

**Department of Legislative Services**  
Maryland General Assembly  
2003 Session

**FISCAL AND POLICY NOTE**

Senate Bill 437 (Senator Giannetti)  
Education, Health, and Environmental Affairs

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**Health Care Records - Confidentiality - Ex Parte Communications With Health  
Care Providers**

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This bill prohibits a health care provider from communicating directly with any person or that person's insurer or legal counsel regarding a patient's or a recipient's health, health care, or treatment in connection with an actual or potential personal injury claim or family law proceeding.

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**Fiscal Summary**

**State Effect:** The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

**Local Effect:** The criminal penalty provisions of this bill are not expected to significantly affect local jurisdiction finances or operations.

**Small Business Effect:** Minimal. Small business health care providers would be subject to stricter medical confidentiality requirements. If a provider failed to comply with the bill's provisions, the provider could be subject to civil and criminal penalties.

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**Analysis**

**Bill Summary:** An exception is granted permitting a health care provider to communicate information regarding a patient or recipient, to a person or a person's insurer or legal counsel if: (1) the person or the person's insurer or legal counsel has provided the health care provider with an affidavit attesting to the fact that the patient, recipient, or person in interest has been notified that direct communication is being

sought with that health care provider; and (2) notice was mailed to the patient, the person in interest, or the patient's legal counsel by certified mail, return receipt requested, at least 14 days before the request for direct communication.

The bill's provisions do not apply to the provision of medical records under existing statutory procedures permitting disclosure of medical records without the authorization of a person in interest or a health care provider's communication with the health care provider's insurer or legal counsel in connection with a claim directly involving the health care provider. Nothing in the bill's provisions may be construed to authorize disclosure of a medical record or information otherwise prohibited by law.

**Current Law:** A medical record is any oral, written, or other transmission in any form or medium of information that: (1) is entered in the record of a patient or recipient; (2) identifies or can readily be associated with the identity of a patient or recipient; and (3) relates to the health care of the patient or recipient. A recipient is a person who receives mental health services.

In general, a health care provider may not disclose a medical record unless disclosure is authorized by a person in interest. A person in interest is: (1) the adult on whom a health care provider maintains a medical record; (2) a person authorized to consent to health care for an adult; (3) a duly-appointed personal representative of a deceased person; (4) a minor, if the medical record concerns treatment to which the minor may consent and has consented; or (5) a parent, guardian, custodian, or representative of the minor.

A health care provider may disclose a medical record without the authorization of a person in interest: (1) for the purpose of seeking reimbursement for care provided; (2) for the purpose of handling a potential or actual claim against the provider; (3) for education or research purposes; (4) to a governmental agency performing its lawful duties; (5) to another health care provider to provide further treatment; (6) to provide emergency health care treatment; (7) to immediate family members; or (8) to organ recovery agencies.

When disclosure of medical records is sought by a governmental agency conducting an investigation, a written request for disclosure, or written confirmation by the health care provider of an oral request, must be inserted in the medical record of the patient or recipient. If disclosure is made, documentation of the disclosure must be inserted in the medical record.

A health care provider who in good faith discloses or fails to disclose a medical record is not liable in any cause of action arising from the disclosure or nondisclosure of the medical record. A health care provider or any other person who knowingly and willfully

requests or obtains a medical record under false pretenses or through deception, or knowingly and willfully discloses a medical record in violation of State law is guilty of a misdemeanor, and upon conviction is subject to a penalty of up to \$250,000, imprisonment for ten years, or both. A health care provider or any other person who knowingly violates medical record confidentiality laws is liable for actual civil damages.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 524 (Delegate Zirkin) – Health and Government Operations.

**Information Source(s):** Department of Health and Mental Hygiene (Family Health Administration, Office of Health Care Quality, Boards and Commissions, Developmental Disabilities Administration), Maryland Insurance Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - March 11, 2003  
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