

SB 678_RealTime_fav.pdf

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Position: FAV



SB 678/HB 812 Electronic Health Networks and Electronic Medical Record Vendors of Nursing Homes – Release of Records - Enforcement

Position: Favorable

Real Time Medical Systems supports SB 678 which would add an explicit but narrow enforcement provision to legislation prohibiting information blocking of electronic medical records of nursing home patients.

In 2023, the Maryland General Assembly passed legislation in 2023 (SB 648) prohibiting the blocking of a patient's electronic medical record (EMR). That legislation was signed into law by the Governor and is similar to a federal law, the 21st Century Cures Act. Prior to passage of that state law, the Attorney General issued an advice letter -- in response to concerns over federal preemption -- stating the 2023 bill was consistent with both state and federal law and regulations. While the bill prohibited information blocking, it did not include an explicit enforcement provision.

Given that information blocking of these records continues, SB 678 seeks a narrowed enforcement provision against an EMR company in violation of state law. The legislation will also clarify that protected health information (PHI) must be shared "without delay" rather than "routinely" under current law.

EMR companies are already compensated for their services by providers, hospitals and nursing homes who contract with the EMR companies. Because of that, patient records should be available to nursing homes and their partners for the care and well-being of their patients. Delaying or blocking patient information impacts patients care, their health and medical outcomes.

Real Time Medical Systems was selected by Maryland's Health Information Exchange (HIE) – CRISP – to analyze nursing home patient data and provide information to the medical professionals in the nursing homes identifying potential health issues that might otherwise be overlooked. The goal of the program is to reduce hospitalizations by identifying health concerns early when patient outcomes are better. The current program has had measurable reductions in patient hospitalizations. However, that record of success is at risk from information blocking.

Moreover, since the federal law has been in place, the National Coordinator for Health Information Technology (ONC) has received over 1,000 claims of information blocking, so this is not an isolated issue in the state of Maryland, but unfortunately, is happening across the entire country. And, these are just the complaints that have been received by the ONC. To date, no

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enforcement action by the ONC has been released to the public, leaving great doubt as to whether any investigation or enforcement by ONC has occurred.

Given the current lack of enforcement at both the state and federal level, it is important that a narrow and explicit enforcement provision is added to Maryland law to ensure that patients' medical information is not blocked by EMR companies. For that reason, Real Time Medical Systems recommends a favorable report.

Contact: wcastelli@rwllaw.com

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785 Elkridge Landing Road, Suite 300 | Linthicum Heights, MD 21090 | 888.546.9786 | realtimed.com

HB812_Comment_Letter_ADVION.pdf

Uploaded by: April Reinert

Position: UNF



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

2025-03-06 SB 678 - Letter of Concern.pdf

Uploaded by: Adam Spangler

Position: INFO

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement



PETER V. BERNS
General Counsel

CHRISTIAN E. BARRERA
Chief Operating Officer

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

ANTHONY G. BROWN
Attorney General

March 6, 2025

TO: The Honorable Pam Beidle
Chair, Finance Committee

FROM: Adam Spangler
Legislative Aide, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 678 – Electronic Health Networks and Electronic Medical
Record Vendors of Nursing Homes - Release of Records - Enforcement-
Letter of Concern

The Office of the Attorney General (OAG) writes to express our concerns regarding **Senate Bill 678**, which, among other things, authorizes the Office of the Attorney General to enforce certain provisions of law addressing the sharing of electronic health networks or electronic medical records with business associates of a nursing home.

While the OAG appreciates the intent of this legislation, we believe that the OAG is not the most appropriate entity to enforce these provisions. The complexities surrounding electronic health records and health care transactions demand a nuanced approach that requires specialized knowledge and expertise in both healthcare compliance and technology.

The Medicaid Fraud and Vulnerable Victims Unit (MFVVU) is the unit within the OAG that typically enforces issues surrounding nursing homes. MFVVU is funded by a federal grant – the terms of which only allow the Unit to enforce issues related to fraud, abuse, or false claims. Electronic health records most certainly does not fall within the scope of MFVVU’s charge. The intricacies of health information management fall outside of the core competencies of any other division or unit in the OAG. A more suitable approach could be authorizing a health-specific regulatory body with experience in addressing the specific challenges and nuances related to health policy, information technology, and electronic health data to enforce the provisions of this

bill. This change could enhance the effectiveness of the bill and ensure that the interests of patients and nursing homes are safeguarded adequately.

We thank you for taking the time to consider our concerns. We look forward to seeing how this bill evolves and are hopeful that a solution will be found that prioritizes the health and privacy of our community.

cc: The Honorable Senator Jim Rosapepe
Finance Committee Members