

November 10, 2023

Rep. Joseline Pena-Melnyk  
Chair of the House Health and Government Operations Committee  
241 Taylor House Office Building  
6 Bladen Street  
Annapolis, MD 21401

RE: Chapter 718 - Health Information Exchanges - Definition and Privacy Regulations

Dear Representative Pena-Melnyk,

The HIMSS Electronic Health Record (EHR) Association is a national trade association of EHR developers. The EHR Association member companies serve the vast majority of hospital, post-acute, specialty-specific, and ambulatory healthcare providers using EHRs and other health IT across the United States. Together, we work to improve the quality and efficiency of care through the adoption and use of innovative, interoperable, and secure health information technology.

The EHR Association appreciates this opportunity to provide feedback on an act concerning Health Information Exchanges - Definition and Privacy Regulations, under Chapter 718 as enacted from House Bill 213.

In House Bill 213, Maryland defined health IT (HIT) developers of certified electronic health records technology (CEHRT), as certified through the Office of the National Coordinator for HIT (ONC) under the authority of 42 U.S.C. 300jj-11(c), as Health Information Exchanges (HIEs). This definition then requires HIT developers to meet obligations originally designed for HIEs, such as consumer education or auditing, within the State of Maryland. With this conflation of HIEs and CEHRT now enacted as Maryland state law, our concerns are outlined below.

First, there are significant distinctions between HIEs and HIT developers of CEHRT. EHRs are not centralized repositories that store and route messages from one provider to another provider. HIT developers do not control the technology they provide to users for the exchange of health information. Instead, they allow providers and other users to use interoperability standards to share directly with other providers, patients, applications, or with centralized repositories/HIEs/HINs that the provider chooses. Therefore, HIT developers of CEHRT are not in a position to fulfill obligations such as educating consumers or providing consumers with a record of where their data has been shared any more than the manufacturer of a telephone is in a position to educate consumers on who any particular user has called or what they have discussed.

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

As a result of this conflation, when legislation enacts new requirements and obligations for HIEs, HIT developers are included in and obligated to comply with requirements in ways that certified health IT software simply is not meant to be used. This has been seen in the recently enacted Senate Bill 786, Reproductive Health Services - Protected Information and Insurance Requirements, which requires HIEs to restrict access to certain reproductive health information.

The EHR Association requests Maryland to revisit and revise its Health Information Exchange legislation to more appropriately define the roles of each participant in the current interoperability landscape.

- EHRs should be expected to support national interoperability standards, such as those included in ONC's EHR Certification Program.
- Providers who use EHRs to exchange data should be responsible for activities such as educating patients on where their data will be shared, providing patients with information on where their data has been shared, and capturing appropriate patient consent.
- Centralized repository HIEs should maintain privacy policies on any data that they store and maintain and how that data is used.

Thank you for your consideration and please let us know if we can expand on any of these concerns for you.

Sincerely,

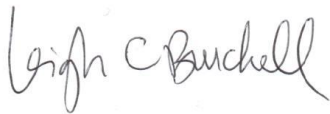


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Foothold Technology



William J. Hayes, M.D., M.B.A.  
Vice Chair, EHR Association  
CPSI

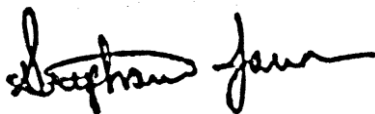
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*Established in 2004, the Electronic Health Record (EHR) Association is comprised of companies that supply the vast majority of EHRs to physicians' practices and hospitals across the United States. The EHR Association operates on the premise that the 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](http://www.ehra.org).*