

**Department of Legislative Services**

Maryland General Assembly

2004 Session

**FISCAL AND POLICY NOTE**

House Joint Resolution 2 (Delegate Morhaim, *et al.*)

Rules and Executive Nominations

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**Health Insurance Portability and Accountability Act of 1996 - Privacy Rule**

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This joint resolution urges the President, the U.S. Department of Health and Human Services (DHHS), and the Maryland Congressional Delegation to take appropriate measures to cease enforcement of the Privacy Rule established under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

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**Fiscal Summary**

**State Effect:** Compliance with this joint resolution would not materially affect State operations or finances.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** The HIPAA Privacy Rule provides that a covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing. A covered entity is a: (1) health plan; (2) health care clearing house; or (3) health care provider who transmits health care information in electronic form.

A covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of protected health information needed to accomplish the intended purpose of the use, disclosure, or request.

A covered entity must maintain reasonable and appropriate administrative, technical, and physical safeguards to prevent intentional or unintentional use or disclosure of protected health information in violation of the Privacy Rule and to limit its incidental use and disclosure pursuant to otherwise permitted or required use or disclosure.

DHHS may impose civil money penalties on covered entities that do not comply with the Privacy Rule. Penalties are \$100 per incident of noncompliance and cannot exceed \$25,000 in one year.

A person who knowingly obtains or discloses health information is guilty of a misdemeanor and subject to a \$50,000 fine and one year imprisonment. Penalties increase up to a \$250,000 fine and 10 years' imprisonment for the intent to sell, transfer, or use health information for commercial advantage, personal gain, or malicious harm.

*Federal Preemption of State Law:* In general, state laws that are contrary to the Privacy Rule are preempted by the federal requirements, and therefore the federal requirements will apply. "Contrary" means that it would be impossible for a covered entity to comply with both the state and federal requirements, or that the provision of state law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA. The Privacy Rule provides exceptions to the general rule of federal preemption for contrary state laws that (1) relate to the privacy of individually identifiable health information and provide greater privacy protections or privacy rights with respect to such information; (2) provide for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention; or (3) require certain health plan reporting, such as for management or financial audits.

In addition, upon the request of a state or other person, DHHS may determine that a state law is necessary for certain purposes such as the state regulation of insurance and health plans, or for serving a compelling public health, safety, or welfare need. In these circumstances, federal law will not preempt state law.

*Maryland Law:* A health care provider must keep a patient's medical record confidential and may disclose the medical record only: (1) upon the patient's authorization; (2) to the health care provider's employees, agents, or staff when seeking payment for health care to patients or to the provider's legal counsel regarding litigation; (3) to a government agency for the provision of mental health services; (4) to a third-party payor for purposes

of reimbursement; or (5) to the appropriate government agency to investigate the abuse of an adult or child or any other specified type of investigation.

A person who violates these provisions is guilty of a misdemeanor and subject to a fine not exceeding \$1,000 for the first offense and not exceeding \$5,000 for each subsequent conviction. A person who fraudulently obtains medical records and wrongfully discloses them is guilty of a misdemeanor and subject to fines ranging from \$50,000 to \$250,000 and imprisonment ranging from one to 10 years. A health care provider or other person who knowingly violates State medical record confidentiality laws is civilly liable for actual damages.

**Background:** In 1996, HIPAA implemented reforms in the individual and small group health insurance markets to provide improved access and renewability for individuals seeking health insurance coverage. Since Congress recognized that advances in technology could erode patient record privacy, HIPAA included administration simplification requirements requiring DHHS to adopt national standards for electronic health care transactions. Accordingly, HIPAA also requires federal privacy protection (the Privacy Rule) for individually identifiable health care information and records. The Privacy Rule requires all health plans, health care clearinghouses, and health care providers that transmit or receive patient records electronically to comply with specified privacy standards by April 1, 2003. Small group plans must comply by April 1, 2004.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** U.S. Department of Health and Human Services, Department of Legislative Services

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