

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 213

(Delegate Kelly)

Health and Government Operations

Finance

Health Information Exchanges – Definition and Privacy Regulations

This bill alters the definition of health information exchange (HIE) for purposes of the confidentiality of medical records. In adopting regulations for the use of electronic health information (EHI) for specified purposes, the Maryland Health Care Commission (MHCC) may not prohibit the Maryland Department of Health, MHCC, or the Health Services Cost Review Commission from using EHI for health regulatory and public health functions; or the sharing or disclosing of information required to be exchanged under State law or federal law, including for the purposes of payment. The bill does not prohibit MHCC from adopting regulations that are more stringent than federal law, as specified.

Fiscal Summary

State Effect: The change is technical in nature and does not directly affect governmental finances. MHCC can promulgate regulations with existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The definition of “health information exchange” is altered to mean:

- an individual or entity that determines, controls, or has the discretion to administer any requirement, policy, or agreement that allows, enables, or requires the use of any technology or services for access, exchange, or use of electronic protected

health care information (1) among more than two unaffiliated individuals or entities 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 defined under federal law, regardless of whether the individuals or entities are subject to the requirements of the Health Insurance Portability and Accountability Act; or

- a health information technology developer of certified health information technology (HIT) that develops or offers HIT and has one or more HIT modules certified under a program for the voluntary certification of HIT that is kept or recognized by the National Coordinator for Health Information Technology.

HIE does not include, if the organizational and technical processes the entity provides or governs are for health care treatment, payment, or health care operations purposes (1) an entity composed of health care providers under common ownership; (2) a carrier; (3) an administrator; (4) a health care provider; (5) a carrier's business associate; and (6) a carrier exchanging information as required by federal law.

Current Law:

Definitions

Under Maryland law, "health information exchange" means an entity that provides or governs organizational and technical processes for the maintenance, transmittal, access, or disclosure of EHI 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.

Under federal law (42 USC § 300), "health information technology" means hardware, software, integrated technologies or related licenses, intellectual property, upgrades, or packaged solutions sold as services that are designed for or support the use by health care entities or patients for the electronic creation, maintenance, access, or exchange of health information. The National Coordinator for Health Information Technology, in consultation with the Director of the National Institute of Standards and Technology, must keep or recognize a program for voluntary certification of an HIT as being in compliance with specified certification criteria.

Under federal regulations (45 CFR § 164.501), “health care operations” means any of the covered activities of a health care provider that transmits EHI, including (1) conducting quality assessment and improvement activities; (2) reviewing the competence or qualifications of health care professionals; (3) activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care; (4) conducting or arranging for medical review, legal services, and auditing functions; (5) business planning and development; and (6) business management and general administrative activities.

Under federal regulations (45 CFR § 160.103), “business associate” includes (1) a health information organization, electronic prescribing gateway, or other person that provides data transmission services with respect to protected health information to a covered entity; (2) a person that offers a personal health record to one or more individuals on behalf of the covered entity; and (3) a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.

Under federal regulations (45 CFR § 160.203), a standard, requirement, or implementation specification that is contrary to a provision of State law preempts the provision of State law.

Health Information Exchange

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.

MHCC must adopt regulations for the privacy and security of protected health information obtained or released through an HIE that (1) govern the access, use, maintenance, disclosure, and redisclosure of protected health information; (2) include protections for secondary use of protected health information obtained or released through an HIE; (3) require the State-designated HIE to develop and maintain a consent management application; and (4) provide penalties for noncompliance with the regulations.

Consumers can opt out of having their information included in an HIE through an online application, via telephone, or by mailing a form. Consumers 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.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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