

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 981
Finance

(Senator Zirkin)

Public Health - Copies of Medical Records - Fees

This bill requires a health care provider to provide one free copy of a patient's medical record to a person in interest upon written request; a patient may make a written request that the free copy be provided to the patient's attorney or other authorized person. A health care provider may require a person in interest or another authorized person to pay for a copy of a medical record if a free copy has already been provided, with a fee of up to 50 cents per page copied and up to \$15 for retrieval, postage, and handling. The bill also repeals the annual Consumer Price Index (CPI) inflation adjustment for the maximum \$20 fee charged for each 100 pages of copied medical records for an individual enrolled in Medicaid.

Fiscal Summary

State Effect: General fund revenues decrease minimally due to the provision of one free copy of a patient's medical record and reduced fees for subsequent copies. Expenditures are likely not materially affected.

Local Effect: Local revenues decrease by an indeterminate amount due to the provision of one free copy of a patient's medical record and reduced fees for subsequent copies. Expenditures are likely not materially affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The federal Health Insurance Portability and Accountability Act (HIPAA) of 1996's Privacy Rule requires a health care provider to provide an individual with access

to the individual's protected health information (PHI) in the form and format requested by the individual, if it is readily producible in such form and format or, if not, in a readable hard copy form or such other form and format as agreed to by the health care provider and the individual. The health care provider may impose a reasonable, cost-based fee, as long as the fee includes only the cost of (1) labor for copying the PHI requested by the individual, whether in paper or electronic form; (2) supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and (3) postage, when the individual has requested that the copy, or the summary or explanation, be mailed.

Under § 4-304 of the Health-General Article, a health care provider must comply within a reasonable time after a "person in interest" requests, in writing, to receive a copy of a "medical record." A "person in interest" includes an adult on whom a health care provider maintains a medical record, a person authorized to consent to health care for an adult, a duly appointed personal representative of a deceased person, a minor, a parent or guardian of a minor, a person authorized to consent to health care for a minor, or an attorney appointed in writing. A "medical record" is defined as any oral, written, or other transmission, in any form or medium of information that is entered in the record of a patient or recipient and relates to the health care of the patient or recipient.

A health care provider may charge a fee for a copy of a medical record. The fee for copying and mailing may not exceed 50 cents per page. A health care provider may also charge a preparation fee of up to \$15, *plus* the actual cost for postage and handling. These fees represent the maximum base fees for 1994 and may be adjusted annually, beginning July 1, 1995, for inflation in accordance with the CPI; thus, providers may charge higher fees due to inflation.

State facilities regulated by the Department of Health and Mental Hygiene (DHMH) may charge a fee for a copy of a medical record in accordance with the Public Information Act (PIA). Under PIA, an official custodian may charge a reasonable fee for the search, preparation, and reproduction of a public record prepared in a customized format and for the actual costs for standard formats. Fees must be calculated in accordance with specified requirements; the official custodian may not charge a fee for the first two hours that are needed to search for a public record and prepare it for inspection.

Under the Code of Maryland Regulations (10.09.36.03), to participate in Medicaid, a provider must provide a recipient's medical records at no charge when the records are requested by another physician or licensed provider on behalf of the recipient.

Regardless, however, a health care provider may not charge a person in interest (except for an attorney appointed in writing by a person in interest) who requests a copy of a medical

record of an individual enrolled in Medicaid a fee that exceeds \$20 (adjusted annually for inflation in accordance with CPI) for each 100 pages or portion of 100 pages copied.

Background: The Maryland Board of Physicians and the Maryland Board of Podiatric Medical Examiners post the current fees on their respective websites, advising that, as of January 1, 2014, a health care provider may charge a preparation fee of \$22.88, plus a fee of no more than 76 cents per page copied, plus the actual cost of shipping and handling. The boards advise that federal HIPAA regulations prohibit a preparation fee for medical records provided directly to a patient.

State Revenues: The bill requires health care providers, including those at DHMH facilities, to issue one free copy of a patient's medical record to a person in interest and caps the maximum fees for additional copies at 50 cents per page and \$15 for retrieval *and* postage and handling. The bill does not authorize the adjustment of fees for annual inflation.

DHMH's Behavioral Health Administration (BHA), which oversees seven hospital facilities, advises that, while some copies of medical records are free to patients or other interested parties, BHA facilities may also charge more than what the bill authorizes in certain situations. BHA was unable to provide an estimate of the number of requests received. DHMH's Public Health Services (PHS) oversees two hospitals and advises that the hospitals receive a combined total of approximately 72 requests per year for copies of medical records; however, it is unclear how many of these requests represent first-time requests or whether the requests are from patients or other individuals. PHS advises that resident patients may receive up to 10 free copies of their medical records and that other requests are charged at 50 cents per page. PHS notes that the bill's changes may impact the ability of facilities to recoup the cost of producing copies of medical records.

Therefore, general fund revenues decrease minimally as a result of the bill's requirement that health care providers issue one free copy of medical records and the reduced retrieval and postage and handling fee for subsequent copies. State facilities may also receive more requests for copies of medical records under the bill, which must be produced free of charge.

Local Revenues: The Maryland Association of County Health Officers (MACHO) advises that local revenues decrease by an indeterminate amount due to the provision of one free copy of medical records and the bill's elimination of the CPI inflation adjustment. MACHO is unable to estimate the number of requests that may be received under the bill.

Small Business Effect: Health care providers must provide one free copy of a patient's medical records to a person in interest or another authorized individual. The bill also reduces the maximum fees for subsequent copies. Health care providers may also receive additional requests for copies of medical records under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers, Department of Health and Mental Hygiene, Department of Legislative Services

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