

January 15, 2025

The Honorable Rebecca Bauer-Kahan
Chair, Privacy and Consumer Protection
Committee
California State Assembly
State Capitol
Sacramento, CA 95814

The Honorable Diane Dixon
Vice Chair, Privacy and Consumer Protection
Committee
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Chair Bauer-Kahan and Vice Chair Dixon,

On September 27, 2023, California Assembly Bill (AB) 352 was enacted, establishing specific requirements for and limitations on the exchange of health data related to certain sensitive information. The law has an enforcement date of January 31, 2026, and mandates that organizations holding Personal Health Information (PHI) restrict the exchange of sensitive data—information related to gender-affirming care, abortion care, and contraceptive health—to individuals or entities outside the state. This requirement imposes significant and complex development demands on health IT software developers who supply California provider organizations with systems that hold this sensitive health data.

The EHR Association—representing 29 member companies—is a national health IT trade association whose members serve the vast majority of hospital, post-acute, specialty-specific, and ambulatory healthcare providers using EHRs and other health IT. We have consistently raised concerns about the implementation timelines specified in AB 352 because of the absence of state agency implementation guidance or any issuance of technical requirements necessary to support standards-based approaches that enable consistent and secure data exchange among EHR developers. The numerous considerations required to implement AB 352’s provisions across all data holders and intermediaries include the following:

- What data is considered sensitive, and therefore what data is not sensitive?
- Which out-of-state parties can and cannot receive this sensitive data, with or without further patient consent?
- Who is responsible for managing data sharing across state lines when the provider or entity requesting the patient’s data is located in California, but their organization also operates and holds data out-of-state?
- Who, if anyone, is liable if sensitive data is inappropriately released by the receiving organization after receipt?

AdvancedMD	Elekta	Greenway Health	Netsmart	Sevocity
Altera Digital Health	EndoSof	Harris Healthcare	Nextech	STI Computer Services
Athenahealth	Experity	MatrixCare	NextGen Healthcare	TruBridge
BestNotes	Epic	MEDHOST	Office Practicum	Varian – A Siemens Healthineers Company
CureMD	Flatiron Health	MEDITECH, Inc.	PointClickCare	Veradigm
eClinicalWorks	Foothold Technology	Modernizing Medicine		

- What is the role in the exchange limitation, if any, of HIEs, QHIOs, and QHINs?
- What, if any, guidance should be used when the decision not to share data impacts patient safety or could otherwise adversely impact the patient?
- What is the meaning of “segregation” (as used in the bill) vs. “segmentation” (as used in the industry) that focuses on “categorizing”?

Clarification by State regulators and decision-makers on these questions would support CalHHS, health IT vendors, and data holders, including healthcare providers interacting with patients, in uniformly applying AB 352. This would enable them to confidently identify sensitive data, mark documents, datasets, and narratives containing sensitive information, establish computable privacy rules consistent with AB 352, and manage patient consent electronically among the data holders inside and outside California when sharing sensitive data requiring consent. We are particularly concerned about how “segregation” is defined in the bill, as it could suggest a mandatory physical separation. This should instead be viewed as a technological choice for each health IT software developer to effectively support their clients.

Risk Introduced Through Insufficient Information

Without clear guidance on these matters, there is a significant risk that different health IT solutions and data holders will inconsistently approach the management of sensitive data, failing to agree on what qualifies as sensitive data. This misalignment raises the risk of data sharing that could unintentionally harm patients. Consistency is critical, requiring guidance from the state to support that.

Given the absence of guidance thus far and the impending compliance deadline for provider organizations, it remains uncertain whether the industry can effectively support all affected providers with a safe, tested, practical, and scalable suite of capabilities that are uniform across all data holders. Furthermore, a range of health IT systems—including EHRs and other systems that interface with the healthcare framework and exchange data with EHRs—must be equipped with these capabilities within a timeframe that supports provider compliance. The variety of health IT systems in use in California also necessitates consideration of factors such as the nature of the technology, its age, adherence to industry standards, and the deployment strategy across various providers.

Recommended Timelines for Development and Deployment

In a previous letter sent to CalHHS Secretary Ghaly in February 2024 ([attached](#)), we particularly recommended the following:

- A practical target timeframe in which to require updated development within the impacted software, which the Association consistently states is a minimum of 24 months *after all relevant specifications and guidance are available*.
- An allowance of a reasonable 9-12 months for all impacted data holders to deploy updated health IT solutions across their organizations once the software has been made available by their health IT developer.

We note that having an adequate deployment time window for data holders, specifically providers using EHRs, is critical; proper management of sensitive data requires new technical capabilities and significant

adjustments to the users' daily workflows and operational processes, as well as education and training of clinical and record management staff.

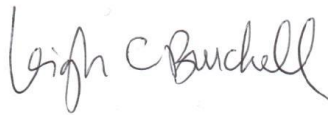
Suggested Change to Enforcement Deadline

We therefore strongly urge the California Assembly to adjust the enforcement date included in AB 352, in consultation with CalHHS, to no sooner than June 30, 2027. Additionally, we request that the Committee work with CalHHS to establish clear agency ownership for overseeing the successful implementation of AB 352. This should include the immediate issuance of technical specifications and other guidance that would enable health IT providers to develop functionality that operates consistently across our various solutions. If it takes some amount of time for the agency or its delegates to issue such specifications and guidance, the enforcement date should be pushed back accordingly to always allow sufficient time as outlined above for development and deployment.

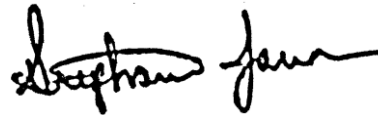
The EHR Association respects the intent of AB 352 and is committed to supporting our collective clients in complying with the management of all relevant sensitive data as efficiently and comprehensively as possible. We appreciate your consideration and welcome the opportunity to further discuss any of these questions or concerns.

For additional information or to schedule a meeting with the Association's leadership, please contact Kasey Nicholoff at knicholoff@ehra.org. She can coordinate a convenient time for all stakeholders to participate in an online meeting.

Sincerely,



Leigh Burchell
Chair, EHR Association
Altera Digital Health



Stephanie Jamison
Vice Chair, EHR Association
Greenway Health

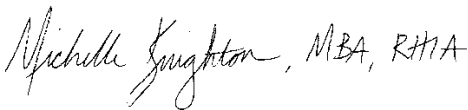
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Established in 2004, the Electronic Health Record (EHR) Association is comprised of 29 companies that supply the vast majority of EHRs to physicians' practices and hospitals across the United States. The EHR Association operates on the premise that the rapid, widespread adoption of EHRs will help improve the quality of patient care as well as the productivity and sustainability of the healthcare system as a key enabler of healthcare transformation. The EHR Association and its members are committed to supporting safe healthcare delivery, fostering continued innovation, and operating with high integrity in the market for our users and their patients and families. The EHR Association is a partner of HIMSS. For more information, visit www.ehra.org.