

2025 – 2026 Legislative Memorandum

Subject: Requiring all health information systems or electronic health record systems to segregate certain patient information from the rest of such patient’s medical record S.1633 (Fernandez) / A.2613 (Lunsford)

Position: SUPPORT

Electronic health records improve the quality of health care by ensuring that every provider who sees a patient has access to their medical history.¹ But, electronic health records also make a patient’s entire medical record – including records about sensitive health care – available to all providers with access to the system. This means that information in a patient’s electronic health record can be shared across state lines automatically. As other states criminalize abortion care and gender affirming care and patients face increased stigma, this automatic sharing can put patients and providers at risk of discrimination and criminalization.

To address this, NYCLU strongly supports S.1633 (Fernandez) / A.2613 (Lunsford).

S.1633 / A.2613 would require electronic health record companies to segment electronic health records and suppress sensitive health information at a patient’s direction.² This would enable patients to reap the benefits of electronic health records without risking that information about their abortion, gender affirming care, or other sensitive health care will be shared and used against them. The NYCLU strongly supports this legislation and urges its immediate passage.

¹ See *Electronic Health Records*, CENTERS FOR MEDICARE & MEDICAID SERVICES, Sept. 6, 2023, <https://www.cms.gov/priorities/key-initiatives/e-health/records>.

² S.1633/A.2613 requires the state to promulgate regulations requiring the electronic health record companies to create the ability to segment, at the patient’s direction, abortion and gender-affirming care information, as well as records pertaining to STI and HIV testing and treatment, mental health services, alcohol or substance abuse treatment, and records of any other health care services determined by the Commissioner of Health in consultation with health care providers and patient advocates. These are all types of health care that are subject to heightened confidentiality protections in New York or federal law.

Opponents' concerns are baseless. Similar measures are already law in Maryland³ and California,⁴ and the major electronic health record companies are already coming into compliance⁵ in those states: about 65% of health information exchanges and electronic health networks were in compliance with Maryland's law by the end of 2024, and nearly 90% expect to be in compliance by the end of 2025.⁶ The electronic health record vendor with the largest market share nationwide, Epic, is already fully in compliance with Maryland's law.⁷ Meanwhile, electronic health records companies, including Epic and Ochin, have shared with providers in California the technologies they have developed and are developing in order to implement California's law.⁸

As of March 2025, 19 states have banned or severely restricted abortion access,⁹ And, in the past two years, at least 49 bills have passed in states across the country targeting medically necessary health care for transgender, gender non-conforming, and nonbinary (TGNCNB)¹⁰ people.¹¹ Electronic health records create unique vulnerabilities for patients and providers when treatment that is health care in New York is criminalized in other states. For example, an abortion provider in an access state tells the story of a patient who traveled for care and then sought follow-up care in her home state of Texas. The access state provider reported, "I sat down at my computer and saw her note from the [Texas doctor] . . . And I thought, 'Oh God, if I can see *their* note, then they must be able to see *my* note,'" which included prescriptions and instructions for medication abortion.¹² Another provider learned that one of her patients was reported to Child Protective Services in her home state after a health care provider there learned through her medical record that she had traveled for abortion care.¹³

³ H.B. 812/S.B. 785, 2023 Leg. (Md. 2023) (signed into law May 3, 2023).

⁴ A.B. 352, 2023 Leg. (Cal. 2023) (signed into law Sept. 27, 2023).

⁵ *E.g. Chapter 249 (House Bill 812), Health – Reproductive Health Services – Protected Information and Insurance Requirements Implementation Update*, MARYLAND HEALTH CARE COMMISSION, Apr. 18, 2024, https://mhcc.maryland.gov/mhcc/pages/home/meeting_schedule/documents/presentations/2024/20240418/agd6_comm_implementation.pdf.

⁶ *See Chapter 248/249 (Senate Bill 786/House Bill 812), Health – Reproductive Health Services – Protected Information and Insurance Requirements (2023): Senate Finance Committee – Implementation Update*, MARYLAND HEALTH COMMISSION, slide 13, Jan 23, 2025, https://mgaleg.maryland.gov/meeting_material/2025/fin%20-%20133820508574622999%20-%20Briefing%20Materials%20-%20MHCC%2001-23-25.pdf.

⁷ *Id.* at 19.

⁸ These include a confidential notes feature, location filtering, and the ability to tag and hide sensitive information that is not identified by a diagnostic or CPT code, like lab, procedure, and image orders; lab results; and follow-up plans. These innovations, and others like them, should streamline implementation in New York when this legislation passes.

⁹ Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Bans Across the Country*, NY TIMES, <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html> (updated March 6, 2025).

¹⁰ Because these bills typically include exemptions for identical treatments when forced onto intersex youth, this memo refers only to TGNCNB people without adding an "I" for intersex.

¹¹ *See generally Mapping Attacks on LGBTQ Rights in U.S. State Legislatures*, ACLU, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights?impact=health> (last updated April 25, 2025) (compiling legislation).

¹² Christine Henneberg, *The Trade-Offs for Privacy in a Post-Dobbs Era*, WIRED, June 5, 2023, <https://www.wired.com/story/the-trade-offs-for-privacy-in-a-post-dobbs-era/>.

¹³ Remarks of Jennifer Pepper, *Protecting Patient Privacy: The Risks of Health Information Exchanges*, NAF Conference, April 2024.

Indeed, a report from a health care provider is the most common way that people come to the attention of law enforcement for allegedly ending their own pregnancies or helping someone else to do so.¹⁴

But, interstate concerns are not the only issues animating S.1633/A.2613. The NYCLU has heard from people who worry about discrimination from the health care providers or insurers here in New York based on an abortion noted in their electronic health records. Because they know their medical records are not private and may be used against them, some people do not provide complete information to their medical providers. For example, fearing discrimination or criminalization, people have refused to share the date of their last menstrual period with their doctors.¹⁵ If they could segment their electronic health records and control who has access to this kind of sensitive information, they would likely be more apt to share it with, for example, a trusted gynecologist.

Based on the experience of other states, this bill provides for a generous implementation timeline. Drafted in collaboration with the New York eHealth Collaborative, the entity that runs New York's health information exchange, the bill provides for a phased approach, requiring implementation first for codified data (or data that can be easily identified by a code such as a diagnostic code or a CPT code) and offering a longer implementation timeline for non-codified data.¹⁶

The bill also creates a practical counseling requirement for providers who deliver sensitive services. These providers would inform their patients of what tools are available to protect their health information.¹⁷

New Yorkers should be able to reap the benefits of electronic health records without worrying that the information in their health records could be used to criminalize or discriminate against them. For these reasons, the NYCLU strongly supports S.1633/A.2613 and urges its immediate passage.

¹⁴ Laura Huss, Farah Diaz-Tello, & Goleen Samari, *Self-Care Criminalized: August 2022 Preliminary Findings*, IF/WHEN/HOW: LAWYERING FOR REPRODUCTIVE JUSTICE, 2022, https://ifwhenhow.org/wp-content/uploads/2023/06/22_08_SMA-Criminalization-Research-Preliminary-Release-Findings-Brief_FINAL.pdf.

¹⁵ EmeraldGirl, *Declined to give my LMP at the doctor's office*, REDDIT, https://www.reddit.com/r/TwoXChromosomes/comments/w5aal1/declined_to_give_my_lmp_at_the_doctors_office/ (last visited Apr. 11, 2024).

¹⁶ The bill requires the Department to promulgate regulations within six months of passage requiring the electronic health record vendors and health information networks to create the ability to segment codified data. It gives the Department a year to promulgate regulations requiring the electronic health record vendors to create the ability to segment non-codified data, such as provider notes and lab results, recognizing that those data present different challenges – although, as described above, the electronic health record vendors are already developing the technologies to implement segmentation of both types of data. The Department is free to choose appropriate implementation deadlines for the vendors and networks taking into account the state of the technology.

¹⁷ This counseling requirement tracks the implementation requirements so that providers will not be required to counsel on technologies that do not yet exist.