



**TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
JUDICIARY COMMITTEE
Monday, March 18, 2024**

**HB 5411, An Act Concerning Requests For Health Records And The Fees Charged
For Access To Such Records**

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **HB 5411, An Act Concerning Requests For Health Records And The Fees Charged For Access To Such Records**. CHA opposes the bill.

Connecticut hospitals are critical to their communities. They are confronting the challenges posed by a post-pandemic healthcare system with an exemplary healthcare workforce that continues to provide outstanding care. But challenges remain. Hospitals are treating sicker patients, it continues to be challenging to hire and retain staff, and the financial headwinds are grave. Through it all, hospitals are steadfast, providing high-quality 24-hour care for everyone who walks through their doors, focusing on making Connecticut's healthcare system more equitable, and driving world-class innovation right here in Connecticut.

Connecticut law must support patient rights. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules insist that healthcare providers act as gatekeepers for a patient's medical records privacy rights. These rules establish a deliberate process that takes time and effort. A provider must verify and validate that all the necessary forms and paperwork are documented, that if a patient's authorization is needed it be valid and complete, and that all other applicable privacy laws, in addition to HIPAA, have been met. Connecticut law must support patient privacy rights as well. HB 5411 as drafted fails to meet this obligation.

Section 1 focuses on General Statutes Section 31-294f, which addresses medical reports used exclusively in workers' compensation proceedings. This section of the bill seeks to penalize treating practitioners who may be late in submitting the completed medical reports as part of a workers' compensation matter. CHA supports the goal of ensuring the right information is presented during a workers' compensation proceeding, but we oppose penalizing practitioners as drafted in the bill for the following key reasons:

- CHA believes that sending a notice to a provider indicating that a report is due to be delivered would likely be sufficient to remedy the problem, without the need for a punitive model. CHA supports the Workers' Compensation Commission having a

process in place to notify providers that a report is due, is late, or is required at any time that the Commission believes that information would assist in processing workers' compensation claims. We believe that is already within the power of the Commission and would not require a law

- The punitive model outlined in Section 1 would also require an administrative hearing apparatus within the workers' compensation system and force providers to protect their rights (with lawyers and defenses), which would be an inefficient use of the Commission and its resources. CHA's understanding is that providers who do not follow the workers' compensation rules can already be barred from the program (a step the Commission has not taken widely)
- The proposed punitive approach in this section would also have a chilling effect, causing providers to be disinclined to participate in the workers' compensation program. The program can ill-afford losing providers, particularly specialists. Additionally, if there are going to be changes made to General Statutes Section 31-294f, we urge there be clarity on what records and reports are required to be disclosed.

Sections 2 and 3 would rework the medical records release and fees laws for practitioners (Section 2) and institutions (Section 3). CHA opposes the bill as written because it fails to reflect federal law requirements and creates confusion and disconnect with HIPAA, despite the fact that HIPAA provides a more coherent and workable approach to medical records release and corresponding fees. The nomenclature is wrong in many places through inconsistencies with HIPAA (e.g., HIPAA uses the term "personal representative," not "authorized representative;" HIPAA uses the term "authorization," but the bill speaks of "medical authorization"). We also note that HIPAA already sets the maximum fees for patient-generated requests.

At a minimum, the changes proposed in the bill to General Statutes Sections 20-7c and 19a-490b should separate the HIPAA concepts of direct access requests (described in HIPAA at 45 CFR 164.524) from requests that require a HIPAA complaint authorization (governed by 45 CFR 164.508). These are totally different portions of federal law that Connecticut law has yet to update. The HIPAA Privacy Rule started being applied through federal mandates in 2003. CHA encourages the Committee to take this opportunity to align our state law with federal law. This would require the Committee to make substantial changes to this bill.

Further, HB 5411 contains language that could accidentally dilute HIPAA obligations, including, for example, verification requirements (described at 45 CFR 164.502) that mandate various steps be taken by providers prior to record release. HB 5411 also appears to ignore Connecticut protections for sensitive information or federal protections beyond HIPAA that mandate specific rules for release of substance use disorder treatment records.

Finally, CHA cautions that HB 5411 will result in prioritizing requests for release of medical records for use in legal matters over release of records for medical purposes. CHA cannot support such a law. This same issue was raised during hearings during the 2023 Legislative Session on what became Section 43 of PA 23-97. There is a pipeline of records for each provider entity, and every request affects the efficiency of that pipeline. The priority must always be focused on those requests for releases of medical records that are intended to facilitate the care and treatment of patients, including prior authorizations. HB 5411 alters that priority to favor legal matters over matters that pertain to a patient's care.

We look forward to working with the Committee to address our concern about this bill as drafted. Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.