



**TESTIMONY OF  
CONNECTICUT HOSPITAL ASSOCIATION  
SUBMITTED TO THE  
JUDICIARY COMMITTEE  
Wednesday, March 22, 2023**

**SB 3, An Act Concerning Online Privacy, Data And Safety Protections And An Employer's Duty To Disclose Known Instances Of Sexual Harassment Or Assault Committed By An Employee When Making Employment Recommendations**

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **SB 3, An Act Concerning Online Privacy, Data And Safety Protections And An Employer's Duty To Disclose Known Instances Of Sexual Harassment Or Assault Committed By An Employee When Making Employment Recommendations**. CHA supports the bill with modifications to subsection (c) of Section 1.

Connecticut hospitals continue to meet the challenges posed by the COVID-19 pandemic and are now facing new challenges of treating sicker patients than they saw before the pandemic, with a dedicated but smaller workforce who are exemplary but exhausted. They are also experiencing significant financial hardships brought on by record inflation. Through it all, hospitals have been steadfast, providing high-quality care for everyone who walks through their doors, regardless of ability to pay.

SB 3 contains a variety of privacy (and other) issues, many of which build on last year's consumer privacy law (PA 22-15), now codified in its own chapter of the general statutes, chapter 743jj; currently spanning 42-515 through 42-525. The primary purpose of chapter 743jj is to regulate *previously unregulated* data controllers and processors. Several industries, and specific types of data, are exempt from chapter 743jj because those industries already have developed legal protections for consumer privacy, with different definitions, different requirements specific to each industry, and different rules for consumer-related activities. For example, HIPAA covered entities and business associates, as well as HIPAA protected data, are exempt from chapter 743jj.

HIPAA requires compliance with elaborate and complex privacy and security rules specifically designed for healthcare providers and health insurers. PA 22-15 rightfully exempted entities that follow HIPAA from also having to follow chapter 743jj. HIPAA has specific definitions, rules, requirements, and enforcement standards specific to marketing, sale of health data, patient permissions, and breach reporting obligations.

The plain language of Section 7 of SB 3 applies the same exemptions found in chapter 743jj to SB 3 Sections 1, 3, 4, 5, 6 7 and 8 of the bill. That makes sense. However, there is language in subsection (c) of Section 1, lines 223-224 that appears to unravel the granted exemption meant to apply to all of Section 1. Subsection (c) begins with a “notwithstanding” clause, specifically:

223 (c) (1) Notwithstanding any provision of the general statutes, no  
224 person shall:

The subsection goes on the set rules for the sale of health data and to ban geofencing within 2000 feet of any physical location. That “notwithstanding” language negates the exemption for this part of Section 1, which is very confusing. We ask that lines 223-224 be revised to specifically apply to the non-exempt entities meant to be regulated by SB 3. This could be accomplished by the following revision:

223 (c) (1) Notwithstanding any provision of the general statutes, no  
224 **regulated entity** [person] shall:

If subsection (c) is meant to apply regardless of exemption to Section 1, that does not make sense. Healthcare providers that are regulated by HIPAA already follow separate, specific federal regulations and definitions governing the prohibition of sale of protected health information and marketing. 45 CFR 164.501, 45 CFR 164.502, and 45 CFR 164.508(a).

Banning *third-parties* from surreptitiously collecting data about consumers who are not their patients through geofencing near provider locations is a reasonable reaction to a problem we’ve seen in other states. But it does not make sense to ban the very healthcare provider on the property where the patient is seeking care. That would immediately interfere with the ability to check-in a patient, provide necessary updates and instructions, provide parking or walking directions, provide updates on wait times, check-out a patient, or provide follow-up instructions. It will also create a chilling effect on providers using geofencing for cyber security and internal communications. If the law requires you to shut off geofencing, it will have a very broad impact for all uses.

We urge you to change the “notwithstanding” clause at lines 128-129 to be consistent with the exemptions for Section 1. In the alternative, we urge you to clarify that HIPAA regulated entities are exempt from all of Section 1, including subsection (c) at all times, and be express that healthcare providers may utilize geofencing at their own locations without needing to comply with Section 1 of the bill.

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