

February 12, 2024

Ben Steffen, Executive Director
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Jordan Green, Director
Office of Regulation and Policy Coordination
Maryland Department of Health
201 West Preston Street
Baltimore, MD 21201

RE: COMAR 10.11.18, COMAR 10.25.07 and 10.25.18

Dear Director Green and Executive Director Steffen,

The HIMSS Electronic Health Record (EHR) Association appreciates the opportunity to provide feedback on regulations published in January 2024:

COMAR 10.11.18 (Abortion Care Disclosure)

COMAR 10.25.07 (Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses)

COMAR 10.25.18 (Health Information Exchanges: Privacy and Security of Protected Health Information)

As the national trade association of EHR developers, our member companies support the vast majority of hospital, post-acute, specialty-specific, and ambulatory healthcare providers using EHRs and other health IT across the United States. Our shared purpose is to enhance care quality and efficiency through the adoption and utilization of innovative, interoperable, and secure health IT solutions.

AdvancedMD	CureMD	Flatiron Health	MEDITECH, Inc.	Oracle Health
Allscripts	eClinicalWorks	Foothold Technology	Modernizing Medicine	PointClickCare
Altera Digital Health	Elekta	Greenway Health	Netsmart	Sevocity
Athenahealth	EndoSoft	Harris Healthcare	Nextech	STI Computer Services
BestNotes	Epic	MatrixCare	NextGen Healthcare	Varian – A Siemens Healthineers Company
CPSI	Experity	MEDHOST	Office Practicum	

Our previous communications, including the letter from October 2023, highlighted concerns regarding the new Maryland legislation requiring the filtering and segmentation of reproductive health information. These requirements definitively do not align with the existing capabilities of certified electronic health records in use in Maryland. Despite our efforts to clarify this through written communication, town hall discussions, and numerous phone conversations held with many of our member companies, the insufficient time originally outlined between the enactment of SB 0786 and the effective date for the development of new features has not been addressed. In fact, the scope of the work required by Maryland has significantly expanded, not decreased, in the Technical Guidance document released on January 12, 2024. This guidance unexpectedly extends the scope to include the segmentation of free text, which was explained clearly as functionality that the industry is entirely unprepared to deliver.

The EHR Association has routinely advised Federal and State regulators that a period of 18-24 months is necessary for the development of new EHR features once standards for that development have reached sufficient maturity for adoption. The additional few months following the December 1, 2023 deadline before penalties begin do not provide adequate time. Most importantly, data segmentation and consent technical standards necessary to support Maryland's goal of restricting the sharing of sensitive reproductive health information are not sufficiently mature through the industry's standards adoption process at this time.

Additionally, certain added expectations in MHCC's Technical Guidance document may also be technically infeasible to implement with current technology. The EHR Association will follow up with more detailed feedback later in February.

COMAR 10.11.18

The COMAR 10.11.18 Summary of Economic Impact is correct in stating that "Currently, Electronic Health Networks (EHNs) and Health Information Exchanges (HIEs) do not have the ability to restrict certain health information from a patient's health records." We also agree that the cost of developing this mechanism is currently unknown. However, we are unfamiliar with the referenced Maryland Department of Health (MDH) discussions intended to estimate these costs.

EHR Association members are concerned about the assertion that the financial impact of these requirements on small businesses would be minimal. Given that the costs associated with this work will inevitably be transferred to healthcare providers in Maryland, including those in small practices operating as small businesses, it is unclear how this conclusion was reached. These providers will, in fact, experience an increase in their health IT costs due to this action.

Furthermore, it is important for the MDH to recognize that with each update to the sensitive data requiring segmentation, additional efforts will be necessitated from each EHN and HIE. This could lead to further cost increments with each update, impacting the overall financial burden on healthcare providers.

COMAR 10.25.07 & COMAR 10.25.18

The Summary of Economic Impact for COMAR 10.25.07 and COMAR 10.25.18 understate that entities “may incur costs when developing technology necessary to restrict...” data. Entities have already incurred expenses in analyzing Maryland’s legislation and regulations, raising inquiries with the Maryland Health Care Commission (MHCC), and developing implementation plans. These costs will continue to accumulate as work continues.

The EHR Association strenuously disagrees with the MHCC assertions that “costs may be minimal” and that developers “could potentially leverage existing technology to implement the proposed regulatory requirements.” As we have indicated in our previous letters, town hall meetings, and phone calls that individual companies have held with members of the MHCC staff, the technology to support Maryland’s requirements does not yet exist. Further, the development of such technology is anticipated to take several years, imposing significant financial burdens on technology developers and the healthcare organizations in Maryland that they serve.

Appropriate Estimates

To develop an estimate, we refer you to [the EHR Association’s estimates of the effort to support similar patient-requested data segmentation requirements that were included in the ONC’s 2023 HTI-1 Proposed Rule](#) (see page 52). Developers estimated that over 100,000 hours per developer per product would be required to segment data as ONC proposed. While we recognize that the scope of HTI-1 is larger than that of SB 0786, the estimates provide insight into the massive amount of time and cost these types of data segmentation requirements can create.

As explained above and in previous communications, the financial implications of implementing these requirements will be passed on to healthcare providers in Maryland, directly impacting small businesses, including physician practices and small hospitals, which already operate on razor-thin margins. The assertion that these actions will have a minimal impact on them is misleading.

Furthermore, MHCC should note that each time their guidance is updated, whether last-minute changes as in the Technical Guidance or other changes on any yet-to-be-announced regular cadence, estimated costs will need to be revised and are expected to increase.

The EHR Association has made numerous good-faith efforts to collaborate with the MHCC, beginning with a meeting request in January 2022 that was unfortunately declined. In the years since, our member companies have consistently voiced concerns about the technical infeasibility of certain proposals related to the segmentation and withholding of Protected Health Information. We implore the MHCC and MDH to meet with us, as the industry’s trade association, for more viable approaches for the cost-effective implementation of SB 0786. The Association’s leadership can be reached by contacting Kasey Nicholoff at knicholoff@ehra.org, who can help identify a time that will work for all stakeholders.

Thank you for your consideration.

Sincerely,



Stephanie Jamison
Chair, EHR Association
Greenway Health

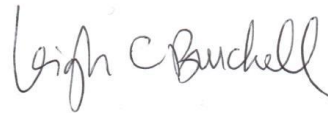


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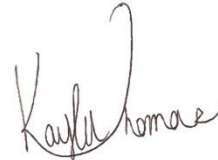
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Cherie Holmes-Henry
NextGen Healthcare



Ida Mantashi
Modernizing Medicine



Kayla Thomas
Oracle Health

Established in 2004, the Electronic Health Record (EHR) Association is comprised of 29 companies that supply the vast majority of EHRs to physicians' practices and hospitals across the United States. The EHR Association operates on the premise that the rapid, widespread adoption of EHRs will help improve the quality of patient care as well as the productivity and sustainability of the healthcare system as a key enabler of healthcare transformation. The EHR Association and its members are committed to supporting safe healthcare delivery, fostering continued innovation, and operating with high integrity in the market for our users and their patients and families. The EHR Association is a partner of HIMSS. For more information, visit www.ehra.org.