



March 4, 2025

Senate Finance Committee
Maryland General Assembly
Miller Senate Office Building, 3 East Wing
11 Bladen St.
Annapolis, MD 21401 - 1991

Submitted Electronically Via <https://mgaleg.maryland.gov/mgawebsite/MyMGATracking/WitnessSignup>

*RE: HOUSE BILL 812- Electronic Health Networks and Electronic Medical Record Vendors of
Nursing Homes – Release of Records – Enforcement*

Dear Chair Beidle, Vice Chair Hayes and Committee Members:

ADVION is a national organization representing health information technology (health IT) companies that develop and distribute full clinical electronic health records (EHRs), billing and point-of-care health IT systems and other software solutions serving the majority of Long Term and Post Acute Care providers (*i.e.*, assisted living facilities (ALF), Home Health Agencies (HHAs), Inpatient Rehabilitation Facilities (IRFs), Long Term Care Hospitals (LTCHs) and Skilled Nursing Facilities (SNFs)). ADVION also represents rehabilitation therapy companies; providers of clinical laboratory and portable x-ray services; suppliers of complex medical equipment and other specialized supplies. ADVION is a founding member of the Long Term & Post-Acute Care Health IT Collaborative, which was formed in 2005 to advance health IT issues by encouraging coordination among provider organizations, policymakers, vendors, payers and other stakeholders.

ADVION appreciates the opportunity to provide feedback on *House Bill 812- Electronic Health Networks and Electronic Medical Record Vendors of Nursing Homes – Release of Records – Enforcement* (HB812/SB678). We appreciate the continuous efforts to ensure the safe, efficient, and equitable exchange of electronic health information (EHI) across healthcare settings. Below, we outline our comments as to why we oppose this legislation and our concerns around the bill.


Congress passed the 21st Century Cures Act (“Cures Act”) in 2016 to create “rules of the road” to encourage interoperability of health information between care providers and their technology partners. The Health and Human Services (HHS) stated mission in achieving interoperability is “to promote the secure exchange, access, and use of electronic health information to support better informed decision making and a more efficient healthcare system.” ^[OBJ] Alternatively, actors that do not participate in this exchange, intentionally or unintentionally, may be consider “information blocking”.

Congress intended for the Cures Act to continue to develop and be refined as innovation and data privacy norms continue to modernize. As part of the intended evolution of the law, Congress specifically did not include a private right of action as part of the enforcement mechanism for the Act. A policy issue as complex and far-reaching as a national healthcare data interoperability framework requires a cohesive system for providers, patients and technology developers to operate within. Allowing a private right of action will inevitably lead to conflicting interpretations of the federal law across state and local levels which will stifle innovation, hinder providers ability to share data, and harm patients’ ability to access their own data even in times of crisis. Congress understood that allowing a private right of action for claims of information blocking would inevitably lead to frivolous lawsuits between parties – without any benefit to the patient. Should EHR vendors and HIT developers be forced to defend themselves against this class of lawsuit they will inevitably have greater costs from legal fees and insurance protections which will lead to higher costs for both providers and patients. Long Term and Post Acute Care (LTPAC) providers especially would be negatively impacted by these increased costs as they operate on razor thin margins as they rely heavily on Medicaid and Medicare reimbursement.

The Cures Act also created a clear process for complaints of information blocking to be filed, investigated and enforced. The intentional creation of an enforcement mechanism as a way to remedy disputes further demonstrates Congressional intent of not allowing private right of actions to exist in this area. The Office of the Inspector General (OIG) under HHS was given the authority by Congress to determine what is, and is not, information blocking. As part of the enforcement construct explicitly outlined by the Cures Act, HHS

was also given the authority to identify information blocking exceptions – or actions that are permissible by actors which may be deemed information blocking on its surface but serve a fundamental underlying purpose in ensuring the long-term sustainability of the Cures Act. Eight information blocking exceptions were identified, and HHS continues to promulgate rules expanding upon and refining those exceptions as technology continues to progress. Most notably as an example, in light of recent high profile cybersecurity events, is the Security exception which allows actors to deny the sharing of information if the requesting party does not meet security standards. If an EHR vendor is responsible for securing patient data and determines to not release patient records they would be subject to a potential lawsuit under the proposed private right of action construct in HB812/SB678. This is an unreasonable and unfair standard and further highlights the intentional intricacies in the Cures Act. Moreso, as recently as December 23rd, 2024, HHS has issued additional rules that continue to expand and refine information blocking exceptions demonstrating that the exceptions play a fundamental piece of the policy along with their ongoing development.

ADVION thanks you for your consideration of our position in opposition to HB812/SB678 and we are hopeful that our additional input highlights the need to prevent information blocking private right of actions and the potential unintended consequences a policy like it may have. Please feel free to contact me at Cynthia@ADVIONadvocates.org or 202 803-2385 for further information or questions. Sincerely,


Cynthia K. Morton, MPA
Executive Vice President