

February 12, 2024

Anna Gribble
Program Manager
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215
mhcc_regs.comment@maryland.gov

Re: Support for Proposed Regulations Implementing HB 812/SB 786

Dear Ms. Gribble:

We respectfully submit these comments to support implementation of HB 812/SB 786 by amending regulations under COMAR 10.25.07, Certification of Electronic Health Network and Medical Care Electronic Claims Databases, and COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information.

Maryland has become a safe haven for individuals living in states that ban abortion. Yet, as patients travel to Maryland to receive abortion care, there is a real risk that—if the state’s medical record privacy protections are not adequately implemented—information related to care provided in Maryland could be accessed and used by law enforcement and private actors in states with bans to institute criminal, civil, and disciplinary actions against providers and patients.

Federal laws and regulations about medical records do not yet sufficiently protect patients or providers in our newly criminalized environment. Currently, federal law essentially requires sharing of health information across state lines through electronic health records systems and health information exchanges (HIE). This means that a patient’s medical records about an out-of-state abortion are generally accessible by their home-state providers. The home state provider’s access to this information could pose a substantial threat: the home state provider may be subject to record demands, and a recent study found that the most common way pregnant people are criminalized is through a report to law enforcement from a healthcare provider.¹ Possible federal regulatory change is in progress but current proposed rule changes do not go far enough to completely protect abortion patients and providers.²

Seeking to plug this significant hole in federal protections, Maryland’s HB 812/SB 786 prohibits HIE disclosure of information related to abortion care without express patient consent and requires HIE and electronic health networks (EHN) to redesign their systems to protect such

¹ Laura Huss, Farah Diaz-Tello, and Goleen Samari, *Self Care, Criminalized: The Criminalization of Self Managed Abortion from 2000 to 2020, If/When/How: Lawyering for Reproductive Justice* (2023), available at: <https://www.ifwhenhow.org/wp-content/uploads/2023/10/Self-Care-Criminalized-2023-Report.pdf>.

² Indeed, the federal government recently passed up an opportunity to protect abortion data from being shared across state lines in new rules about electronic health records issued by the Department of Health and Human Services Office of the National Coordinator for Health Information Technology. 45 C.F.R. §§ 170, 171 (2024).

data. This is a groundbreaking and necessary stopgap measure to prevent electronic health record systems from jeopardizing the safety and security of healthcare providers and people seeking abortion care. Although several states are working towards enacting similar protections, California is currently the only other state that has passed a similar law. The many other states seeking to protect their citizens and those traveling to their states for abortion care are looking to Maryland and California as exemplars.

It is thus crucial that Maryland enact regulations to effectively implement its privacy protections. The proposed regulations, which provide enforcement mechanisms to ensure EHN and HIE compliance, are necessary to make the state's privacy protections meaningful. As we work towards redesigning health information systems to protect people seeking and providing abortion and other sensitive health care services, Maryland should continue to be a leader in changing the national landscape by adopting the proposed regulations.

Respectfully,

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