

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 868

(Delegate Barron, *et al.*)

Health and Government Operations

Finance

Medical Records – Compulsory Process Requests – Advisory Protocol and
 Voluntary Training Webinar

This bill requires the Office of the Attorney General (OAG), by September 30, 2020, to develop and post on its website an advisory protocol and voluntary training webinar for health care providers on how to respond to compulsory process requests for medical records. The protocol and webinar must include information about the requirements of specified provisions of State and federal law, Maryland Court Rules, and the differences between the types of compulsory process requests. In developing the protocol and webinar, OAG must consult with any health occupations boards that requests to be consulted and may consult with various legal and health professional associations. Each health occupations board is encouraged to disseminate information about the protocol and webinar. OAG must track website traffic and, by December 31, 2020, issue a report on the bill’s implementation and effectiveness. **The bill takes effect July 1, 2019. Provisions relating to development of the protocol and webinar terminate September 30, 2020; remaining provisions terminate June 30, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$59,000 in FY 2020 and \$33,900 in FY 2021 for contractual staff. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	59,000	33,900	0	0	0
Net Effect	(\$59,000)	(\$33,900)	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: “Compulsory process” includes a subpoena, summons, warrant, or court order that appears on its face to have been issued on lawful authority. A health care provider must disclose a medical record without the authorization of a person in interest in accordance with compulsory process, subject to specified limitations, if the person receives specified notice and the subpoena, summons, warrant, or court order seeking the disclosure or production of the 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) a minor, if the medical record concerns treatment to which the minor has the right to consent and has consented; (5) 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; (6) if the previous two items do not apply to a minor, a person authorized to consent to health care for the minor consistent with the authority granted or, 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, a parent of the minor; or (7) an attorney appointed in writing by any of the aforementioned persons.

Under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), covered entities may not use or disclose protected health information except either as the privacy rule permits or as an individual authorizes in writing. Covered entities may disclose protected health information without an individual’s authorization for such purposes as treatment, payment, health care operations, and public interest activities. The HIPAA privacy rule defines “covered entities” as health plans, health care clearinghouses, and health care providers. “Protected health information” is individually identifiable health information that is transmitted or maintained by electronic media or any other form or medium, excluding individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, student health records for individuals attending an institution of postsecondary education who are at least age 18, and employment records held by a covered entity in its role as employer.

Maryland’s Confidentiality of Medical Records Act requires health care providers and facilities to keep the medical record of a patient confidential and obtain written consent for disclosure, even for purposes of treatment and payment. Generally, a person to whom a medical record is disclosed may not redisclose the medical record unless authorized by the person in interest. Exceptions are made for such purposes as provision of health care services, billing, utilization review, and legal claims. Chapters 165 and 166 of 2017

expanded the exception to redisclosure to include instances where the medical record was disclosed to a guardian ad litem and certain criteria are met.

A health care provider may, under specified circumstances, disclose a medical record without the authorization of the person in interest if (1) the health care provider receives a written assurance from the party or the attorney representing the party that, in all other proceedings, a person in interest has not objected to the disclosure of the designated medical records within 30 days after the notice was sent or (2) a specified notice and other documentation is mailed by certified mail to the person in interest by the person requesting the disclosure at least 30 days before the records are to be disclosed.

Chapters 700 and 701 of 2017 expressed the intent of the General Assembly that Maryland's Confidentiality of Medical Records Act (1) not be interpreted to be more restrictive than the federal privacy regulations adopted under HIPAA; (2) is not intended to be in conflict with HIPAA; and (3) is to be interpreted in a way that is consistent with any federal regulations adopted under HIPAA, federal policy guidance on HIPAA, and any judicial decisions relating to HIPAA.

State Expenditures: General fund expenditures increase by \$59,018 in fiscal 2020, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one contractual staff attorney to consult with specified stakeholders, develop the advisory protocol, develop the voluntary training webinar to be posted on the OAG website, and prepare the required report. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$53,659
One-time Start-up Expenses	4,890
Other Operating Expenses	<u>469</u>
Total FY 2020 State Expenditures	\$59,018

Future year expenditures reflect a full salary with annual increases and employee turnover, ongoing operating expenses, and subsequent termination of the contractual position on December 31, 2020, following submission of the required report.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additional Information

Prior Introductions: HB 1481 of 2013, a bill with similar provisions, passed the House as amended and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 557, was enacted as Chapter 287 of 2013; however, the Act did not ultimately include the provisions of this bill.

Cross File: SB 459 (Senator Waldstreicher) - Finance.

Information Source(s): Office of the Attorney General; Maryland Department of Health; Department of Legislative Services

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