

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 338
Finance

(Senator Conway)

Medical Records - Authorization to Disclose - Person in Interest

This bill expands the definition of “person in interest” (as it relates to the disclosure of confidential medical records) to include, if specified requirements are met, a spouse, parent, or child of a deceased person. Specifically, the authorization of a spouse, parent, or child of a deceased person must be accompanied by an affidavit in which the affiant declares and affirms under the penalties of perjury that (1) the affiant is an adult and competent to be a witness; (2) the affiant is the spouse, parent, or child of the deceased person; and (3) the authorization and affidavit have not been executed for any unlawful purpose.

Fiscal Summary

State Effect: The change is procedural in nature and does not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: With regard to the disclosure of medical records, “person in interest” means (1) an adult on whom a health care provider maintains a medical record; (2) a person authorized to consent to health care for an adult consistent with the authority granted; (3) a duly appointed personal representative of a deceased person; (4) an attorney appointed in writing by another person in interest; or (5) in specified circumstances, a

consenting minor or a minor's parent, guardian, custodian, or court-designated representative, or another person authorized to consent to health care for the minor.

A health care provider must disclose a medical record on receipt of (1) a preauthorized form that is part of an application for insurance or (2) an authorization for the release of relevant medical information that is included with the claim application properly filed with the Workers' Compensation Commission.

Otherwise, an authorization must (1) be in writing and be signed and dated by the person in interest; (2) state the name of the health care provider; (3) identify to whom the information is to be disclosed; (4) state the period of time for which the authorization is valid; and (5) apply only to the record developed by the health care provider unless, in writing, the authorization specifies disclosure of a medical record that the health care provider has received from another provider and the other provider has not prohibited redisclosure.

Under the federal Health Insurance Portability and Accountability Act (better known as HIPAA) Privacy Rule, individually identifiable health information about a decedent is protected for 50 years after the individual's death. During this period, the personal representative of the decedent (the person authorized by law to act on behalf of the decedent or the decedent's estate) may exercise rights under the Privacy Rule for the decedent's health information, including the disclosure of information. For family members or other persons involved in the individual's health care or payment for care prior to the individual's death, but who are not personal representatives under the law, the Privacy Rule allows the disclosure of relevant protected health information to such persons, unless doing so is inconsistent with the decedent's prior expressed preference.

Additional Information

Prior Introductions: SB 376 of 2012 was withdrawn after receiving a hearing in the Senate Finance Committee. Its cross file, HB 436, was also withdrawn after receiving a hearing in the House Health and Government Operations Committee.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2015
mar/ljm

Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510