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Health Occupations and
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Joint Committee on Administrative,
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Testimony of Delegate Samuel I. Rosenberg

Before the House Ways and Means Committee

in Support of House Bill 812

Health – Reproductive Health Services –

Protected Information and Insurance Requirements

Madam Chair and Members of the Committee:

On June 22, 2022, millions of Marylanders lost the fundamental right of bodily autonomy. The Dobbs decision overturned Roe v Wade and eliminated constitutional protections for abortion rights. Justice Clarence Thomas also suggested that other protections, such as the right to birth control, may also be called into question.

Since then, 14 states have implemented abortion bans, including our neighboring state of West Virginia. By the end of this year, we could see about half the states banning or severely restricting abortion.

These legislatures, however, are not content with stopping abortion within their boundaries. Instead, they are adopting aggressive tactics to intimidate and even criminalize their residents who travel out-of-state to seek abortion care. These tactics are creating a chilling effect on health care providers in states like Maryland. Abortion remains protected in our state, but our providers are frightened by the attempts of restrictive states to impose criminal, civil, and administrative penalties.

I have included with my testimony the “model” statute in this regard from Texas - V.T.C.A., Health & Safety Code § 171.208.

Because of laws like this, these fears are not theoretical. They are happening now:

- A 10-year old girl had to travel from Ohio to Indiana last summer for an abortion. She had been raped and had been pregnant for 6 weeks and several days – just past Ohio’s limit on abortion care. The Attorney General of Indiana publicly accused the physician

who provided the abortion care to the 10-year-old of breaking the law. The physician had to raise funds for security for herself and her family through a Go Fund Me page. She has since moved to another state and is suing the Indiana Attorney General for defamation of character.ⁱ

- A hospital in Texas called law enforcement about a 26-year-old patient who had self-induced an abortion after Texas instituted its abortion ban. The district attorney charged the patient with murder. The charges were later dropped. But that patient – whose identity was publicly outed by these charges – has to live forever with the trauma of being jailed and having her most personal information revealed to the world.ⁱⁱ

HB 812 is part of a shielding package of legislation. The companion bill, HB 808, the Reproductive Health Protection Act, will prohibit Maryland from participating in out-of-state investigations of abortion and other legally protected reproductive health care. However, that bill cannot protect our providers and patients beyond Maryland's borders.

HB 812 is a necessary complement to the shielding bill. If we do not enact this legislation, we will be creating grave risk for Maryland abortion providers and patients. We need to close existing loopholes in our data privacy laws – or else Maryland abortion patients and their providers can too easily be identified. This bill closes those loopholes by:

- Prohibiting health records about abortion and other reproductive health services from flowing over state lines through health information exchanges. We can keep aggressive states like Texas from accessing this information in Maryland through this bill. But we cannot stop someone from obtaining this information through a court order to an out-of-state provider. If a Maryland abortion patient has seen an out-of-state provider for any reason, even just for an urgent care visit while on vacation, there is a high likelihood the provider will have the patient's abortion record through a health information exchange. Patients would retain the ability to consent to when and with whom their records could be shared.
- Prohibiting dispensing information about Mifepristone from being shared without the patient's consent. Pharmacy dispensing data is routinely integrated into electronic health records. Mifepristone, the main medication used in medical abortion, can now be dispensed by pharmacies because of a rule change by the Food and Drug Administration. This rule change enhances access in underserved areas, but it means that the identity of prescribers of Mifepristone will be more widely available. If we do not protect providers' identities, there will be a chilling effect on access to abortion care. Providers are afraid of threats of violence, and for good reason. Since the leak of the Dobbs decision last spring, three abortion facilities have been set on fire by arsonists or firebombed.
- Creating more guardrails to protect the personal information of health care providers under Maryland's Public Information Act. These guardrails will protect all practitioners, not just abortion providers. Nurses, in particular, suffer from high rates of violence at

work, and in recent years, the Maryland General Assembly has enacted several pieces of legislation to protect health care professionals from workplace violence.

Today, abortion providers and patients will share their very real fears in this post-Dobbs world. We will hear from a Maryland provider who will tell us that many of her colleagues are too afraid to provide abortion care because of fear of being identified. We will hear from providers on the West Coast, who were the first to feel the impact of abortion restrictions in Texas. One of those providers will tell us that they have converted to using paper medical records because they are so afraid of the risk of electronic health records.

It is possible that there will be federal action to close some of the loopholes in the Health Insurance Portability and Accountability Act. A group of senators, including Maryland Senator Chris Van Hollen, has written to the Department of Health and Human Services asking for a rule change.ⁱⁱⁱ But we know how long federal rulemaking can take, and we know that the balance of power on the federal level has shifted all too easily in the past.

With HB 812, I know that we are on the right path. As an article in the Yale Law Review in October observed, “the most effective legislative approach for states may be to prohibit electronic-health-record vendors and health-information exchanges from facilitating the transfer of abortion-related data across state lines.”^{iv}

In closing, I wish to read to you testimony that I received from the American College of Nurse Midwives. It urges, “We implore the Maryland General Assembly to protect Maryland abortion providers and their patients. Nurse-midwives, along with our physician and nurse practitioner colleagues, are struggling to provide reproductive health care to Marylanders and out-of-state patients alike. We are afraid of the long arm of the law of states like Texas, and we no longer believe the Supreme Court will protect us.”

Now, I will turn to the rest of my panel who will provide their perspectives. I know that this is a complex issue, and many stakeholders will have contributions on how this bill should be shaped. You have an initial draft of sponsor amendments in your package, and I am committed to working with the Committee to ensure that we get this bill just right.

We cannot afford not to get it right. This is just too important for access to reproductive health services in Maryland.

I ask a favorable report on House Bill 812.

March 2, 2023

ⁱ<https://www.npr.org/2022/11/03/1133901526/indiana-doctor-sues-ag-to-block-him-from-obtaining-patient-abortion-records>

ⁱⁱ<https://www.vox.com/policy-and-politics/23021104/texas-abortion-murder-charge-starr-county>

ⁱⁱⁱ<https://www.help.senate.gov/imo/media/doc/Letter%20from%20Senator%20Murray%20et%20al.%20to%20Secretary%20Becerra%20re%20HIPAA%20Protections%20for%20Reproductive%20Health%20Information%202013.pdf>

^{iv}https://www.yalelawjournal.org/pdf/F7.ZubrzyckiFinalDraftWEB_6jsh8oxp.pdf