

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 1375

(Delegate Kelly)

Health and Government Operations

Finance

Health Information Exchanges - Electronic Health Information - Sharing and Disclosure

This bill requires the Maryland Health Care Commission (MHCC) to adopt regulations that require the “State-designated health information exchange” to develop and maintain a consent management application. MHCC *must* adopt regulations specifying the scope of clinical information to be exchanged or sent, and such regulations must limit the scope of clinical information shared to promote the protection of the electronic health information (EHI) of a person in interest who has opted out of having their EHI shared or disclosed by a “health information exchange” (HIE). MHCC must establish penalties for noncompliance with regulations governing the privacy and security of protected health information, including fines of up to \$10,000 per day that are determined based on the extent of actual or potential public harm caused by the violation, the cost of investigating the violation, and whether the person committed previous violations. An HIE and a payor must transmit the response to a request for clinical information received through the State-designated HIE in accordance with specified regulations. MHCC, in consultation with specified stakeholders, must make a recommendation on an updated statutory definition of HIE and report its recommendation to specified committees of the General Assembly by December 1, 2021.

Fiscal Summary

**State Effect:** The bill’s requirements can be handled with existing budgeted resources. Application of penalty provisions is not anticipated to have a material impact on State finances or operations.

**Local Effect:** None.

**Small Business Effect:** Minimal.

## Analysis

**Bill Summary:** “State-designated health information exchange” means the HIE designated by MHCC and the Health Services Cost Review Commission (HSCRC).

MHCC must adopt regulations to require the State-designated HIE to develop and maintain a consent management application, subject to State and federal law, that:

- allows a person in interest to opt out of having EHI shared or disclosed by an HIE;
- informs the person in interest of the EHI that may be shared or disclosed notwithstanding the choice to opt out;
- requires that the State-designated HIE provide an HIE with the opt-out status of a person in interest, on receipt of an electronic request from the HIE;
- requires an HIE to obtain the opt-out status of a person in interest from the State-designated HIE before sharing or disclosing their EHI; and
- prohibits an HIE from sharing or disclosing the EHI of a person in interest if they have opted out of having EHI shared or disclosed by an HIE.

Regulations adopted by MHCC for the privacy and security of protected health information obtained or released through an HIE must (1) allow the Maryland Department of Health, MHCC, and HSCRC to use EHI for planning activities and public health functions, subject to State and federal law, and (2) reflect the requirements of the federal 21st Century Cures Act and provisions of Maryland law regarding the Prescription Drug Monitoring Program (in addition to other provisions of State and federal law as currently required).

The bill expresses that the General Assembly recognizes that (1) the definition of HIE should be updated to accommodate changing technology, functionality, and innovation and (2) regulations adopted by the Office of the National Coordinator (45 CFR § 171.102) and definitions of HIE in other states and federal laws offer models for the State to consider.

**Current Law:** “Health information exchange” means an entity that provides or governs organizational and technical processes for the maintenance, transmittal, access, or disclosure of electronic health care information between or among health care providers or entities through an interoperable system.

Under federal regulations (45 CFR § 171.102), “health information exchange” means an individual or entity that determines, controls, or has the discretion to administer any requirement, policy, or agreement that permits, enables, or requires the use of any technology or services for access, exchange, or use of EHI (1) among more than two unaffiliated individuals or entities that are enabled to exchange with each other and (2) that is for a treatment, payment, or health care operations purpose.

MHCC designated the Chesapeake Regional Information System for our Patients (CRISP) as the statewide HIE in 2009, and the infrastructure became operational in 2010. An HIE allows clinical information to move electronically among disparate health information systems. CRISP offers tools aimed at improving the facilitation of care for the region's health care providers.

Consumers can opt out of having their information included in an HIE through an online application, via telephone, or by mailing a form. A consumer can opt out of all sharing of their EHI, including research, or opt out of research only (prevent approved researchers from receiving sets of data that include the consumer's EHI). Maryland law does not allow a consumer to opt out of public health reporting, such as the reporting of specific diseases to public health officials, or to opt out of sharing information about controlled dangerous substances prescriptions to the Maryland Prescription Drug Monitoring Program.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - March 18, 2021  
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