

**TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
GENERAL LAW COMMITTEE
Thursday, March 3, 2022**

SB 6, An Act Concerning Personal Data Privacy And Online Monitoring

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **SB 6, An Act Concerning Personal Data Privacy And Online Monitoring**.

Since early 2020, hospitals and health systems have been at the center of Connecticut's response to the COVID-19 public health emergency, acting as a vital partner with the state and our communities. Hospitals expanded critical care capacity, procured essential equipment and supplies, and stood up countless community COVID-19 testing locations. Hospitals have been an essential component of the statewide vaccine distribution plan including efforts to reach and serve historically under-resourced communities disproportionately affected by the virus.

CHA supports the concept of the bill, but, as written, the bill requires several modifications to avoid significant unintended consequences that would negatively impact Connecticut, and negatively impact the fight to address healthcare disparities and to achieve social justice.

In 2021, Connecticut officially recognized racism as a public health crisis in Public Act 21-35 (also known as SB 1). It is universally understood that combating health disparities and seeking social justice will require more than just introspection and promises to do better. It will require hard work that uses data and sophisticated data analytics. SB 6 tries to balance important consumer protections with the need to avoid interfering with legitimate data uses. The bill does this through exemptions. But the exemptions fall short for healthcare. To ensure that necessary data are available and able to be used to fight racism, identify and address social influencers of health, examine population health, and solve for myriad health disparities, the bill needs additional exemptions.

Entity-Level Exemption

The current entity-level exemption for healthcare entities lists only hospitals as exempt, which immediately disregards most pediatric practices and physician offices, surgery centers, and many nursing homes, as well as other healthcare providers. That creates an unnecessary gap for data use and data sourcing, and will negatively affect ongoing, critical work on addressing healthcare disparities. While there is a "HIPAA exemption" for data

covered by HIPAA rules, the exemption is not broad enough, because it fails to encompass data sourced from outside of the patient record. This is a critical gap. If the bill, as written, were in place during the early days of the COVID-19 public health emergency, the inability to collect and exchange data outside of the patient record would have stalled (if not blocked) the ability of providers to determine where COVID-19 testing and vaccinations were most needed and which populations were being underserved. It would have impaired (if not eliminated) the ability to provide outreach to communities that most needed access to care.

To address this concern, we recommend the following modifications:

At line 179 delete “or”

At line 180, delete the period and insert “; or (8) healthcare provider as defined in 45 CFR 160.301.”

Population and Community Health

The draft bill also contains an exemption for “public health,” a legal term defined in federal law as exclusively relating to activities only when an official public health authority is involved. (See HIPAA at 45 CFR 164.512(b)). **This exemption does not expressly cover population health and community health activities of providers or others outside of government, even though population health and community health have been long-recognized as necessary to addressing healthcare disparities.** Data focused on economic justice issues and social influencers of health, including well-known topics such as food insecurity, housing insecurity, and job access are all affected, as well as lesser-discussed but very important topics that are vital to families’ and individuals’ health, including access to diapers and menstrual products.

To address this concern, we recommend the following modifications:

At line 207, after “as authorized by HIPAA” insert “, population health activities and community health activities”

Patient Safety Organizations

The bill should also provide an express exemption covering Connecticut’s Patient Safety Organization law, Section 19a-127o of the Connecticut general statutes. The draft bill contains exemptions for work product used by federally designated PSOs, but fails to recognize Connecticut’s PSOs. Connecticut is one of only two states with a robust state-level Patient Safety Law (the other is Pennsylvania). Connecticut’s PSO law, Section 19a-127o of the general statutes, has been on the books since 2005 and should be expressly exempt from SB 6.

To address this concern, we recommend the following modifications:

At line 197, after “product for purposes of” insert “section 19a-127o of the general statutes and”

Non-Profit Organizations

The bill exempts 501(c)(3) non-profit entities, but **should also exempt 501(c)(6) non-profit entities, and other similar entities**. Exempting only 501(c)(3) organizations fails to assure that legitimate non-profit organizations are able to participate in data analytics directed at improving social justice and reducing health disparities. Addressing racism as a public health crisis, as identified in Public Act 21-35, requires broad engagement by as many willing entities as possible, not just 501(c)(3)s. CHA is a 501(c)(6) organization, as are many well-known, respected, and legitimate organizations, such as the various chambers of commerce operating in regions of Connecticut, the American Bar Association and the Connecticut Bar Association, and The American Medical Association and various state and county medical associations and societies.

To address this concern, we recommend the following modifications

Delete lines 75-78, and replace those lines with the following text:

"Nonprofit organization" means any corporation organized under the Connecticut Revised Nonstock Corporation Act. Sections 33-1000 to 33-1290, inclusive, or any organization exempt from taxation under § 501(c)(3), 501(c)(6), or 501 (c)(12) of the Internal Revenue Code, and any subsidiaries and affiliates of such entities.

(Note: This language directly models the Virginia consumer privacy law, which takes a balanced and well-reasoned approach to exempting nonstock and nonprofit entities.)

Colocation Services

The definition of data processing and what constitutes a processor subject to the bill (lines 91-96) expressly sweeps in companies that merely house or colocate data, but do not control data or distribute it. That puts every colocation and data storage company, both cloud-based and brick-and-mortar businesses doing business in Connecticut or seeking to do business in Connecticut, in an untenable position. **The law should provide a clear, understandable, and express exemption for third parties that perform data storage and colocation services, but that do not directly use data.**

To address this concern, we recommend the following modifications:

At line 94, delete the word “storage” and delete the period at the end of the line, then insert “but does not include data services that are limited to colocation or storage, whether in a physical location or in the cloud.”

Technical Assistance to Foster Compliance

Additionally, we ask **that the Office of the Attorney General, as swiftly as possible, set up and operate a unit to offer timely technical assistance to answer questions that businesses have as they prepare for implementation of the new law.** The law is untested and extremely complicated. Achieving universal compliance, without causing considerable cost to businesses for lawyers and consultants (costs that will eventually be pushed down to consumers) is essential.

To address this concern, we recommend the following modifications:

At the end of the bill, add a new Section 12 that reads:

“No later than October 1, 2022, the Attorney General shall establish and maintain a dedicated and staffed unit that provides technical assistance and education regarding how to comply with the act, and shall provide timely information to those seeking guidance on best practices and compliance with the act.”

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.