

SENATE BILL 17

J3, J1, J2

8lr0055

(PRE-FILED)

By: **Chair, Finance Committee (By Request – Departmental – Health)**

Requested: September 21, 2017

Introduced and read first time: January 10, 2018

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Information Exchanges – Definitions and Regulations**

3 FOR the purpose of altering the requirement that the Maryland Health Care Commission
4 adopt certain regulations for the privacy and security of protected health information
5 obtained or released through a health information exchange; repealing a certain
6 provision of law prohibiting certain regulations from applying to protected health
7 information exchanged between or among certain persons; defining a certain term;
8 altering a certain definition; and generally relating to health information exchanges.

9 BY repealing and reenacting, with amendments,
10 Article – Health – General
11 Section 4–301 and 4–302.2
12 Annotated Code of Maryland
13 (2015 Replacement Volume and 2017 Supplement)

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

16 **Article – Health – General**

17 4–301.

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

19 (B) **“COMMON OWNERSHIP” MEANS OWNERSHIP OF A HEALTH CARE**
20 **ENTITY:**

21 (1) **BY TWO OR MORE HEALTH CARE PROVIDERS;**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) BY TWO OR MORE HEALTH CARE PROVIDERS EMPLOYED BY A**
2 **MUTUAL EMPLOYER FOR A WAGE, SALARY, FEE, OR PAYMENT TO PERFORM WORK**
3 **FOR THE EMPLOYER;**

4 **(3) BY HEALTH CARE ORGANIZATIONS OPERATING AS AN ORGANIZED**
5 **HEALTH CARE ARRANGEMENT, AS DEFINED IN 45 C.F.R. § 160.103;**

6 **(4) BY A HEALTH CARE ENTITY OR HEALTH CARE ENTITIES THAT**
7 **POSSESS AN OWNERSHIP OR EQUITY INTEREST OF 5% OR MORE IN ANOTHER**
8 **HEALTH CARE ENTITY; OR**

9 **(5) BY AFFILIATED PROVIDERS OPERATING UNDER THE SAME TRADE**
10 **NAME.**

11 **[(b)] (C)** “Directory information” means information concerning the presence
12 and general health condition of a patient who has been admitted to a health care facility or
13 who is currently receiving emergency health care in a health care facility.

14 **[(c)] (D)** “Disclose” or “disclosure” means the transmission or communication of
15 information in a medical record, including an acknowledgment that a medical record on a
16 particular patient or recipient exists.

17 **[(d)] (E)** “Emergency” means a situation when, in the professional opinion of the
18 health care provider, a clear and significant risk of death or imminent serious injury or
19 harm to a patient or recipient exists.

20 **[(e)] (F)** “General health condition” means the health status of a patient
21 described in terms of “critical”, “poor”, “fair”, “good”, “excellent”, or terms denoting similar
22 conditions.

23 **[(f)] (G)** “Health care” means any care, treatment, or procedure by a health care
24 provider:

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

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

28 **[(g)] (H)** (1) “Health care provider” means:

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

1 (ii) A facility where health care is provided to patients or recipients,
2 including a facility as defined in § 10–101(g) of this article, a hospital as defined in §
3 19–301 of this article, a related institution as defined in § 19–301 of this article, a health
4 maintenance organization as defined in § 19–701(g) of this article, an outpatient clinic, and
5 a medical laboratory.

6 (2) “Health care provider” includes the agents, employees, officers, and
7 directors of a facility and the agents and employees of a health care provider.

8 **[(h)] (I) (1) “Health information exchange” means an [infrastructure that**
9 **provides organizational and technical capabilities for the exchange of protected health**
10 **information electronically among entities not under common ownership] ENTITY THAT**
11 **PROVIDES ORGANIZATIONAL AND TECHNICAL PROCESSES FOR THE MAINTENANCE,**
12 **TRANSMITTAL, ACCESS, OR DISCLOSURE OF ELECTRONIC HEALTH CARE**
13 **INFORMATION BETWEEN OR AMONG HEALTH CARE PROVIDERS OR ENTITIES**
14 **THROUGH AN INTEROPERABLE SYSTEM.**

15 (2) **“HEALTH INFORMATION EXCHANGE” DOES NOT INCLUDE:**

16 (I) **AN ENTITY COMPOSED OF HEALTH CARE PROVIDERS**
17 **UNDER COMMON OWNERSHIP; OR**

18 (II) **IF THE ORGANIZATIONAL AND TECHNICAL PROCESSES IT**
19 **PROVIDES ARE TRANSACTIONS, AS DEFINED IN 45 C.F.R. § 160.103:**

20 1. **A CARRIER, AS DEFINED IN § 15–1301 OF THE**
21 **INSURANCE ARTICLE;**

22 2. **A CARRIER’S BUSINESS ASSOCIATE, AS DEFINED IN 45**
23 **C.F.R. § 160.103; OR**

24 3. **AN ADMINISTRATOR, AS DEFINED IN § 8–301 OF THE**
25 **INSURANCE ARTICLE.**

26 **[(i)] (J) (1) “Medical record” means any oral, written, or other transmission**
27 **in any form or medium of information that:**

28 (i) **Is entered in the record of a patient or recipient;**

29 (ii) **Identifies or can readily be associated with the identity of a**
30 **patient or recipient; and**

31 (iii) **Relates to the health care of the patient or recipient.**

32 (2) **“Medical record” includes any:**

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

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

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

7 1. Requested the examination; or

8 2. Is making payment for the examination; and

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

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

12 2. Identifies or can readily be associated with the identity of
13 the patient or recipient.

14 **[(j)] (K)** (1) “Mental health services” means health care rendered to a
15 recipient primarily in connection with the diagnosis, evaluation, treatment, case
16 management, or rehabilitation of any mental disorder.

17 (2) For acute general hospital services, mental health services are
18 considered to be the primarily rendered service only if service is provided pursuant to Title
19 10, Subtitle 6 of this article or Title 3 of the Criminal Procedure Article.

20 **[(k)] (L)** “Patient” means a person who receives health care and on whom a
21 medical record is maintained.

22 **[(l)] (M)** “Person in interest” means:

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

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

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

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

30 (ii) A parent, guardian, custodian, or a representative of the minor

1 designated by a court, in the discretion of the attending physician who provided the
2 treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

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

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

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

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

11 ~~[(m)]~~ (N) “Primary provider of mental health services” means the designated
12 mental health services provider who:

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

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

16 ~~[(n)]~~ (O) “Protected health information” means all individually identifiable
17 health information held or transmitted by a covered entity or its business associate
18 protected under the U.S. Department of Health and Human Services Privacy Rule.

19 ~~[(o)]~~ (P) “Recipient” means a person who has applied for, for whom an
20 application has been submitted, or who has received mental health services.

21 4–302.2.

22 (a) The Maryland Health Care Commission shall adopt regulations for the
23 privacy and security of protected health information obtained or released through a health
24 information exchange [by:

25 (1) A health care provider;

26 (2) A payor that holds a valid certificate of authority issued by the
27 Maryland Insurance Commissioner;

28 (3) A health care consumer; or

29 (4) Any person authorized by a health care consumer to act on behalf of the
30 health care consumer].

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

1 (1) Govern the access, use, maintenance, disclosure, and redisclosure of
2 protected health information as required by State or federal law, including the federal
3 Health Insurance Portability and Accountability Act and the federal Health Information
4 Technology for Economic and Clinical Health Act; and

5 (2) Include protections for the secondary use of protected health
6 information obtained or released through a health information exchange.

7 (c) Data obtained or released through a health information exchange:

8 (1) May not be sold for financial remuneration until the regulations
9 required under subsections (a) and (b) of this section are adopted; and

10 (2) May be sold for financial remuneration only in accordance with the
11 regulations adopted under subsections (a) and (b) of this section.

12 [(d) Regulations adopted under subsections (a) and (b) of this section may not
13 apply to protected health information exchanged:

14 (1) Between a hospital and credentialed members of the hospital's medical
15 staff;

16 (2) Among credentialed members of a hospital's medical staff; or

17 (3) Between a hospital and ancillary clinical service providers that are
18 affiliated with the hospital and have signed a business associate agreement.]

19 [(e)] **(D)** The Maryland Health Care Commission shall consult with health care
20 providers, payors, State health agencies, consumer advocates, and employers before
21 adopting regulations under subsections (a) and (b) of this section.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2018.