January 23, 2024

The Honorable Senator Joe Baldacci,
The Honorable Representative Michele Meyer
Joint Standing Committee on Health and Human Services
Cross Building, Room 209, 287-1317
100 State House Station
Augusta, ME 04333

RE: Support for LD 2151

Dear Senator Baldacci and Representative Meyer, and Honorable Members of the Joint Standing Committee on Health and Human Services:

I am Deputy General Counsel and Director of Government Relations for Datavant, the country's leading provider of release of health information services. I provide this written testimony to **SUPPORT LD 2151.**

Datavant is a release of information company providing release of health information services in all 50 states for over 3,000 of the country's largest hospitals and health systems and over 18,000 medical providers generally. Personally, I have worked in the industry for 11 plus years and provided testimony and general information regarding the necessity for electronic medical record fee schedules for 16 of the 20 states that currently have regulated fee schedules for electronic medical records.

Before describing the release of health information process, it is important to understand that patient fees are governed by HIPAA while third party requesters fees are governed by state law. The fees in your current law are not charged to patients requesting their own records. Patients are entitled to their entire file with limited exception so there is no required page by page review, and HIPAA encourages patients to request their own records; so, the fee is therefore limited. However, third parties commonly use medical records to make financial decisions regarding things like life insurance underwriting, evaluation of general liability matters from an insured perspective, and other general liability matters from a claimant's perspective, such as, whether to take a patient's potential injury lawsuit (this could be workers compensation, personal injury, medical malpractice, disability, and product liability, etc.). These requests place an administrative and financial burden on healthcare providers who are trying to focus on their core competency of providing health care. This is why health care providers engage a release of health information vendor. Release of information vendors typically do not charge medical providers for release of information services because the laws in forty-five states, including Maine, permit the provider or their release of information vendor to charge the requester for the reproduction of medical records. The medical providers assign this statutory right to the release of information vendor. Therefore, these statutory fees are essential to making the current paradigm work efficiently to protect patient privacy in their health information.

Release of health information processing is commonly misunderstood, especially by medical record requesters. They tend to believe that electronic records are easy to disclose by simply pushing a button and uploading a file and then sending the record via email. This couldn't be further from the truth. In reality, highly trained release of information specialists must validate the request letter, HIPAA authorization, subpoena, court order, power of attorney document, or whatever other documents we receive before we even locate the subject record. These legal documents can be very complex with third-party requests, and simply including an apparent HIPAA authorization isn't enough. Before the record can be disclosed, we have to be certain the requester is authorized under federal and state law to receive the records requested. For example, in a wrongful death matter you will likely have in the request package: (1) an attorney letter explaining who the parties are and what is needed, (2) a certificate of death for the patient, (3) a court order demonstrating who the executor or administrator of the estate is, (4) possibly a Last Will and Testament or Durable Power of Attorney, and hopefully, (5) a HIPAA signed authorization from the Executor or Administrator. It isn't sufficient to just identify that these documents are presented; we have to validate them and make certain the requester is entitled to the requested records. Also, it is important to note that the HIPAA authorization is typically not the form the hospital provides; so, we have to validate that the authorization includes the following in order to be valid under HIPAA:

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.
3. The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.
4. A description of each purpose of the requested use or disclosure.
5. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure.
6. Signature of the individual and date.

Also, the authorization must include the following statements:

1. The individual's right to revoke the authorization in writing;
2. The ability or inability to condition treatment, payment, enrollment, or eligibility for benefits on the authorization;
3. The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected by HIPAA.

See 45 CFR 164.508(c).

Next, we have to identify the patient Medical Record Number in the patient index software, which is separate and distinct from the electronic health record software. We use that patient index number to locate the subject records in the electronic health record software (EHR).

We then begin reviewing the records to identify the records requested and authorized by the patient to be disclosed to a third party. If we identify highly sensitive information, such as mental health treatment, substance use and abuse testing and treatment, or HIV/AIDS testing and treatment in the file, we confirm if the highly sensitive information is authorized for release on the HIPAA authorization form. We also are making sure every scanned record uploaded to the EHR is that of the patient. Many people are not aware that EHRs often contain information that has been scanned and uploaded. This could include records the provider requested from other treating providers that may not be on the same HER, which leads me to the next point. Many providers, especially large health systems, have legacy EHR systems; so, we as the release of information vendors have to check all legacy systems for the requested records. It is not sufficient to check just one HER; and if you do or do not locate the patient's records, you still have to check the other EHRs. This tedious work of signing in and out of multiple EHRs and performing page by page review requires a degree of expertise, patience, and professionalism, hence justifying the per page fee, even for electronic records. If these steps are not taken, the patient's privacy could be breached.

As we work our way through the electronic medical record, we also have to convert the acceptable records for disclosure into PDF format for secure delivery through our secure internet portal. The data in the EHR is not capable of being read on a standard computer that doesn't have the same software. Therefore, Datavant had to create its own proprietary software to convert the unstructured data into a universally readable format, typically a pdf. For a more thorough explanation and easy to follow flow chart of the steps involved in producing a copy of an electronic medical record please see the attached 45 step process.

I'd like to now share some information about other states so this committee and the Maine Legislature doesn't think LD 2151 is an outlier. Currently, twenty states regulate fees for producing an electronic copy of a medical record to a third-party requester. The current Maine model, adopted in 2013, set a precedent for other states by establishing a cap that an electronic record could never exceed $150. Other states have followed Maine's lead and adopted caps on producing an electronic record as well. Those states also provide for a per page fee for electronic record so that requesters and providers alike will be able to easily calculate the proper fee for the record rather than using vague terms that no one will agree upon like "reasonable fee." Next, we would like to address the search and handling fee for validating the request and locating the patient medical record number and, subsequently, the records. As discussed, there is quite a bit of work involved in simply validating the request documents and locating the Medical Record Number, and the search and handling fee is intended to reimburse for this necessary work. You would likely be surprised how often requesters go on fishing expeditions for records and we do not locate any record despite being required to validate the documents and look for the record. This work would go unreimbursed without a proper search and handling fee. The average national search and handling fee is approximately $24.00. I say approximately because some states do include a nominal page count in the search and handling fee, like Maine currently does with one page being included.

In conclusion, Datavant believes the request in LD 2151 is supported by sound rationale and demonstrates the value that Maine places on protecting patient privacy. Datavant greatly appreciates Maine considering these modest amendments to the Maine release of information statutes so that Datavant and its competitors can continue to offer valuable release of information services to Maine's medical providers.

Thank you for considering this testimony and voting YES on LD 2151.

Respectfully submitted,

DocuSigned by:
Kyle Probst
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Kyle Probst
Deputy General Counsel and Director of Government Relations
Datavant

AHIOS

THE RELEASE OF INFORMATION (ROI) PROCESS

LOGGING, TRACKING & VERIFYING REQUEST

1. Receive Request
2. Enter Request in ROI tracking software for Accounting of Disclosures
3. Is the request directed from the individual or his/her personal representative under HIPAA (78 FR 5566, 5635)?
3. Is the authorization valid?
   - Is patient identifiable?
   - Does the authorization contain the 6 core elements and 3 required statements of a HIPAA compliant authorization in accordance with 45 CFR 164.508(c)?

No → 3a. Update Status in Software → 3b. Reject auth - Send invalid authorization letter to requester

Yes → *Continue to Step #4*

RETRIEVING PATIENT PROTECTED HEALTH INFORMATION

4. Search for Medical Record Number
5. Able to Locate Patient in the Master Patient Index?

No → 5a. Search Secondary Systems → 5b. Is the Protected Health Information (PHI) available?

Yes → *Continue to Step #6*

No → 5b1. Update status in ROI Tracking software → 5b2. Send status letter to requester

Yes → 6. Determine Format of PHI (Paper-Microfilm-Electronic)

Only 3.4% of all hospitals nationally are completely paperless so a hybrid record requires steps 7, 12 and 16.

7. Order Offsite record of PHI → 8. Transport offsite record → 9. Login Offsite PHI → 10. PHI Retrieved?

No → 10a. Report to HIM Manager → 10b. Update status in ROI software → 10c. Send status letter

Yes → 11. Update Chart Locator if Needed → *Continue to Step #12*

12. Retrieve Onsite Paper PHI and billing records → 13. Log into Patient Accounting system & extract itemized billing records or Order itemized Billing → 14a. Retrieve Paper PHI. Is the paper record available?

No → 14b. log into chart locator & locate PHI → 14c. Chart received → 14d. Update Chart locator → *Continue to Step #16*

Yes → 15. Update Chart Locator to ROI area → *Continue to Step #16*

16. Retrieve Electronic PHI → 16a. Log In To Electronic Medical Record System(s) → 16b. Is Electronic PHI available?

No → 16c. Report to HIM Management → 16d. Update status in ROI software → 16e. Print & send Status letter to Requester

Yes → 17. Extract PHI from the EMR → 18. Upload to ROI software and Save Patient order → *Continue to Step #19*

PROTECTING SENSITIVE INFORMATION

19. Review every page/image of the PHI printed or downloaded ensuring pages scanned do not contain federally or state protected health information such as drug and alcohol, HIV, mental health.

19a. If authorized proceed to step 22.

20. If federally protected not authorized Reject the auth -update status in software

21. Send invalid authorization letter to requester

22. Verify all pages and EHR images of PHI are the correct patient

23. Verify Dates of Service and Items Requested and Authorized

24. Scan Backup Set (Request & Authorization) into Tracking Software

25. Scan Paper PHI into tracking software as the Medical Records Set—Reassemble Chart Exactly as Found

26. Return Paper Chart to file/offsite storage/update Chart Locater

27. Retrieve Imaged PHI and upload to the Medical Records Set

Continue to Step #28

RELEASING AUTHORIZED INFORMATION

28. Match paper and electronic PHI with Request to confirm proper patient by checking SS#, date of birth, confirm proper treatment records of PHI is released based on diagnosis (car accident, slip and fall, heart attack, etc.)

29. Perform quality review to ensure all PHI is included as authorized

Yes → 30. Confirm ALL Pages Oriented Correctly? Fall within the Date Range Requested and Authorized? Are they the Types of Records Requested and Authorized?

31. Flip, Delete, Scan PHI as Needed to Fulfill Request Correctly → *Continue to Step #32*

No → 29a. Notify HIM Management → 29b. Notify Requester → 29c. Update status in ROI tracking software → 29d. Send status letter

COMPLETING AND INVOICING THE REQUEST

On Site Release

32. Does Requester Require a Fee Approval?

Yes → 32a. Verify Fee per state rate, select charge type, Generate Fee Approval Notice → 32b. Send Fee Approval Notice → *Return to Step #1*

No → 33. Verify state rate, apply payment that accompanied request → 34. Generate Invoice and print PHI → 35. Compare Patient Name on Last Page of all PHI with Invoice Page, perform mail QA → 36. Attach Any Supplemental Info: Affidavit, Certification, etc → 37. Place Completed Documents in Appropriate Envelope, Place in Mail Out Bin

Centralized Processing

38. Review Every Page of the PHI : Ensuring Pages Scanned are Oriented Properly, Fall within the Dates of Service Requested and Authorized, are the Correct Type of PHI requested and Authorized ALSO Verify Correct Patient Name on EVERY Page of the PHI

39. Are all pages of the PHI on the patient available and correct?

No → 39a. Notify Site to be corrected

40. Correct Name on ALL Pages?

No → 39b. Print Wrong Patient Pages, Notify Site, Fax to Site and File

Yes → 41. If output is paper, follow steps 33-37. If CD, go to step 45

42. Alternately Stack Document Set to be Verified and Mailed

43. Compare Patient Name on Last Page of PHI with Invoice Page, Double Check Mailing Address against 1st Page of Backup-Verify All Supplemental Info is Attached. Place in Appropriate Envelope and Place in Mail Out Bin → 44. Mail PHI

45. Burn file to CD, perform final QA, include invoice, package and place in mail out bin