

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 230

(Senator Zirkin)

Finance

Health and Government Operations

Disclosure of Medical Records - Compulsory Process - Timeline

This bill requires a health care provider to disclose a medical record in accordance with compulsory process not later than 30 days after receiving (1) the required documentation and (2) any fees relating to the provision of the medical record, as specified, that are owed to the health care provider by the party or the attorney representing the party seeking the medical record. A health care provider may request up to 30 additional days to disclose a medical record on a showing of good cause.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Potential minimal.

Analysis

Current Law: Under the Health-General Article, “compulsory process” includes a subpoena, summons, warrant, or court order that appears on its face to have been issued on lawful authority.

Generally, a health care provider may not disclose medical records without the authorization of the person in interest. However, a health care provider must disclose a medical record without the authorization of the person in interest under specified circumstances, including in accordance with compulsory process if the health care provider receives copies of specified documentation and (1) written assurance from the party or the

party's attorney seeking the medical records that a person in interest has not objected to the disclosure of the medical records or that the objections of the person in interest have been resolved and the disclosure request is made in accordance with the resolution; (2) proof that service of the subpoena, summons, warrant, or court order has been waived by the court for good cause; or (3) a copy of a court order expressly authorizing disclosure of the records.

"Person in interest" means:

- an adult on whom a health care provider maintains a medical record;
- a person authorized to consent to health care for an adult;
- a personal representative of a deceased person;
- a minor, if the medical record concerns treatment to which the minor has the right to consent and has consented; or a parent, guardian, custodian, or representative of the minor designated by a court, in the discretion of the attending physician who provided the treatment to the minor, under specified circumstances;
- a parent of the minor generally, except if the parent's authority to consent to health care for the minor has been specifically limited by a court order or a valid separation agreement entered into by the parents of the minor, or another person authorized to consent to health care for the minor; or
- an attorney appointed in writing by a person meeting another definition of person in interest.

Federal Health Insurance Portability and Accountability Act

In addition to restrictions in state law, federal law and regulations restrict the ability of a health care provider to disclose a medical record (also referred to as protected health information) without the authorization of the person in interest. Generally, federal law and regulations preempt state law with respect to protected health information confidentiality. However, the federal Health Insurance Portability and Accountability Act (HIPAA) and its standards do not preempt state law if the state provision (1) relates to the privacy of individually identifiable health information and (2) is "more stringent" than HIPAA's requirements.

Under HIPAA regulations, a health care provider is required to treat a personal representative of an individual *as the individual* for the purposes of disclosure of protected health information and may be required to disclose an individual's protected health information to a personal representative without the individual's consent. For example, if a person has the authority to act on behalf of an individual who is an adult or an emancipated minor with respect to making health care decisions, a health care provider is required to treat the person as a personal representative and disclose the protected health

information. Likewise, generally, when a parent, guardian, or other person acting in place of the parent has the authority to act on behalf of an unemancipated minor in making health care decisions, a health care provider must treat that person as the personal representative of the individual and disclose the protected health information. However, if a person is not authorized to make health care decisions, that person likely does not qualify as a personal representative for purposes of the disclosure of protected medical information.

Additionally, a health care provider is authorized, under exigent circumstances, to use or disclose protected health information if the health care provider believes in good faith that the use or disclosure is “necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public” and the disclosure is made to a person “reasonably able to prevent or lessen the threat.”

Additional Information

Prior Introductions: SB 745 of 2017, a similar bill, passed the Senate and was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; U.S. Department of Health and Human Services; Department of Legislative Services

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