

HOUSE BILL 213

J1

2lr1472

By: **Delegate Kelly**

Introduced and read first time: January 13, 2022

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 23, 2022

CHAPTER _____

1 AN ACT concerning

2 **Health Information Exchanges – Definition and Privacy Regulations**

3 FOR the purpose of altering the definition of a “health information exchange” as used in
4 provisions of law governing the confidentiality of medical records; providing that
5 regulations governing the privacy and security of protected health information
6 obtained or released through a health information exchange may not prohibit the
7 sharing and disclosing of information that is required to be exchanged or the use of
8 electronic health information for certain purposes; and generally relating to health
9 information exchanges.

10 BY repealing and reenacting, without amendments,
11 Article – Health – General
12 Section 4–301(a) and 4–302.2(a)
13 Annotated Code of Maryland
14 (2019 Replacement Volume and 2021 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Health – General
17 Section 4–301(i) and 4–302.2(b)
18 Annotated Code of Maryland
19 (2019 Replacement Volume and 2021 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Health – General

4–301.

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

(i) (1) “Health information exchange” means:

(I) ~~an~~ AN INDIVIDUAL OR entity that [provides or governs organizational and technical processes for the maintenance, transmittal, access, or disclosure] **DETERMINES, CONTROLS, OR HAS THE DISCRETION TO ADMINISTER ANY REQUIREMENT, POLICY, OR AGREEMENT THAT ALLOWS, ENABLES, OR REQUIRES THE USE OF ANY TECHNOLOGY OR ~~SERVICE~~ SERVICES FOR ACCESS, EXCHANGE, OR USE of electronic PROTECTED health care information;**

1. ~~between or among~~ AMONG MORE THAN TWO UNAFFILIATED ~~health care providers~~ INDIVIDUALS or entities [through an interoperable system] THAT ARE ENABLED TO EXCHANGE ELECTRONIC PROTECTED HEALTH INFORMATION WITH EACH OTHER; AND

2. THAT IS FOR A TREATMENT, PAYMENT, OR HEALTH CARE OPERATIONS PURPOSE, AS THOSE TERMS ARE DEFINED IN 45 C.F.R. § 164.501, REGARDLESS OF WHETHER THE INDIVIDUALS OR ENTITIES ARE SUBJECT TO THE REQUIREMENTS OF 45 C.F.R. PARTS 160 AND 164; OR

(II) A HEALTH INFORMATION TECHNOLOGY DEVELOPER OF CERTIFIED HEALTH INFORMATION TECHNOLOGY THAT DEVELOPS OR OFFERS HEALTH INFORMATION TECHNOLOGY, AS THAT TERM IS DEFINED IN 42 U.S.C. 300JJ(5), AND HAS ONE OR MORE HEALTH INFORMATION TECHNOLOGY MODULES CERTIFIED UNDER A PROGRAM FOR THE VOLUNTARY CERTIFICATION OF HEALTH INFORMATION TECHNOLOGY THAT IS KEPT OR RECOGNIZED BY THE NATIONAL COORDINATOR IN ACCORDANCE WITH 42 U.S.C. 300JJ–11(C)(5).

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

(i) An entity composed of health care providers under common ownership **IF THE ORGANIZATIONAL AND TECHNICAL PROCESSES THE ENTITY PROVIDES OR GOVERNS ARE FOR HEALTH CARE TREATMENT, PAYMENT, OR HEALTH CARE OPERATIONS PURPOSES, AS THOSE TERMS ARE DEFINED IN 45 C.F.R. § 164.501; [or]**

(ii) ~~If the organizational and technical processes it provides or governs are [transactions, as defined in 45 C.F.R. § 160.103] FOR TREATMENT, PAYMENT, OR HEALTH CARE OPERATIONS PURPOSES, AS THOSE TERMS ARE DEFINED IN 45 C.F.R. § 164.501;~~

~~4- (II)~~ A carrier, as defined in § 15–1301 of the Insurance Article
IF THE ORGANIZATIONAL AND TECHNICAL PROCESSES THE CARRIER PROVIDES OR
GOVERNS ARE FOR HEALTH CARE TREATMENT, PAYMENT, OR HEALTH CARE
OPERATIONS PURPOSES, AS THOSE TERMS ARE DEFINED IN 45 C.F.R. § 164.501;

[2. A carrier’s business associate, as defined in 45 C.F.R. §
160.103; or]

[3.] ~~2- (III)~~ An administrator, as defined in § 8–301 of the
Insurance Article, IF THE ORGANIZATIONAL AND TECHNICAL PROCESSES THE
ADMINISTRATOR PROVIDES OR GOVERNS ARE FOR HEALTH CARE TREATMENT,
PAYMENT, OR HEALTH CARE OPERATIONS PURPOSES, AS THOSE TERMS ARE
DEFINED IN 45 C.F.R. § 164.501;

~~3- (IV)~~ A HEALTH CARE PROVIDER, AS DEFINED IN
SUBSECTION (H) OF THIS SECTION, IF THE ORGANIZATIONAL AND TECHNICAL
PROCESSES THE HEALTH CARE PROVIDER PROVIDES OR GOVERNS ARE FOR HEALTH
CARE TREATMENT, PAYMENT, OR HEALTH CARE OPERATIONS PURPOSES, AS THOSE
TERMS ARE DEFINED IN 45 C.F.R. § 164.501;

~~(HH)~~ (V) A CARRIER’S BUSINESS ASSOCIATE, AS DEFINED IN 45
C.F.R. § 160.103, IF THE ORGANIZATIONAL AND TECHNICAL PROCESSES PROVIDED
OR GOVERNED BY THE BUSINESS ASSOCIATE ARE TRANSACTIONS, AS DEFINED IN 45
C.F.R. § 160.103; OR

~~(IV)~~ (VI) A CARRIER EXCHANGING INFORMATION AS
REQUIRED BY 45 C.F.R. § 156.221.

4–302.2.

(a) The Maryland Health Care Commission shall adopt regulations for the
privacy and security of protected health information obtained or released through a health
information exchange.

(b) (1) The regulations adopted under subsection (a) of this section shall:

(i) Govern the access, use, maintenance, disclosure, and
redisclosure of protected health information as required by State or federal law, including
the federal Health Insurance Portability and Accountability Act, the federal Health
Information Technology for Economic and Clinical Health Act, the federal 21st Century
Cures Act, and Title 21, Subtitle 2A of this article;

(ii) Include protections for the secondary use of protected health
information obtained or released through a health information exchange;

(iii) Require the State-designated health information exchange to develop and maintain a consent management application, subject to State and federal law, that:

1. Allows a person in interest to opt out of having electronic health information shared or disclosed by a health information exchange;

2. Informs the person in interest of the electronic health information that may be shared or disclosed notwithstanding the choice to opt out;

3. Requires that the State-designated health information exchange provide a health information exchange with the opt-out status of a person in interest, on receipt of an electronic request from the health information exchange for the opt-out status of the person in interest;

4. Requires a health information exchange to obtain the opt-out status of a person in interest from the State-designated health information exchange before sharing or disclosing the electronic health information of the person in interest; and

5. Except as provided in paragraph (2) of this subsection, prohibits a health information exchange from sharing or disclosing the electronic health information of a person in interest if the person in interest has opted out of having electronic health information shared or disclosed by a health information exchange; and

(iv) Provide appropriate penalties for noncompliance with the regulations, including fines that do not exceed \$10,000 per day and that are determined based on:

1. The extent of actual or potential public harm caused by the violation;

2. The cost of investigating the violation; and

3. Whether the person committed previous violations.

(2) The regulations adopted under subsection (a) of this section [shall, subject to State and federal law, allow the Department, the Maryland Health Care Commission, and the Health Services Cost Review Commission to use electronic health information for planning activities and public health functions] **MAY NOT PROHIBIT:**

(I) THE DEPARTMENT, THE MARYLAND HEALTH CARE COMMISSION, OR THE HEALTH SERVICES COST REVIEW COMMISSION FROM USING ELECTRONIC HEALTH INFORMATION, SUBJECT TO FEDERAL AND STATE LAW, FOR HEALTH REGULATORY AND PUBLIC HEALTH FUNCTIONS;

1 ~~(H)~~ (II) THE SHARING OR DISCLOSING OF INFORMATION
2 THAT IS REQUIRED TO BE EXCHANGED UNDER ~~FEDERAL LAW OR~~ TITLE 21,
3 SUBTITLE 2A OF THIS ARTICLE; OR

4 ~~(H)~~ (III) THE SHARING OR DISCLOSING OF INFORMATION
5 THAT IS REQUIRED TO BE EXCHANGED UNDER FEDERAL LAW, INCLUDING FOR THE
6 PURPOSES OF PAYMENT, AS DEFINED IN 45 C.F.R. § 164.501; ~~OR~~

7 ~~(H)~~ ~~THE USE OF THE ELECTRONIC HEALTH INFORMATION,~~
8 ~~SUBJECT TO STATE AND FEDERAL LAW, FOR PURPOSES THAT ARE IMPORTANT TO~~
9 ~~PUBLIC HEALTH FUNCTIONS OR HEALTH PLANNING ACTIVITIES OF THE~~
10 ~~DEPARTMENT, THE MARYLAND HEALTH CARE COMMISSION, OR THE HEALTH~~
11 ~~SERVICES COST REVIEW COMMISSION.~~

12 (3) THIS SECTION DOES NOT PROHIBIT THE COMMISSION FROM
13 ADOPTING REGULATIONS THAT ARE MORE STRINGENT THAN FEDERAL LAW IN
14 ACCORDANCE WITH 45 C.F.R. § 160.203.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2022.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.