

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.

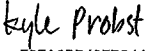
As we work our way through the electronic medical record, we also have to convert the acceptable records for disclosure into PDF format for secure delivery through our secure internet portal. The data in the EHR is not capable of being read on a standard computer that doesn't have the same software. 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.

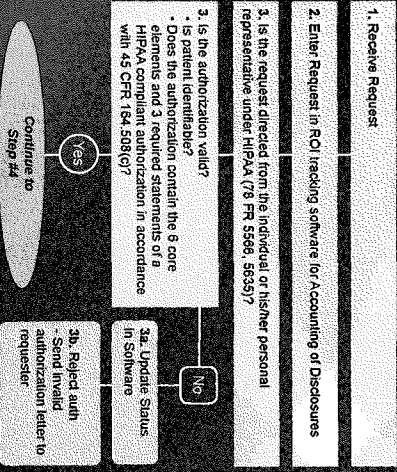
Respectfully submitted,

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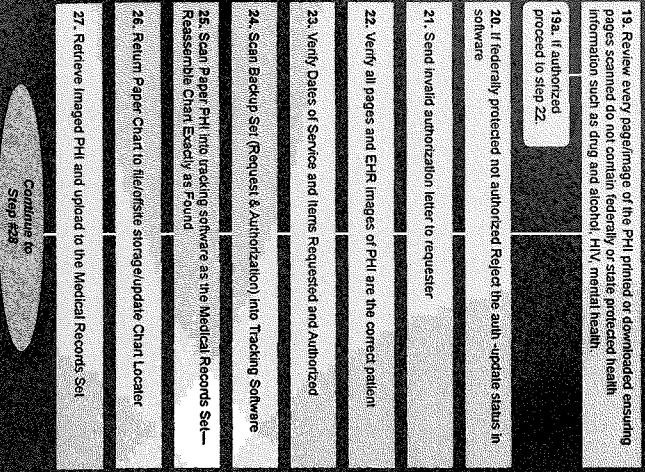
Kyle Probst
Deputy General Counsel and Director of Government Relations
Datavant



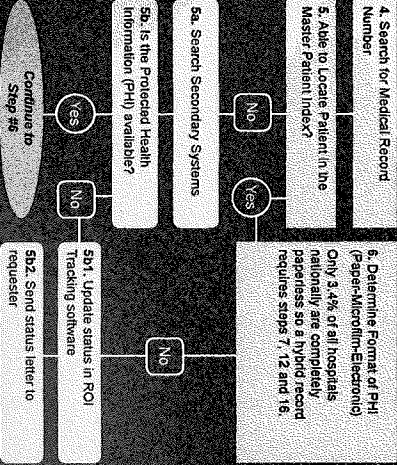
LOGGING, TRACKING & VERIFYING REQUEST



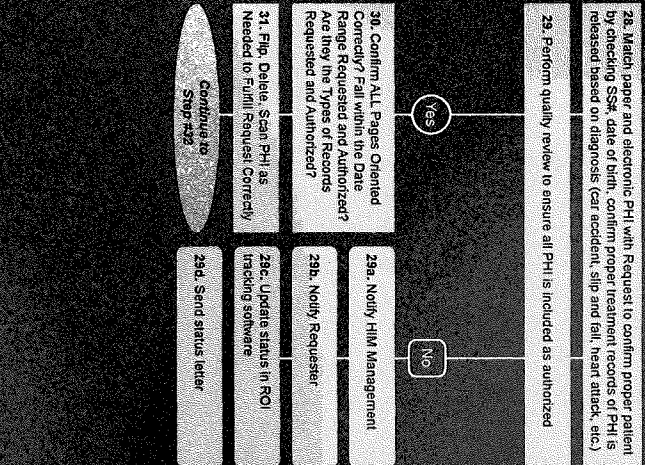
PROTECTING SENSITIVE INFORMATION



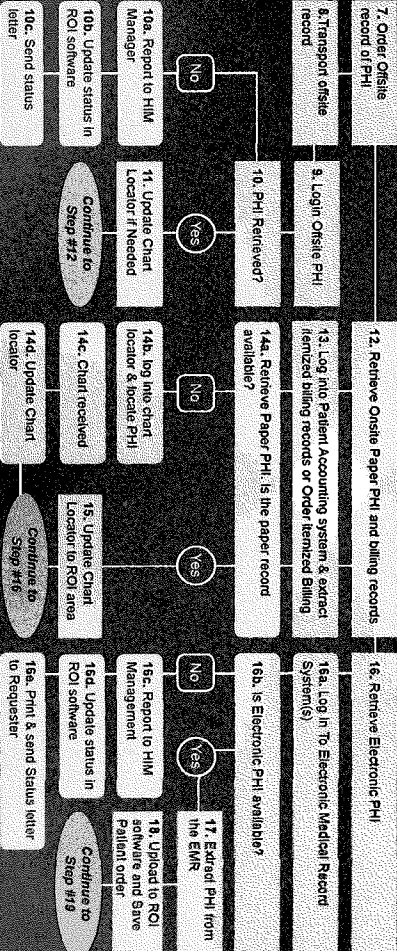
RETRIEVING PATIENT PROTECTED HEALTH INFORMATION



RELEASING AUTHORIZED INFORMATION



COMPLETING AND INVOICING THE REQUEST



COMPLETING AND INVOICING THE REQUEST

