**TESTIMONY OF**
**CONNECTICUT HOSPITAL ASSOCIATION**
**SUBMITTED TO THE**
**JUDICIARY COMMITTEE**
**Monday, March 21, 2022**

## HB 5414, An Act Concerning Protections For Persons Receiving And Providing Reproductive Health Care Services In The State

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **HB 5414, An Act Concerning Protections For Persons Receiving And Providing Reproductive Health Care Services In The State.**

HB 5414 seeks to protect patients and providers from unwarranted and harmful intrusion into personal decisions made, and professional services provided, with respect to reproductive healthcare. CHA supports the goals of the bill.

A patient's right to seek and receive access to reproductive healthcare services in Connecticut (or anywhere) should not be subject to collateral attacks, particularly when those attacks are thinly disguised attempts to deprive individuals of their rights. While CHA supports the bill in concept, we believe that Section 2 needs a different approach to realistically achieve the bill's goal, and to avoid unintended consequences for legitimate uses of healthcare records that could negatively affect patients' healthcare.

Medical records are replete with information about reproductive health, and need to contain detailed information that is routinely shared for purposes related to healthcare. HIPAA provides an elaborate framework for how records may be shared and when consents for release are needed. We urge you to stay within that framework to avoid creating information blocking of healthcare records, which is prohibited by both state and federal law, used for legitimate purposes.

Collateral attacks on an individual's access to reproductive healthcare predictably will include efforts by external entities (not legitimately involved in the healthcare of patients) to access records. Those efforts are likely to involve issuance of subpoenas. Providers receiving subpoenas most often are not parties to the litigation matter for which a subpoena is issued; they are merely gatekeepers of the records. The provider in that instance has no information or knowledge about the underlying facts or legal issues in a legal matter, is not represented by counsel, and has limited—if any—access to a court or tribunal for advice.

Currently, there is no requirement placed on the party issuing the subpoena to clarify their intentions or reasons for subpoenaing the records. The provider is left to guess what the correct process is, while facing an official-looking demand that is often accompanied with pressure from the subpoenaing party. That should change. The onus should be squarely on the party issuing the subpoena, which would be good for patient care, and also better achieve the goal of reducing interference with reproductive rights.

HIPAA has a specific set of rules for how subpoenas must be processed when protected health information (PHI) is involved.

Using that framework, we urge you to strike all of Section 2 in the raised bill, and substitute the following:

*Sec. 2. (NEW) (a) As used in this section:*
*(1) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), as amended from time to time;*
*(2) "HIPAA protected information" means any record, data, information or testimony that is protected by HIPAA; and*
*(3) "Patient" means an individual whose HIPAA protected information is sought.*

*(b) Any subpoena issued for HIPAA protected information shall set forth the specific portion of 45 CFR 164.512 that authorizes the disclosure of such information in response to the subpoena. With respect to a subpoena seeking HIPAA protected information under section 45 CFR 164.512(e), the subpoena shall be accompanied by at least one of the following: (1) The patient's HIPAA compliant authorization; (2) a valid and enforceable order of a court or tribunal of the federal government, or of a court of this state or other governmental agency of this state, that expressly authorizes compliance with the disclosures sought by the subpoena; or (3) satisfactory assurances as set forth in clauses (ii) to (iv), inclusive, of subdivision (1) of subsection (e) of section 45 CFR 164.512.*

*(c) No person or entity receiving a subpoena that seeks HIPAA protected information shall be required to disclose such information in any manner unless the subpoena complies with subsection (b) of this section.*

*(d) Any person or entity complying in good faith with a subpoena or court order based on a reasonable belief that the disclosure meets HIPAA requirements shall not be subject to civil liability under state law to any person in connection with a disclosure of HIPAA protected information.*

*(e) Nothing in this section shall prohibit a recipient of a subpoena that seeks HIPAA protected information from filing a motion to quash, challenging the subpoena or related court order, or contacting or notifying the parties or the patient about the content of the subpoena.*

*(f) Nothing in this section shall affect obligations to comply with 42 CFR 2 concerning the disclosure of substance use disorder patient records.*

*(g) In addition to the requirements of subsection (b), a person issuing a subpoena for HIPAA protected information shall indicate on the face of the subpoena, in bolded eighteen-point type, whether or not the information sought is intended to be used in connection with an allegation or investigation relating to the provision, receipt, assistance in receipt or provision, material support for, or any theory of vicarious, joint, several or conspiracy liability derived therefrom, for reproductive health care services that are permitted under the laws of this state.*

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