

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 734

(Senators Raskin and Frosh)

Education, Health, and Environmental Affairs

Health and Government Operations

State Board of Physicians - Subpoenas - Medical Records for Mental Health Services

This bill requires the Maryland Board of Physicians to notify a patient of the right to oppose the sharing of medical information when the board subpoenas the patient's medical records for mental health services as a result of a complaint from another person.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing Department of Health and Mental Hygiene budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The board has to notify the patient by certified mail, return receipt requested, that the board is issuing the subpoena for the records, and that the patient has certain rights. The board also has to notify the subpoena recipient by certified mail, return receipt requested, that the patient has been sent the required notice.

Specifically, the patient has the right to assert any constitutional right or other legal authority in opposition to the disclosure of the medical record by filing a motion to quash or a motion for a protective order in the circuit court for the jurisdiction in which the patient resides within 30 days after receiving the notice. In addition, the patient may request a hearing on the motion in the circuit court.

If the patient who receives the required notice does not assert the right to oppose the release of medical records within 30 days after receiving the notice, the board may require the subpoena recipient to disclose the patient's medical records for mental health services.

Current Law: A health care provider has to disclose a medical record without the authorization of a person of interest in accordance with a subpoena for medical records on specific recipients to health professional licensing and disciplinary boards for the sole purpose of an investigation regarding licensure, certification, or discipline of a health professional or the improper practice of a health professional.

The board may issue subpoenas and administer oaths in connection with any investigation prior to taking any disciplinary action or other actions and any hearing or proceeding before it.

Background: The board advises that it subpoenas the patient medical records of approximately 4,000 providers annually. Historically, however, it has subpoenaed the patient medical records of approximately just 30 psychiatrists annually.

State Effect: Since the board typically subpoenas the patient medical records of approximately 30 psychiatrists annually, existing staff can handle the new notification requirements under the bill. However, special fund expenditures may increase in future years if the number of psychiatrists subpoenaed annually by the board increases and the patients affected oppose disclosure. If so, additional resources can be requested through the annual budget process.

Additional Comments: Because they are not regulated by the Board of Physicians, this bill does not apply to medical records subpoenaed from psychologists or other mental health providers.

Additional Information

Prior Introductions: SB0443 LR1777 2008 EHE

Cross File: HB 1232 (Delegate Waldstreicher, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

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