

**Office of General Counsel**

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Dear Members of the Committee on Labor and Housing and Representatives Roeder, Boyer, Faulkingham, Gere, Malon, Osher, Supica, and Williams:

Thank you for your work to date on LD 949, “An Act to Protect Workers from Employer Surveillance.” While LD 949 rightly encourages dialogue concerning whether, how, and when employees have a reasonable expectation of privacy in the workplace, LD 949 raises serious questions and concerns for employers, and for health care provider employers in particular.

By way of background, PCHC is the largest and most comprehensive of the 20 FQHC organizations in Maine and the second largest of the 100 in northern New England, with approximately 900 employees located in Penobscot, Waldo and Somerset counties. PCHC’s employees include approximately 200 providers: physicians, nurse practitioners, physicians’ assistants, registered nurses, pharmacists, LCSWs, LCPCs, psychiatrists, social workers, dentists, chiropractors, and physical therapists, among others. In normal, non-pandemic years, PCHC sees approximately 65,000 patients and engages in roughly 325,000 visits annually. Seventy percent of PCHC’s patient population are lower income people and seniors. PCHC works through the medical home model, coordinating individual patient care among the entire care team, addressing the root causes, social determinants of health, and community conditions that lead to poor health, and enhancing the patient-care team relationships to improve health outcomes. PCHC has been providing this type of care since 1997. PCHC providers focus on individual patient needs, proactively treating chronic illnesses encouraging healthier behaviors for better health management.

Health care providers implement health information and related systems to ensure data tracking, measurement, auditing, and reporting. Having a real-time understanding of how health information and related systems are interacting and how employees are interacting with those systems is necessary to ensure timely and outstanding patient care at both population health and individual health levels, that standards of care are met, that harm-events are avoided, that positive patient outcomes and relationships are maximized, and that we meet expectations laid out by grantors, funders, payers (public and commercial), and accreditors. This means, for example, that PCHC, and all health care providers, among other things:

- Monitor whether patient referrals are being processed per timelines set forth in policy (e.g., stat and urgent referrals (same day and 1 business day, respectively), and stat lab results and critical lab values are being communicated immediately to patients.
- Track and audit whether patient needs communicated via phone call are routed and triaged appropriately.
- Run reports from its various electronic medical records on whether employees are appropriately and correctly performing core job duties (e.g., track and measure quality metrics such as cancer screening, immunization, A1C) as defined in the job description.

- Audit and prevent data from being sent outside of PCHC’s secured encrypted systems.
- Audit to ensure that patient protected health information (PHI) is accessed, used and disclosed only for permissible purposes.

All of this work relies upon a health care provider’s ability to access, track, measure, audit and report on employee work and productivity within technical data systems. The work described above translates into ensuring a stable foundation upon which outstanding patient care can happen. In its current form, LD 949 will interfere with this work, for example:

- It does not include a definition of “productivity” or “keystroke.” (See Paragraph 1).
- While the current version of LD 949 does allow an employer to use surveillance if “it is strictly necessary to ensure employee health and safety or the security of employer data . . .”, it does not define “strictly necessary”, “health” or “safety.” (emphasis added). (See Paragraph 3).
- It does not define “authorized agent.” (See paragraph 3(D)).
- It appears to opine on what data an employer owns versus what data an employee owns, which lacks clarity and could cause confusion vis-a-vis the well-settled law of right, title and interest in property in the state of Maine. (see Paragraph 5).
- It provides for a private right of action for employees to pursue litigation against an employer for violation of LD 949, which will translate into additional, costly litigation, and add to the already long dockets our court system in Maine manages. (See paragraph 9).

In short, and specifically for healthcare providers, LD 949 in its current form will require extensive and costly systems and policy redesign. It will require that health care providers allocate diminishing resources to non-core functions, system rework, and vendor contract and functionality modifications. The remedy in this space (employer surveillance), alternatively, could be tied to laws requires every employer to lay out its data access, tracking, measurement, auditing, and reporting practices in organizational policy and giving employees notice of expectations at hire and ongoing during the course of employment.

Thank you for your time and work. PCHC appreciates your interest in this issue. An employee’s right to privacy at work and an employer’s right to monitor all of its systems and data can be balanced in an appropriate and thoughtful way. LD 949 in its current form does not get us there, however.

I would be happy to discuss this further. Please do not hesitate to reach out with any questions or for more information.

Sincerely,



Megan A. Sanders, Esq.  
Chief Legal Officer, Compliance Officer & Chief Human Resources Officer