



## Chapter 249 (House Bill 812), *Health – Reproductive Health Services – Protected Information and Insurance Requirements (2023)*

### Implementation Updates – Guidance for Health Information Exchanges and Electronic Health Networks

August 15, 2024 – Version 1

#### Overview

During the 2023 legislative session, the Maryland General Assembly passed Chapter 249 (House Bill 812), *Health - Reproductive Health Services - Protected Information and Insurance Requirements* (“law”). The law prohibits the disclosure of legally protected health information (“LPHI”) by electronic health network (“EHN”) and health information exchange (“HIE”) entities operating in the State with some exceptions.<sup>1</sup> LPHI includes mifepristone data and the diagnosis, procedure, medication, and related codes for abortion care and other sensitive health services with a date of service after May 31, 2022, as determined by the Secretary of Health.<sup>2</sup>

To support implementation of the law, the Maryland Health Care Commission (“MHCC”) amended existing regulatory frameworks: Code of Maryland Regulations (“COMAR”) 10.25.07, *Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses* and COMAR 10.25.18, *Health Information Exchanges: Privacy and Security of Protected Health Information* (“regulations”).<sup>3</sup> The regulations required EHNs and HIEs to submit an affirmation of compliance or implementation plan in January 2024. Entities that submitted an implementation plan were required to submit a status report in April 2024 and a validation of compliance in June 2024.

MHCC recognizes that some EHNs and HIEs need additional time to develop and implement the necessary technical capabilities to prevent the release of LPHI. **EHNs and HIEs that are not fully compliant with the statutory and regulatory requirements related to LPHI are requested to submit implementation updates to MHCC at least biannually. Implementation updates are due to MHCC by September 30, 2024 and March 31, 2025.** This document is intended to provide guidance on the scope of what should be included in an implementation update. The MHCC will provide further information regarding the need, scope, and timing to submit additional implementation updates.

<sup>1</sup> Exceptions include the adjudication of claims and to a specific treating provider at the written request of and with the consent of a patient or a parent or guardian of a patient.

<sup>2</sup> COMAR 10.11.08, *Abortion Care Disclosure*.

<sup>3</sup> Final regulations were published in the May 3<sup>rd</sup> issue of the Maryland Register, with an effective date of May 13, 2024.

## Implementation Updates

EHNs and HIEs are encouraged to minimally adhere to the reporting structure that follows. Please provide information on activities currently underway and planned to implement requirements for LPHI. Include the following:

- The extent to which your organization currently possesses the technological capabilities to filter and restrict from disclosure codes and text-based LPHI and facilitate the exchange of LPHI to a specific treating provider when a patient, or a parent or guardian of the patient, provides direct consent for the disclosure.
- Approaches for informing clients of the status of new software upgrades and features to suppress the exchange of codes and text-based LPHI and facilitate the exchange of LPHI when direct consent is provided.
- A timeline for the release of software upgrades and features related to LPHI requirements and anticipated client implementation.
- Entities that are unable to fully comply with the law in 2025 must provide information on the following:
  - Approaches to address challenges and barriers that are delaying compliance; and
  - A description of your organization's contingency plans specifying actions taken or planned to mitigate risks of non-compliance, including policy(ies) implemented through agreements with clients.

***Affirmation of Technical Compliance with COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information and/or COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses; and COMAR 10.11.08, Abortion Care Disclosure***

Once an organization has complied with LPHI technical requirements, provide an affirmation that the organization:

1. Possesses the technological capability to filter and restrict from disclosure legally protected health information to the extent required by law;
2. Is parsing restricted codes and conveying all other information in the health record that is not prohibited by law to exchange; and
3. Possesses the technological capacity to allow a consumer to request and consent to the exchange of legally protected health information to a specific treating provider.

Organizations that submit an affirmation may be asked to provide ongoing implementation updates describing their approaches for working with clients and are encouraged to describe any advancements to their technical capabilities.

*NOTE:* Implementation updates should be submitted on company letterhead and signed by a corporate officer with authority to conduct business transactions on behalf of the entity. Please omit trade secrets or confidential business and financial information as defined in the Maryland Public Information Act.<sup>4</sup>

*Questions can be directed to Mac Gbenro at [macred.gbenro@maryland.gov](mailto:macred.gbenro@maryland.gov).*

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<sup>4</sup> The Maryland Public Information Act Manual is available at:  
[www.marylandattorneygeneral.gov/OpenGov%20Documents/Chapter3.pdf](http://www.marylandattorneygeneral.gov/OpenGov%20Documents/Chapter3.pdf)