we remain concerned for a variety of reasons. The bill as amended disrupts the current ecosystem established by federal rules in which fees are permitted and associated with information sharing, as well as how proprietary health information technology (HIT) is protected. The dramatic shift in policy in Maryland is not aligned with policy in any other state in which we operate as governed by federal rule 45 CFR §171 Subpart A, B and C. The following is an outline of our concerns with the bill as amended:

***SB 648 As Amended Grants Exclusive Authority to CRISP to Approve Fees Without Clear Rationale or Due Process***

4.302.5(B)(2)(IV) states the following:

“An electronic health network or electronic medical record vendor releasing patient medical records or electronic health care transactions under paragraph (1) of this subsection: may not charge a fee to a business associate contracted with the state-designated health information exchange to improve nursing home quality through data integration, unless the fee is approved by the state-designated health information exchange.”

We are concerned that by granting exclusive authority to CRISP to approve fees, the bill puts at risk significant intellectual property investments made by HIT developers. It is unclear what information CRISP is required to rely on to approve fees, does not offer any procedural guidance for how fee approval will be determined or its associated timeline, and neglects to include any opportunity to appeal CRISP's decision in the event that any party involved disagrees with CRISP's determination. The bill as amended effectively grants CRISP opaque unilateral decision making authority on fees set by HIT companies without considering federal rules, cost parameters to develop HIT, or cost parameters to maintain HIT systems.

Federal regulation governs what is allowed as reasonable fees for assessing, exchanging or using electronic health information put forth in 45 CFR §171.302. The rule was developed to ensure that fees are reasonable, and when charged, do not constitute information blocking. This is especially true in instances of data sharing between HIT vendors. In the event that there is a concern or complaint regarding a fee, ONC has established a complaint process at the federal level that can be accessed by an aggrieved party. This amendment specifically complicates the governing authority on issues of interoperability. We are concerned that passage of SB 648 as amended could result in a chilling effect to innovation in the Maryland marketplace.

We propose amending this section by addition to read as follows:

**“An electronic health network or electronic medical record vendor releasing patient medical records or electronic health care transactions under paragraph (1) of this subsection: may not charge a fee to a business associate contracted with the state-designated health information exchange to improve nursing home quality through data integration, unless the fee is approved by the state-designated health information exchange *and conforms with federal regulations put forth in 45 C.F.R. §171.*”**

#### ***SB 648 As Amended Calls Into Question Which Information is Required to Be Released***

There are federal standards of what constitutes appropriate data for information sharing; however, the legislation as drafted could include the release of significant proprietary pieces of information such as clinical workflows that sets clinical technology apart. We are concerned that the bill as amended may inadvertently force the release of this and other types of proprietary information. While the “licensing exception” under the Federal rules provide protections to developers, without this consideration, SB 648 as amended could unravel these protections and place the intellectual property of HIT developers in Maryland at risk due to the ambiguity in 4.302.5(B)(2)(I)

We respectfully request that the committee work with PointClickCare and other HIT vendors to establish and implement policy and legislation that is aligned with national standards put forth in 45 CFR Part 171 Subpart A, B, and C. The national policy that was developed through the Cures Act established technology standards for transferring patient data to not only protect patients and improve quality care, but to also ensure that innovation was not stifled.

### ***SB 648 Exclusively Targets HIT Vendors in Post-Acute Care Delivery***

Broadly speaking, the amended SB 648 exclusively targets HIT vendors in the long-term / post-acute care space. This is problematic because of the transfer of information across the care continuum. It is necessary for acute care providers such as hospitals and ambulatory care centers to share information across other care settings such as skilled nursing facilities and assisted living facilities. SB 648 as amended creates policy that is exclusive to one type of care setting without taking into consideration the implications it may have on the transfer of data to other care settings. We believe it is important to address HIT policy with the entire continuum of care and data interoperability in mind. SB 648 as amended has the potential to create a bifurcated and segmented health data infrastructure that runs counter to any national interoperability standards.

### ***SB 648 Requires HIT Vendors to Provide Non-Standardized Information***

4.302.5(B)(2)(I) states the following:

“An electronic health network or electronic medical record vendor releasing patient medical records or electronic health care transactions under paragraph (1) of this subsection: shall release the patient medical records or electronic health care transactions in an electronic format that conforms to the specifications of the Office of the National Coordinator for Health Information Technology **or another form required by the state-designated health information exchange.**”

Though we certainly do not have any issue with the release of patient medical records or electronic health care transaction in an electronic format that conforms to the specifications of the Office of the National Coordinator for Health Information Technology (ONC), the prospect of releasing the information in a form determined by CRISP may create additional operational and financial burdens on HIT developers. This issue compounding with the fee approval issue can result in a significant cost to HIT developers.

The ONC has been developing these standards across the healthcare delivery continuum so that care delivery can be coordinated rather than fragmented depending on patient type or care setting. We are concerned that SB 648 as amended creates separate standards at the state level for both the technology standards themselves, as well as the care settings they apply to, which may result in fragmented health care information delivery.

We propose removing “or another form required by the state-designated health information exchange” altogether.

Thank you once again for your time and consideration of our comments on the amended SB 648. We certainly look forward to the opportunity to work with the committee to resolve these issues.

Sincerely,

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