Senator Carney, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary, I am Sarah Calder, Senior Government Affairs Director at MaineHealth, and I am here to share our significant concerns with the several privacy bills before you today.

MaineHealth is an integrated non-profit health care system that provides a continuum of health care services to communities throughout Maine and New Hampshire. Every day, our over 22,000 care team members support our vision of “Working Together so Our Communities are the Healthiest in America” by providing a range of services from primary and specialty physician services to a continuum of behavioral health care services, community and tertiary hospital care, home health care and a lab.

Consistent with our mission and vision – and in accordance with the Health Insurance Portability and Accountability Act (HIPAA) and other state and federal regulations – MaineHealth is committed to ensuring the privacy of our patients and maintaining the confidentiality of their information and medical records. As an already highly regulated entity, we would ask that health care providers be clearly exempted from LD 1705, LD 1902, and LD 1977.

Based on the testimony this Committee has received as well as the debate occurring in state legislatures across the country, health care providers are clearly not the intended target of the new proposed regulations. With that said, however, should the Committee not pursue a blanket exemption for health care providers, MaineHealth would ask that the Committee include the following amendments:

LD 1902:
• Exclude health care information from “consumer health data” on p. 2:
  • “Consumer health data” does not include health care information, as defined in Title 22, section 1711-C, subsection 1, paragraph E, obtained for health care, as defined in Title 22, section 1711-C, subsection 1, paragraph C;
• MaineHealth is in the process of utilizing geofencing to allow patients to more easily and quickly check-in to their health care appointments, and we would ask that health care facilities be excluded from the geofencing prohibition on p. 10. The language was also adopted by the New York General Assembly:
  • “It shall be unlawful for any person, corporation, partnership, or association to establish a geofence or similar virtual boundary around any health care facility, other than their own health care facility, when the geofence is used to identify, track, collect data from or send notifications or messages to a consumer that enters the virtual perimeter.
• MaineHealth requires certain care team members to use biometric identifiers to access its networks, clinical and business information systems, and software applications. For example, biometric identifiers are used to access secure medications and medical supplies
to prevent misuse. The technology uses numeric algorithmic expressions generated from biological characteristics that alone could not be used to re-identify those biological characteristics. With that said, we would ask the Committee to revise the definition of “biometric data” on p. 1. This language has been adopted in other states, including Washington and Florida:

- "Biometric identifier" does not include a physical or digital photograph, video or audio recording or data generated therefrom, or information collected, used, or stored for health care treatment, payment, or operations under the federal health insurance portability and accountability act of 1996.

LD 1977:

- Exclude HIPAA protected information:
  - “This chapter does not apply to protected health information collected, used or disclosed in accordance with the federal Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and 45 Code of Federal Regulations, Parts 160 and 164 and implementing regulations.”

- Exclude health care information from “Covered data” on p. 1:
  - “Covered data” does not include health care information, as defined in Title 22, section 1711-C, subsection 1, paragraph E, obtained for health care, as defined in Title 22, section 1711-C, subsection 1, paragraph C;

- As with LD 1902, we would ask the Committee to revise the definition of “Biometric information” on p. 1:
  - “Or information collected, used, or stored for health care treatment, payment, or operations under the federal health insurance portability and accountability act of 1996.”

LD 1705:

- As with the previous two bills, we would ask the Committee to revise the definition of “biometric identifier” on p. 1:
  - “Information collected, used, or stored for health care treatment, payment, or operations under the federal health insurance portability and accountability act of 1996”

- As mentioned above, MaineHealth requires certain care team members to use biometric identifiers to access its networks, clinical and business information systems, and software applications. These care team members are required to sign consent and authorization forms, which describes our policies, but in order to perform their jobs and access, for example, certain medications and medical supplies, they must provide consent. It is important to note that we do not sell or lease this information to third parties, and we have a policy to permanently destroy the data. With that said, we would ask the Committee to revise the section on “Affirmative written consent” on p. 3:
  - “Uses of affirmative written consent. A private entity may only use the affirmative written consent regarding a biometric identifier of an employee of the private entity to permit access to a secure physical location, medications or medical supplies, or secure computer hardware or software and to record the beginning and end of the employee’s work day and meal or rest breaks. The
private entity may not retain biometric identifier related to access for the purpose of employee tracking.

- “Affirmative written consent may be given by electronic means. A user interface may not influence an individual toward giving affirmative written consent, and any default settings in a user interface must be designed to have as a default setting the option not to give affirmative written consent, unless it is a condition of employment.”

It is important to note that we have done our best to review all three bills and identify areas that would significantly impact our ability to provide patient care, but because of the substantial scope of these bills and the completely new regulatory structures they would impose, there may be areas that we did not consider. With that said, we ask that the Committee exempt health care entities that are already highly regulated both at the federal and state levels.

Thank you and I would be happy to answer any questions you may have.