



February 27, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen Street
Annapolis, MD 21401

Dear Madam Chair Griffith –

On behalf of Chesapeake Regional Information System for our Patients (CRISP), the designated health information exchange (HIE) and health data utility (HDU) for Maryland, I am writing to express our concern for SB786 *Health – Reproductive Health Services – Protected Information and Insurance Requirements*. Although we are supportive of the intent of the bill, we believe that the bill should be re-written to ensure clarity and flexibility for its implementation to be successful.

From a technological perspective, at this time, it is not feasible to block, segment, or filter data based on a general category of “reproductive health services.” In our experience, unless certain medical codes or diagnoses are proactively identified as being a part of protected health data, entities cannot filter-out “reproductive health services” from the remainder of the health records. As a result, as written, this bill would most likely be implemented by blocking *entire* records at the patient-level or at the department level (e.g., all information from obstetrics departments), meaning that patients’ records that include any type of “reproductive health services” would not be shared when entities exchange data for the allowable purposes under state and federal laws.

Therefore, we encourage the Senate to amend the bill to include specific medical or diagnosis codes that should be filtered from a record. To ensure flexibility, we recommend that the legislation allow for the list of codes to be updated through a regulatory or sub-regulatory process. Attached, we submit our suggested amendments.

As a strong proponent of patient consent, privacy, and shared decision-making, CRISP supports the overall intent of this bill; however, to ensure technological implementation that also allows other types of health data to flow as allowed by state and federal law, we encourage the Committee to take into consideration our proposed amendments.



CRISP

Thank you for your consideration and the opportunity to express our concerns regarding the current language in SB786.

Best,

Nichole Ellis Sweeney, JD
General Counsel and Chief Privacy Officer
CRISP

ATTACHMENT
PROPOSED AMENDMENT TO SB786

*HEALTH – REPRODUCTIVE HEALTH SERVICES – PROTECTED INFORMATION AND INSURANCE
REQUIREMENTS*

SENATE BILL 786

J1, J5

3lr2403
CF HB 812

By: **Senator Hettleman**

Introduced and read first time: February 6, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health – Reproductive Health Services – Protected Information and Insurance**
3 **Requirements**

4 FOR the purpose of regulating the disclosure of certain information related to
5 legally protected health care by custodians of public records, health care providers,
6 health information exchanges, and dispensers; repealing a provision of law
7 authorizing a custodian to allow inspection of the part of a public record that gives
8 the home address of a licensee under certain circumstances; requiring that the
9 regulations adopted by the Maryland Health Care Commission regarding clinical
10 information to be exchanged through the State–designated exchange restrict data of
11 patients who have obtained legally protected health care; altering the purpose of the
12 Maryland Health Care Commission to include the establishment of policies and
13 standards that protect the confidentiality of certain health care information;
14 clarifying that certain insurance requirements regarding abortion care services
15 apply notwithstanding a certain restriction; and generally relating to health
16 information and reproductive health services.

17 BY repealing and reenacting, with amendments,
18 Article – General Provisions
19 Section 4–333
20 Annotated Code of Maryland
21 (2019 Replacement Volume and 2022 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Health – General
24 Section 4–301, 4–302.3, 4–305, 4–309, 19–103, and 19–145
25 Annotated Code of Maryland
26 (2019 Replacement Volume and 2022 Supplement)

27 BY adding to
28 Article – Health – General
Section 4–302.5

1 Annotated Code of Maryland
2 (2019 Replacement Volume and 2022 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Insurance
5 Section 15–857
6 Annotated Code of Maryland
7 (2017 Replacement Volume and 2022 Supplement)

8 BY repealing and reenacting, without amendments,
9 Article – Insurance
10 Section 31–116(a)
11 Annotated Code of Maryland
12 (2017 Replacement Volume and 2022 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article – General Provisions**

17 4–333.

18 (a) Subject to subsections (b) through (d) of this section, a custodian shall deny
19 inspection of the part of a public record that:

20 (1) contains information about the licensing of an individual in an
21 occupation or a profession;

22 (2) **CONTAINS THE NAME OF AN INDIVIDUAL OR OTHER IDENTIFYING**
23 **INFORMATION RELATED TO AN AMBULATORY SURGERY CENTER LICENSED UNDER §**
24 **19–3B–01 OF THE HEALTH – GENERAL ARTICLE OR A SURGICAL ABORTION**
25 **FACILITY LICENSED UNDER § 20–209 OF THE HEALTH – GENERAL ARTICLE; OR**

26 (3) **RELATES TO AN INVESTIGATION OF A LICENSEE OR CERTIFICATE**
27 **HOLDER REGARDING THE PROVISION OF LEGALLY PROTECTED HEALTH CARE, AS**
28 **DEFINED IN § 4–301 OF THE HEALTH – GENERAL ARTICLE, PENDING A FINAL**
29 **ORDER.**

30 (b) A custodian shall allow inspection of the part of a public record that gives:

31 (1) the name of the licensee;

32 (2) the business address of the licensee [or, if the business address is not
1 available, the home address of the licensee after the custodian redacts any information that
2 identifies the location as the home address of an individual with a disability as defined in
§ 20–701 of the State Government Article];

3 (3) the business telephone number of the licensee;

4 (4) the educational and occupational background of the licensee;

5 (5) the professional qualifications of the licensee;

6 (6) any orders and findings that result from formal disciplinary actions;
7 and

8 (7) any evidence that has been provided to the custodian to meet the
9 requirements of a statute as to financial responsibility.

10 (c) A custodian may allow inspection of other information about a licensee if:

11 (1) the custodian finds a compelling public purpose; and

12 (2) the rules or regulations of the official custodian allow the inspection.

13 (d) Except as otherwise provided by this section or other law, a custodian shall
14 allow inspection by the person in interest.

15 (e) A custodian who sells lists of licensees shall omit from the lists the name of
16 any licensee, on written request of the licensee.

17 **Article – Health – General**

18 4–301.

19 (a) In this subtitle the following words have the meanings indicated.

20 (b) “Common ownership” means ownership of a health care entity:

21 (1) By two or more health care providers;

22 (2) By two or more health care providers employed by a mutual employer
23 for a wage, salary, fee, or payment to perform work for the employer;

24 (3) By health care organizations operating as an organized health care
25 arrangement, as defined in 45 C.F.R. § 160.103;

26 (4) By a health care entity or health care entities that possess an ownership
27 or equity interest of 5% or more in another health care entity; or

- (5) By affiliated providers operating under the same trade name.

1 (c) "Directory information" means information concerning the presence and
2 general health condition of a patient who has been admitted to a health care facility or who
3 is currently receiving emergency health care in a health care facility.

4 (d) "Disclose" or "disclosure" means the transmission or communication of
5 information in a medical record, including an acknowledgment that a medical record on a
6 particular patient or recipient exists.

7 (e) "Emergency" means a situation when, in the professional opinion of the health
8 care provider, a clear and significant risk of death or imminent serious injury or harm to a
9 patient or recipient exists.

10 (f) "General health condition" means the health status of a patient described in
11 terms of "critical", "poor", "fair", "good", "excellent", or terms denoting similar conditions.

12 (g) "Health care" means any care, treatment, or procedure by a health care
13 provider:

14 (1) To diagnose, evaluate, rehabilitate, manage, treat, or maintain the
15 physical or mental condition of a patient or recipient; or

16 (2) That affects the structure or any function of the human body.

17 (h) (1) "Health care provider" means:

18 (i) A person who is licensed, certified, or otherwise authorized under
19 the Health Occupations Article or § 13–516 of the Education Article to provide health care
20 in the ordinary course of business or practice of a profession or in an approved education or
21 training program; or

22 (ii) A facility where health care is provided to patients or recipients,
23 including a facility as defined in § 10–101(g) of this article, a hospital as defined in §
24 19–301 of this article, a related institution as defined in § 19–301 of this article, a health
25 maintenance organization as defined in § 19–701(g) of this article, an outpatient clinic, a
26 medical laboratory, a comprehensive crisis response center, a crisis stabilization center,
27 and a crisis treatment center established under § 7.5–207 of this article.

28 (2) "Health care provider" includes the agents, employees, officers, and
29 directors of a facility and the agents and employees of a health care provider.

30 (i) (1) "Health information exchange" means:

31 (i) An individual or entity that determines, controls, or has the
32 discretion to administer any requirement, policy, or agreement that allows, enables, or
33 requires the use of any technology or services for access, exchange, or use of electronic
34 protected health care information:

1 1. Among more than two unaffiliated individuals or entities
2 that are enabled to exchange electronic protected health information with each other; and

3 2. That is for a treatment, payment, or health care
4 operations purpose, as those terms are defined in 45 C.F.R. § 164.501, regardless of whether
5 the individuals or entities are subject to the requirements of 45 C.F.R. parts 160 and 164;
6 or

7 (ii) A health information technology developer of certified health
8 information technology that develops or offers health information technology, as that term
9 is defined in 42 U.S.C. 300jj(5), and has one or more Health Information Technology
10 Modules certified under a program for the voluntary certification of health information
11 technology that is kept or recognized by the National Coordinator in accordance with 42
12 U.S.C. 300jj–11(c)(5).

13 (2) “Health information exchange” does not include:

14 (i) An entity composed of health care providers under common
15 ownership if the organizational and technical processes the entity provides or governs are
16 for health care treatment, payment, or health care operations purposes, as those terms are
17 defined in 45 C.F.R. § 164.501;

18 (ii) A carrier, as defined in § 15–1301 of the Insurance Article if the
19 organizational and technical processes the carrier provides or governs are for health care
20 treatment, payment, or health care operations purposes, as those terms are defined in 45
21 C.F.R. § 164.501;

22 (iii) An administrator, as defined in § 8–301 of the Insurance Article,
23 if the organizational and technical processes the administrator provides or governs are for
24 health care treatment, payment, or health care operations purposes, as those terms are
25 defined in 45 C.F.R. § 164.501;

26 (iv) A health care provider, as defined in subsection (h) of this section,
27 if the organizational and technical processes the health care provider provides or governs
28 are for health care treatment, payment, or health care operations purposes, as those terms
29 are defined in 45 C.F.R. § 164.501;

30 (v) A carrier’s business associate, as defined in 45 C.F.R. § 160.103,
31 if the organizational and technical processes provided or governed by the business associate
32 are transactions, as defined in 45 C.F.R. § 160.103; or

33 (vi) A carrier exchanging information as required by 45 C.F.R. §
34 156.221.

35 (j) **“LEGALLY PROTECTED HEALTH CARE” MEANS ALL**
36 **HEALTH SERVICES, MEDICATIONS, AND SUPPLIES LISTED BY DIAGNOSIS CODE BY THE**

PROTECTED HEALTH COMMISSION.

1 **(K)** (1) “Medical record” means any oral, written, or other transmission in any
2 form or medium of information that:

- 3 (i) Is entered in the record of a patient or recipient;
- 4 (ii) Identifies or can readily be associated with the identity of a
5 patient or recipient; and
- 6 (iii) Relates to the health care of the patient or recipient.

7 (2) “Medical record” includes any:

8 (i) Documentation of disclosures of a medical record to any person
9 who is not an employee, agent, or consultant of the health care provider;

10 (ii) File or record maintained under § 12–403(c)(13) of the Health
11 Occupations Article by a pharmacy of a prescription order for drugs, medicines, or devices
12 that identifies or may be readily associated with the identity of a patient;

13 (iii) Documentation of an examination of a patient regardless of who:

14 1. Requested the examination; or

15 2. Is making payment for the examination; and

16 (iv) File or record received from another health care provider that:

17 1. Relates to the health care of a patient or recipient received
18 from that health care provider; and

22 2. Identifies or can readily be associated with the identity of
23 the patient or recipient.

24 **[(k)] (L)** (1) “Mental health services” means health care rendered to a
25 recipient primarily in connection with the diagnosis, evaluation, treatment, case
26 management, or rehabilitation of any mental disorder.

27 (2) For acute general hospital services, mental health services are
28 considered to be the primarily rendered service only if service is provided pursuant to Title
29 10, Subtitle 6 of this article or Title 3 of the Criminal Procedure Article.

1 **[(l)] (M)** “Patient” means a person who receives health care and on whom a
2 medical record is maintained.

3 **[(m)] (N)** “Person in interest” means:

4 (1) An adult on whom a health care provider maintains a medical record;

5 (2) A person authorized to consent to health care for an adult consistent
6 with the authority granted;

7 (3) A duly appointed personal representative of a deceased person;

8 (4) (i) A minor, if the medical record concerns treatment to which the
9 minor has the right to consent and has consented under Title 20, Subtitle 1 of this article;
10 or

11 (ii) A parent, guardian, custodian, or a representative of the minor
12 designated by a court, in the discretion of the attending physician who provided the
13 treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

14 (5) If item (4) of this subsection does not apply to a minor:

15 (i) A parent of the minor, except if the parent’s authority to consent
16 to health care for the minor has been specifically limited by a court order or a valid
17 separation agreement entered into by the parents of the minor; or

18 (ii) A person authorized to consent to health care for the minor
19 consistent with the authority granted; or

20 (6) An attorney appointed in writing by a person listed in item (1), (2), (3),
21 (4), or (5) of this subsection.

22 **[(n)] (O)** “Primary provider of mental health services” means the designated
23 mental health services provider who:

24 (1) Has primary responsibility for the development of the mental health
25 treatment plan for the recipient; and

26 (2) Is actively involved in providing that treatment.

27 **[(o)] (P)** “**PROTECTED HEALTH COMMISSION**” IS A COMMISSION COMPRISED OF THE
FOLLOWING INDIVIDUALS:

30 **(1) THE EXECUTIVE DIRECTOR OF THE MARYLAND HEALTH CARE COMMISSION;**

31 **(2) THE DEPUTY SECRETARY FOR PUBLIC HEALTH, OR THE DEPUTY SECRETARY’S**
DESIGNEE;

32 **(3) THE DIRECTOR OF THE OFFICE OF MINORITY HEALTH AND HEALTH DISPARITIES,**

OR THE DIRECTOR'S DESIGNEE;

33 (4) THE FOLLOWING MEMBERS, APPOINTED BY THE GOVERNOR:

34 (A) A STATE RESIDENT WITH CREDENTIALS BY THE AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS:

35 (B) A STATE RESIDENT WITH EXPERTISE IN INTERSTATE HEALTH DATA EXCHANGE;

AND

36 (C) A CONSUMER HEALTH ADVOCATE.

1 (Q) "Protected health information" means all individually identifiable
2 health information held or transmitted by a covered entity or its business associate
3 protected under the U.S. Department of Health and Human Services Privacy Rule.

1 **(R) “PROTECTED MEDICATION RECORD” MEANS ANY IDENTIFYING**
2 **INFORMATION ABOUT THE PATIENT OR PRESCRIBER OF MEDICATION USED IN A**
3 **MEDICAL ABORTION IF THE MEDICATION:**

4 **(1) HAS BEEN APPROVED BY THE FEDERAL FOOD AND DRUG**
5 **ADMINISTRATION FOR MEDICAL ABORTION; OR**

6 **(2) IS RECOGNIZED BY THE SECRETARY.**

7 **(S) (1) “PROTECTED SERVICES RECORD” MEANS ANY IDENTIFYING**
8 **INFORMATION CONTAINED IN A PATIENT’S MEDICAL RECORD RELATING TO THE**
9 **PROVISION OF LEGALLY PROTECTED HEALTH CARE.**

10 **(2) “PROTECTED SERVICES RECORD” DOES NOT INCLUDE A**
11 **PROTECTED MEDICATION RECORD.**

12 **[(p)] (T)** “Recipient” means a person who has applied for, for whom an
13 application has been submitted, or who has received mental health services.

14 **[(q)] (U)** “State–designated health information exchange” means the health
15 information exchange designated by the Maryland Health Care Commission and the
16 Health Services Cost Review Commission under § 19–143 of this article.

17 4–302.3.

18 (a) (1) In this section the following words have the meanings indicated.

19 (2) “Electronic health care transactions” means health care transactions
20 that have been approved by a nationally recognized health care standards development
21 organization to support health care informatics, information exchange, systems
22 integration, and other health care applications.

23 (3) “Electronic health network” means an entity:

24 (i) Involved in the exchange of electronic health care transactions
25 between a payor, health care provider, vendor, and any other entity; and

26 (ii) Certified by the Maryland Health Care Commission.

27 (4) “Nursing home” has the meaning stated in § 19–1401 of this article.

28 (5) “Standard request” means a request for clinical information from a
29 health information exchange that conforms to the major standards version specified by the
30 Office of the National Coordinator for Health Information Technology.

1 (b) This section applies to:

2 (1) Except for the State–designated health information exchange, a health
3 information exchange operating in the State; and

4 (2) A payor that:

5 (i) Holds a valid certificate of authority issued by the Maryland
6 Insurance Commissioner; and

7 (ii) Acts as, operates, or owns a health information exchange.

8 (c) An entity to which this section applies shall connect to the State–designated
9 health information exchange in a manner consistent with applicable federal and State
10 privacy laws.

11 (d) When a standard request for clinical information is received through the
12 State–designated health information exchange, an entity to which this section applies
13 shall:

14 (1) Respond to the request to the extent authorized under federal and State
15 privacy laws; and

16 (2) Transmit the response to the State–designated health information
17 exchange in the manner specified in the regulations adopted under subsection (g) of this
18 section.

19 (e) A consent from a patient to release clinical information to a provider obtained
20 by an entity to which this section applies shall apply to information transmitted through
21 the State–designated health information exchange or by other means.

22 (f) (1) On request of the Department, a nursing home shall submit
23 electronically clinical information to the State–designated health information exchange to
24 facilitate the objectives stated in paragraph (3) of this subsection.

25 (2) In accordance with State and federal law and to facilitate the objectives
26 stated in paragraph (3) of this subsection, the State–designated health information
27 exchange may provide the information submitted under paragraph (1) of this subsection to:

28 (i) A health care provider;

29 (ii) An authorized health information exchange user;

30 (iii) A health information exchange authorized by the Maryland
31 Health Care Commission;

32 (iv) A federal official; and

1 (v) A State official.

2 (3) (i) If approved by the Maryland Health Care Commission, the
3 information submitted under paragraph (1) of this subsection may be combined with other
4 data maintained by the State–designated health information exchange to facilitate:

- 5 1. A State health improvement program;
6 2. Mitigation of a public health emergency; and
7 3. Improvement of patient safety.

8 (ii) The information submitted by a nursing home under paragraph
9 (1) of this subsection may be used only to facilitate the objectives stated in subparagraph
10 (i) of this paragraph and may not be used for any other purpose, including licensing and
11 certification.

12 (g) (1) The State–designated health information exchange shall:

13 (i) Participate in the advisory committee established under §
14 13–4306(a)(1) of this article; and

15 (ii) Maintain a data set for the Maryland Commission on Health
16 Equity and provide data from the data set consistent with the parameters defined by the
17 advisory committee.

18 (2) If approved by the Maryland Commission on Health Equity, the
19 State–designated health information exchange may use the data set maintained under
20 paragraph (1) of this subsection to improve health outcomes for patients.

21 (h) (1) An electronic health network shall provide electronic health care
22 transactions to the State–designated health information exchange for the following public
23 health and clinical purposes:

- 24 (i) A State health improvement program;
25 (ii) Mitigation of a public health emergency; and
26 (iii) Improvement of patient safety.

27 (2) An electronic health network may not charge a fee to a health care
28 provider, health care payor, or to the State–designated health information exchange for
29 providing the information as required under paragraph (1) of this subsection.

1 (3) The State–designated health information exchange shall develop and
2 implement policies and procedures to implement paragraph (1) of this subsection that are
3 consistent with regulations adopted by the Maryland Health Care Commission.

4 (i) The Maryland Health Care Commission:

5 (1) Shall adopt regulations for implementing the connectivity to the
6 State–designated health information exchange required under this section; and

7 (2) Shall seek, through any regulations adopted under item (1) of this
8 subsection, to promote technology standards and formats that conform to those specified by
9 the Office of the National Coordinator for Health Information Technology.

10 (j) (1) The Maryland Health Care Commission shall adopt regulations that:

11 (i) Specify the scope of clinical information to be exchanged or sent
12 under this section; and

13 (ii) Provide for a uniform, gradual implementation of the exchange
14 of clinical information under this section.

15 (2) Any regulations adopted under paragraph (1) of this subsection shall
16 limit the scope of the clinical information to purposes that:

17 (i) Improve treatment, including improved access to clinical records
18 by treating clinicians;

19 (ii) Promote uses of the State–designated health information
20 exchange important to public health; or

21 (iii) The protection of the electronic health information of a person in
22 interest who has opted out of having electronic health information shared or disclosed by a
23 health information exchange.

24 (3) Regulations adopted under paragraph (1) of this subsection shall:

25 (i) Limit redisclosure of financial information, including billed or
26 paid amounts available in electronic claims transactions;

27 (ii) Restrict data of patients who have opted out of records sharing
28 through the State–designated health information exchange or a health information
29 exchange authorized by the Maryland Health Care Commission; **[and]**

30 (iii) Restrict data from health care providers that possess sensitive
31 health care information; **AND**

1 **(IV) RESTRICT DATA OF PATIENTS WHO HAVE OBTAINED**
2 **LEGALLY PROTECTED HEALTH CARE.**

3 (k) This section does not:

4 (1) Require an entity to which this section applies to collect clinical
5 information or obtain any authorizations, not otherwise required by federal or State law,
6 relating to information to be sent or received through the State–designated health
7 information exchange;

8 (2) Prohibit an entity to which this section applies from directly receiving
9 or sending information to providers or subscribers outside of the State–designated health
10 information exchange; or

11 (3) Prohibit an entity to which this section applies from connecting and
12 interoperating with the State–designated health information exchange in a manner and
13 scope beyond that required under this section.

14 **4–302.5.**

15 **(A) A HEALTH INFORMATION EXCHANGE MAY NOT DISCLOSE A PROTECTED**
16 **SERVICES RECORD OR PROTECTED MEDICATION RECORD TO A TREATING**
17 **PROVIDER, BUSINESS ENTITY, OR HEALTH INFORMATION EXCHANGE LOCATED**
18 **OUTSIDE THE STATE UNLESS THE DISCLOSURE IS:**

19 **(1) FOR THE ADJUDICATION OF CLAIMS; OR**

20 **(2) TO A SPECIFIC TREATING PROVIDER AT THE WRITTEN REQUEST**
21 **OF AND WITH THE CONSENT OF:**

22 **(i) A PATIENT, FOR SERVICES FOR WHICH THE PATIENT CAN**
23 **PROVIDE CONSENT UNDER STATE LAW; OR**

24 **(ii) A PARENT OR GUARDIAN OF A PATIENT, FOR SERVICES FOR**
25 **WHICH THE PARENT OR GUARDIAN CAN PROVIDE CONSENT UNDER STATE LAW.**

26 **(B) (1) A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY**
27 **OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT TO EXCEED**
28 **\$10,000 PER DAY.**

29 **(2) IN DETERMINING THE FINE TO BE IMPOSED UNDER PARAGRAPH**
30 **(1) OF THIS SUBSECTION, THE FOLLOWING FACTORS SHALL BE CONSIDERED:**

31 **(i) THE EXTENT OF ACTUAL OR POTENTIAL PUBLIC HARM**
32 **CAUSED BY THE VIOLATION;**

1 (II) THE COST OF INVESTIGATING THE VIOLATION; AND

2 (III) WHETHER THE PERSON PREVIOUSLY VIOLATED THIS
3 SECTION.

4 (C) THE SECRETARY SHALL:

5 (1) ADOPT REGULATIONS THAT IDENTIFY THE MEDICATIONS AND
RELATED CODES TO BE CONSIDERED A MEDICATION USED IN A MEDICAL
ABORTION FOR PURPOSES OF
6 DETERMINING IF A RECORD IS A PROTECTED MEDICATION RECORD; AND

7 (2) FOLLOW GUIDELINES OF THE AMERICAN COLLEGE OF
8 OBSTETRICIANS AND GYNECOLOGISTS, THE WORLD HEALTH ORGANIZATION, AND
9 THE SOCIETY OF FAMILY PLANNING IN DETERMINING WHICH MEDICATIONS TO
10 IDENTIFY IN THE REGULATIONS ADOPTED UNDER ITEM (1) OF THIS SUBSECTION.

11

(D) A PROTECTED HEALTH COMMISSION IS CREATED.

(1) THE PURPOSE OF THIS COMMISSION IS TO PRODUCE A SENSITIVE DIAGNOSIS CODE LIST FOR PURPOSES OF DEFINING “LEGALLY PROTECTED HEALTH CARE” UNDER THIS TITLE.

(2) WITHIN 60 DAYS OF THE ADOPTION OF THIS SUBTITLE THE SECRETARY WILL RELEASE AN INITIAL DIAGNOSIS CODE LIST DEFINING “LEGALLY PROTECTED HEALTH CARE” UNDER THIS TITLE.

(3) THE COMMISSION MUST MEET AT LEAST THREE TIMES PER YEAR TO UPDATE THE SENSITIVE DIAGNOSIS CODE LIST.

12 4–305.

13 (a) This section may not be construed to impose an obligation on a health care
14 provider to disclose a medical record.

15 (b) A health care provider may disclose a medical record without the
16 authorization of a person in interest:

17 (1) (i) To the provider’s authorized employees, agents, medical staff,
18 medical students, or consultants for the sole purpose of offering, providing, evaluating, or
19 seeking payment for health care to patients or recipients by the provider;

20 (ii) To the provider’s legal counsel regarding only the information in
21 the medical record that relates to the subject matter of the representation; or

22 (iii) To any provider's insurer or legal counsel, or the authorized
23 employees or agents of a provider's insurer or legal counsel, for the sole purpose of handling
24 a potential or actual claim against any provider if the medical record is maintained on the
25 claimant and relates to the subject matter of the claim;

26 (2) If the person given access to the medical record signs an
27 acknowledgment of the duty under this Act not to redisclose any patient identifying
28 information, to a person for:

29 (i) Educational or research purposes, subject to the applicable
30 requirements of an institutional review board;

- 1 (ii) Evaluation and management of health care delivery systems;
2 [or]
3 (iii) Accreditation of a facility by professional standard setting
4 entities; **OR**

5 (IV) AN OUT-OF-STATE INVESTIGATION OF LEGALLY
6 PROTECTED HEALTH CARE PROVIDED IN THE STATE;

7 (3) Subject to the additional limitations for a medical record developed
8 primarily in connection with the provision of mental health services in § 4-307 of this
9 subtitle, to a government agency performing its lawful duties as authorized by an act of the
10 Maryland General Assembly or the United States Congress;

11 (4) Subject to the additional limitations for a medical record developed
12 primarily in connection with the provision of mental health services in § 4-307 of this
13 subtitle, to another health care provider for the sole purpose of treating the patient or
14 recipient on whom the medical record is kept;

15 (5) If a claim has been or may be filed by, or with the authorization of a
16 patient or recipient on behalf of the patient or recipient, for covered insureds, covered
17 beneficiaries, or enrolled recipients only, to third party payors and their agents, if the
18 payors or agents have met the applicable provisions of §§ 15-10B-01 to 15-10B-18 of the
19 Insurance Article, including nonprofit health service plans, health maintenance
20 organizations, fiscal intermediaries and carriers, the Department and its agents, the
21 United States Department of Health and Human Services and its agents, or any other
22 person obligated by contract or law to pay for the health care rendered for the sole purposes
23 of:

- 24 (i) Submitting a bill to the third party payor;
- 25 (ii) Reasonable prospective, concurrent, or retrospective utilization
26 review or predetermination of benefit coverage;
- 27 (iii) Review, audit, and investigation of a specific claim for payment
28 of benefits; or
- 29 (iv) Coordinating benefit payments in accordance with the provisions
30 of the Insurance Article under more than one sickness and accident, dental, or hospital and
31 medical insurance policy;

32 (6) If a health care provider makes a professional determination that an
33 immediate disclosure is necessary, to provide for the emergency health care needs of a
34 patient or recipient;

1 (7) To immediate family members of the patient or any other individual
2 with whom the patient is known to have a close personal relationship, provided that:

3 (i) The disclosure is limited to information that is directly relevant
4 to the individual's involvement in the patient's health care; and

5 (ii) 1. If the patient is present or otherwise available before the
6 disclosure and has the capacity to make health care decisions:

7 A. The patient has been provided with an opportunity to
8 object to the disclosure and the patient has not objected; or

9 B. The health care provider reasonably infers from the
10 circumstances that, based on the health care provider's professional judgment, the patient
11 does not object to the disclosure; or

12 2. If the patient is not present or otherwise available before
13 the disclosure is made, or providing the patient with an opportunity to object to the
14 disclosure is not practicable because of the patient's incapacity or need for emergency care
15 or treatment, the health care provider determines, based on the health care provider's
16 professional judgment, that the disclosure is in the best interests of the patient;

17 (8) To an appropriate organ, tissue, or eye recovery agency under the
18 restrictions of § 5–408 of this article for a patient whose organs and tissues may be donated
19 for the purpose of evaluating the patient for possible organ and tissue donation;

20 (9) To the Department or an organ, tissue, or eye recovery agency
21 designated by the Department for the purpose of conducting death record reviews under §
22 19–310 of this article;

23 (10) Subject to subsection (c) of this section, if the purpose of the medical
24 record disclosure is for the coordination of services and record retention within the
25 Montgomery County Department of Health and Human Services; [or]

26 (11) To a carrier, as defined in § 15–1301 of the Insurance Article, or an
27 accountable care organization, as defined in § 3022 of the Patient Protection and Affordable
28 Care Act, for the sole purposes of enhancing or coordinating patient care, provided that:

29 (i) A disclosure under this item is subject to the additional
30 limitations in § 4–307 of this subtitle on disclosure of a medical record developed primarily
31 in connection with the provision of mental health services;

32 (ii) A medical record may be disclosed only in accordance with the
33 federal Health Insurance Portability and Accountability Act of 1996, any regulations
34 adopted under the Act, and any other applicable federal privacy laws, and disclosures under
35 this item may not be made in violation of the prohibited uses or disclosures under the
36 federal Health Insurance Portability and Accountability Act of 1996;

1 (iii) A disclosure under this item may not be used for underwriting or
2 utilization review purposes;

3 (iv) A health care provider that discloses a medical record in
4 accordance with this item shall provide a notice consistent with the requirements of 45
5 C.F.R. § 164.520 specifying the information to be shared, with whom it will be shared, and
6 the specific types of uses and disclosures that the health care provider may make in
7 accordance with this item;

8 (v) The notice required by item (iv) of this item shall include an
9 opportunity for the individual to opt out of the sharing of the individual's medical record
10 with a carrier or an accountable care organization for the purposes identified in this item;
11 [and]

12 (vi) If a health care provider discloses medical information or medical
13 data to a carrier or accountable care organization through an infrastructure that provides
14 organizational and technical capabilities for the exchange of protected health information
15 among entities not under common ownership, the health care providers are subject to the
16 requirements of §§ 4-302.2 and 4-302.3 of this subtitle; AND

17 **(VII) IF THE DISCLOSURE IS OF A PROTECTED SERVICES RECORD**
18 **OR A PROTECTED MEDICATION RECORD, THE DISCLOSURE IS SUBJECT TO THE**
19 **REQUIREMENTS FOR A PROTECTED SERVICES RECORD AND PROTECTED**
20 **MEDICATION RECORD UNDER § 4-302.5 OF THIS SUBTITLE; OR**

21 **(12) SUBJECT TO THE REQUIREMENTS FOR A PROTECTED SERVICES**
22 **RECORD AND PROTECTED MEDICATION RECORD UNDER § 4-302.5 OF THIS**
23 **SUBTITLE, TO ANOTHER HEALTH CARE PROVIDER FOR THE SOLE PURPOSE OF**
24 **TREATING THE PATIENT FOR WHOM THE MEDICAL RECORD IS KEPT.**

25 (c) (1) The disclosure of medical records under subsection (b)(10) of this
26 section to a person that is not employed by or under contract with the Montgomery County
27 Department of Health and Human Services shall be conducted in accordance with this
28 subtitle.

29 (2) Under provisions of State law regarding confidentiality, the
30 Montgomery County Department of Health and Human Services shall be considered to be
31 one agency.

32 4-309.

33 (a) **THIS SECTION DOES NOT APPLY TO A VIOLATION OF § 4-302.5 OF THIS**
34 **SUBTITLE.**

1 **(B)** If a health care provider knowingly refuses to disclose a medical record within
2 a reasonable time but no more than 21 working days after the date a person in interest
3 requests the disclosure, the health care provider is liable for actual damages.

4 **[(b)] (C)** A health care provider may not refuse to disclose a medical record on
5 the request of a person in interest because of the failure of the person in interest to pay for
6 health care rendered by the health care provider.

7 **[(c)] (D)** A health care provider or any other person is in violation of this subtitle
8 if the health care provider or any other person:

9 (1) Requests or obtains a medical record under false pretenses or through
10 deception; or

11 (2) Discloses a medical record in violation of this subtitle.

12 **[(d)] (E)** Except as otherwise provided in subsection **[(e)] (F)** of this section, a
13 health care provider or any other person, including an officer or employee of a governmental
14 unit, who knowingly and willfully violates any provision of this subtitle is guilty of a
15 misdemeanor and on conviction is subject to a fine not exceeding \$1,000 for the first offense
16 and not exceeding \$5,000 for each subsequent conviction for a violation of any provision of
17 this subtitle.

18 **[(e)] (F)** (1) A health care provider or any other person, including an officer
19 or employee of a governmental unit, who knowingly and willfully requests or obtains a
20 medical record under false pretenses or through deception or knowingly and willfully
21 discloses a medical record in violation of this subtitle is guilty of a misdemeanor and on
22 conviction is subject to the following penalties:

23 (i) A fine not exceeding \$50,000, imprisonment for not more than 1
24 year, or both;

25 (ii) If the offense is committed under false pretenses, a fine not
26 exceeding \$100,000, imprisonment for not more than 5 years, or both; and

27 (iii) If the offense is committed with intent to sell, transfer, or use
28 individually identifiable health information for commercial advantage, personal gain, or
29 malicious harm, a fine not exceeding \$250,000, imprisonment for not more than 10 years,
30 or both.

31 (2) This subsection does not apply to an officer or employee of a
32 governmental unit that is conducting a criminal investigation.

33 **[(f)] (G)** A health care provider or any other person who knowingly violates any
34 provision of this subtitle is liable for actual damages.

1 19–103.

2 (a) There is a Maryland Health Care Commission.

3 (b) The Commission is an independent commission that functions in the
4 Department.

5 (c) The purpose of the Commission is to:

6 (1) Develop health care cost containment strategies to help provide access
7 to appropriate quality health care services for all Marylanders, after consulting with the
8 Health Services Cost Review Commission;

9 (2) Promote the development of a health regulatory system that provides,
10 for all Marylanders, financial and geographic access to quality health care services at a
11 reasonable cost by:

12 (i) Advocating policies and systems to promote the efficient delivery
13 of and improved access to health care services; and

14 (ii) Enhancing the strengths of the current health care service
15 delivery and regulatory system;

16 (3) Facilitate the public disclosure of medical claims data for the
17 development of public policy;

18 (4) Establish and develop a medical care database on health care services
19 rendered by health care practitioners;

20 (5) Encourage the development of clinical resource management systems
21 to permit the comparison of costs between various treatment settings and the availability
22 of information to consumers, providers, and purchasers of health care services;

23 (6) In accordance with Title 15, Subtitle 12 of the Insurance Article,
24 develop a uniform set of effective benefits to be included in the Comprehensive Standard
25 Health Benefit Plan;

26 (7) Analyze the medical care database and provide, in aggregate form, an
27 annual report on the variations in costs associated with health care practitioners;

28 (8) Ensure utilization of the medical care database as a primary means to
29 compile data and information and annually report on trends and variances regarding fees
30 for service, cost of care, regional and national comparisons, and indications of malpractice
31 situations;

32 (9) Establish standards for the operation and licensing of medical care
33 electronic claims clearinghouses in Maryland;

1 (10) Reduce the costs of claims submission and the administration of claims
2 for health care practitioners and payors;

3 (11) Determine the cost of mandated health insurance services in the State
4 in accordance with Title 15, Subtitle 15 of the Insurance Article;

5 (12) Promote the availability of information to consumers on charges by
6 practitioners and reimbursements from payors; [and]

7 (13) Oversee and administer the Maryland Trauma Physician Services
8 Fund in conjunction with the Health Services Cost Review Commission; AND

9 **(14) ESTABLISH POLICIES AND STANDARDS TO PROTECT THE**
10 **CONFIDENTIALITY OF PATIENT AND HEALTH CARE PRACTITIONER INFORMATION**
11 **RELATED TO LEGALLY PROTECTED HEALTH CARE AS DEFINED IN § 4-301 OF THIS**
12 **ARTICLE.**

13 (d) The Commission shall coordinate the exercise of its functions with the
14 Department and the Health Services Cost Review Commission to ensure an integrated,
15 effective health care policy for the State.

16 19–145.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) “Dispenser” means a person authorized by law to dispense, as defined
19 in § 12–101 of the Health Occupations Article, a prescription drug to a patient or the
20 patient’s agent in the State.

21 (3) “Noncontrolled prescription drug” means a prescription drug, as
22 defined in § 21–201 of this article, that is not a controlled dangerous substance designated
23 under Title 5, Subtitle 4 of the Criminal Law Article.

24 (4) “State designated exchange” has the meaning stated in § 4–302.3 of this
25 article.

26 (b) The State designated exchange shall operate as a health data utility for the
27 State.

28 (c) The purposes of the health data utility include:

29 (1) The collection, aggregation, and analysis of clinical information, public
30 health data, and health administrative and operations data to assist the Department, local
31 health departments, the Commission, and the Health Services Cost Review Commission in

32 the evaluation of public health interventions and health equity;

1 (2) The communication of data between public health officials and health
2 care providers to advance disease control and health equity; and

3 (3) The enhancement and acceleration of the interoperability of health
4 information throughout the State.

5 (d) [Dispensers] **EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS**
6 **SECTION, EACH DISPENSER** shall provide data to the State designated exchange.

7 **(E) (1) A DISPENSER MAY NOT SUBMIT INFORMATION RELATED TO THE**
8 **PRESCRIBING PROVIDER FOR ANY DISPENSES OF MIFEPRISTONE,**
9 **MISOPROSTOL, OR ANY MEDICATION USED FOR A MEDICAL ABORTION, AS**
10 **DETERMINED BY THE SECRETARY, TO THE STATE DESIGNATED EXCHANGE.**

11 **(2) THE SECRETARY SHALL FOLLOW GUIDELINES OF THE AMERICAN**
12 **COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, THE WORLD HEALTH**
13 **ORGANIZATION, AND THE SOCIETY OF FAMILY PLANNING IN DETERMINING THE**
14 **MEDICATIONS TO BE INCLUDED AMONG THE MEDICATIONS USED IN A MEDICAL**
15 **ABORTION ABOUT WHICH A DISPENSER MAY NOT SUBMIT INFORMATION UNDER**
16 **PARAGRAPH (1) OF THIS SUBSECTION.**

17 **[(e)] (F) (1)** The purpose of this subsection is to:

18 (i) Authorize individuals and organizations involved in the
19 treatment and care coordination of patients to access, as legally authorized, a patient's
20 medication history, including medications prescribed for the patient; and

21 (ii) Assist health care providers, care managers, the Department,
22 and local health departments to understand and promote matters of health equity and
23 treatment efficacy.

24 (2) After dispensing a noncontrolled prescription drug, a dispenser shall
25 submit prescription information to the State designated
26 exchange.

27 (3) The prescription information shall be submitted:

28 (i) By electronic means;

29 (ii) Without unduly increasing the workload and expense on a
30 dispenser;

31 (iii) In a manner that minimizes burden and duplication by being as
32 compatible as possible with existing federal standards for data submission practices,

33 including technology software of dispensers; and

1 (iv) As otherwise required by regulations adopted by the
2 Commission.

3 (4) The State designated exchange may not impose any fees or other
4 assessments on dispensers to support the operation of the exchange.

5 (5) The State designated exchange shall make prescription information
6 submitted under this subsection available for purposes of treatment and care coordination
7 of a patient.

8 **[(f)] (G)** The State designated exchange may provide data, as allowed by law, for
9 public health purposes that may include:

10 (1) Improving health equity through access to prescription medications,
11 including for the treatment of infectious disease;

12 (2) Assisting programs led by health care providers and the Department,
13 local health departments, the Commission, and the Health Services Cost Review
14 Commission to identify opportunities for quality improvement, including for stewardship
15 of antibiotic medications; and

16 (3) Conducting case investigations and related activities.

17 **[(g)] (H)** Information submitted to the State information exchange or provided
18 by the State information exchange under this section shall be submitted or provided, to the
19 extent practicable, in as near to real time as possible.

20 **[(h)] (I)** (1) The Commission, in consultation with appropriate stakeholders,
21 shall adopt regulations to carry out this section.

22 (2) The regulations shall take into account consumer perspective and
23 include:

24 (i) The specific data required to be provided under subsection (d) of
25 this section;

26 (ii) The specific prescription information required to be submitted
27 under subsection **[(e)] (F)** of this section;

28 (iii) The time frame for submitting prescription information under
29 subsection **[(e)] (F)** of this section;

30 (iv) The electronic means and manner by which prescription
31 information is to be submitted under subsection **[(e)] (F)** of this section;

1 (v) Prescription information submission requirements that align
2 with the data submission requirements on dispensers of monitored prescription drugs
3 under Title 21, Subtitle 2A of this article; and

4 (vi) Identification and necessary suppression of information related
5 to providers or medications that are determined to have significant potential to cause harm.

6 **[(i)] (J)** (1) The State designated exchange shall establish a consumer
7 advisory council to bring the perspectives of individuals and organizations with an interest
8 in protecting consumers into the delivery of services provided by the State designated
9 exchange.

10 (2) In selecting members, the State designated exchange shall consider
11 diversity of experience.

12 (3) The consumer advisory council established under paragraph (1) of this
13 subsection shall:

14 (i) Consist of a minimum of six members, including at least four
15 consumer representatives and two staff representatives, and maintain a ratio of consumer
16 representatives to nonconsumer representatives of at least two to one;

17 (ii) Identify and report consumer privacy concerns to senior
18 leadership of the State designated exchange;

19 (iii) Advise on efforts to educate consumers on data exchange policies,
20 including options for consumers to opt out of disclosure of protected health information;

21 (iv) Meet at least 3 times each year; and

22 (v) Adopt and maintain a charter to be posted online that includes
23 the purpose, members, and meeting schedule of the consumer advisory council.

24 **Article – Insurance**

25 15–857.

26 (a) (1) This section applies to:

27 (i) insurers and nonprofit health service plans that provide labor
28 and delivery coverage to individuals or groups on an expense-incurred basis under health
29 insurance policies or contracts that are issued or delivered in the State; and

30 (ii) health maintenance organizations that provide labor and
31 delivery coverage to individuals or groups under contracts that are issued or delivered in
32 the State.

1 (2) This section does not apply to:

2 (i) a multistate plan that does not provide coverage for abortions in
3 accordance with 42 U.S.C. § 18054(a)(6); or

4 (ii) a high–deductible plan, as defined in 26 U.S.C. § 223(c)(2)(C) of
5 the Internal Revenue Code, unless the Commissioner determines that abortion care is not
6 excluded from the safe harbor provisions for preventive care under § 223(c)(2)(C) of the
7 Internal Revenue Code.

8 (3) An organization that is eligible to obtain an exclusion from the coverage
9 requirements under § 15–826 of this subtitle may obtain from an entity subject to this
10 section an exclusion from the coverage and notice requirements of this section if the
11 requirements conflict with the organization’s bona fide religious beliefs and practices.

12 (b) Except as provided in subsection (c) of this section **AND NOTWITHSTANDING**
13 **§ 31–116(A) OF THIS ARTICLE**, an entity subject to this section shall:

14 (1) cover abortion care services without:

15 (i) a deductible, coinsurance, copayment, or any other cost–sharing
16 requirement; and

17 (ii) restrictions that are inconsistent with the protected rights under

18 Title 20, Subtitle 2 of the Health – General Article; and

19 (2) provide information to consumers about abortion care
20 coverage using
21 the terminology “abortion care” to describe coverage.

22 (c) If the Commissioner determines that enforcement of this
23 section may
24 adversely affect the allocation of federal funds to the State, the
25 Commissioner may grant
26 an exemption to the requirements of this section to the minimum extent
27 necessary to
28 ensure the continued receipt of federal funds.

29 31–116.

30 (a) The essential health benefits required under § 1302(a) of the
31 Affordable Care
32 Act:

33 (1) shall be the benefits in the State benchmark plan,
34 selected in
35 accordance with this section; and

36 (2) notwithstanding any other benefits mandated by State law,
37 shall be the
38 benefits required in:

39 (i) subject to subsection (f) of this section, all
40 individual health
41 benefit plans and health benefit plans offered to small employers, except for
42 grandfathered
43 health plans, as defined in the Affordable Care Act, offered outside the
44 Exchange; and

45 (ii) subject to § 31–115(c) of this subtitle, all qualified
46 health plans
47 offered in the Exchange.

48 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall
49 take effect
50 October 1, 2023.