

Department of Legislative Services  
 Maryland General Assembly  
 2000 Session

FISCAL NOTE  
 Revised

Senate Bill 371 (Senator Hollinger. *et al.*)  
 (Chairman. Health Subcommittee)

Economic and Environmental Affairs

**Medical Records - Confidentiality**

This bill establishes a general prohibition against the sale, rental, or barter of any medical record, except in the transfer of ownership regarding a medical practice or facility.

This bill takes effect July 1, 2000.

**Fiscal Summary**

**State Effect:** Special fund expenditures increase by \$41,400 in FY 2001 for one staff position within the Maryland Health Care Commission. Future year estimates reflect inflation. Revenues would not be affected.

(in dollars)	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
SF Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditures	41,400	49,400	51,700	54,100	56,700
Net Effect	(\$41,400)	(\$49,400)	(\$51,700)	(\$54,100)	(\$56,700)

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

**Local Effect:** None.

**Small Business Effect:** None.

**Analysis**

**Bill Summary:** The bill restricts payors using medical care electronic claims clearinghouses to accepting claims only from those clearinghouses that are appropriately accredited or certified by the Maryland Health Care Commission. The bill sets limits on the disclosure of

mental health records, defines and sets limits on the use of personal notes associated with medical records, and limits the conditions for refusal of disclosure.

In addition, the bill establishes a 29-member State Council on Medical Privacy and Confidentiality, to be staffed by the Department of Health and Mental Hygiene (DHMH).

The bill sets forth the duties of the council, including specified studies relating to the confidentiality of medical records.

**Current Law:** A health care provider is authorized to disclose medical records in a legal proceeding or under certain circumstances regarding mental health services. The State legislature has established standards for authorized disclosure and has set limits on the disclosure of medical records. Except in a criminal investigation, a health care provider or other person requesting or obtaining a medical record under false pretenses is guilty of a misdemeanor and subject to maximum penalties of up to a \$250,000 fine and/or imprisonment for up to ten years, depending on the offense. In all judicial, legislative, or administrative proceedings, a patient can refuse to disclose communications made while receiving counseling, or relating to diagnosis or treatment of the patient's mental or emotional disorder.

**Background:** This bill is the product of the Confidentiality of Medical Records Workgroup to strengthen the existing law on medical records confidentiality and in anticipation of federal action being considered by the Department of Health and Human Services.

Health care providers regularly transmit claims data to the clearinghouses to streamline the reimbursement payment process. The Maryland Health Care Commission established a voluntary certification program in 1996 which applies a standard for privacy, technical performance, and business practices developed by the Electronic Health Network Accreditation Commission (ENHAC). Only a few networks have applied under the voluntary program and approximately eight Maryland-based firms are expected to apply for the certification as required by this bill.

**State Fiscal Effect:** Electronic health networks that are not accredited by the Electronic Health Network Accreditation Commission must be certified by the Maryland Health Care Commission. Special fund expenditures thus would increase by approximately \$41,425 in fiscal 2001 to hire an administrator to develop and operate the certification process, develop regulations and enforcement procedures, conduct site reviews, evaluate applications, address complaints, develop resolution procedures, and conduct ongoing promotional efforts to ensure that all State networks become certified. This estimate reflects a 90-day start-up delay and includes salaries, fringe benefits, one time start-up costs, and other operating expenses.

Future year expenditures increase with inflation.

Any expense reimbursements for members of the State Council on Medical Privacy and Confidentiality and associated staffing costs for DHMH are assumed to be minimal and absorbable within existing budgeted resources.

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### **Additional Information**

**Prior Introductions:** Joint Resolutions were cross filed in the 1999 session as HJ 16/SJ 5. A conference committee was appointed for both joint resolutions.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene (Developmental Disabilities Administration, Laboratories Administration), Board of Physicians Quality Assurance, Maryland Insurance Administration, Maryland Health Care Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2000  
jir/jr Revised - Senate Third Reader - March 20, 2000  
Revised - Clarification - March 22, 2000  
Revised - Enrolled Bill - May 3, 2000

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