

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE

Senate Bill 887 (Senator Grosfeld)
 Education, Health, and Environmental Affairs

State Board of Physicians - Subpoenas - Health Records

This bill specifies notification requirements for the Board of Physicians when it issues a subpoena in connection with patient medical records.

The board must notify a patient, former patient, or patient’s authorized representative of the subpoena for the patient’s medical records, and inform the patient of: (1) the right to assert in a motion to quash or motion for a protective order any constitutional right or other legal authority in opposition to disclosure; and (2) the right to a hearing on the motion in the circuit court of the jurisdiction in which the patient, former patient, or the patient’s authorized representative resides.

Fiscal Summary

State Effect: Board of Physician special fund expenditures could increase by \$90,600 in FY 2006. Future year estimates reflect annualization and inflation. No effect on revenues.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
SF Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	90,600	106,900	113,300	120,200	127,600
Net Effect	(\$90,600)	(\$106,900)	(\$113,300)	(\$120,200)	(\$127,600)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The board may issue subpoenas and administer oaths in connection with any investigation and any hearing or proceeding before it.

State Fiscal Effect: The Board of Physicians advises special fund expenditures could increase by an estimated \$263,896 in fiscal 2006 to fulfill notification requirements when issuing subpoenas for patient medical records. The board estimates that, of the 1,500 subpoenas it issues annually, about 10% of patients would contest disclosure of records to the board, requiring additional attorneys and support staff to handle increased litigation. Legislative Services agrees that additional staff time would be necessary to handle contested subpoenas but not to the extent indicated by the board.

Most people who contest disclosure of their medical records to the board generally do so due to privacy concerns. However, there are currently measures in place to protect the confidentiality of medical records used by the board in disciplinary hearings. Neither the board nor any of its investigatory bodies may disclose any information contained in any of the board's proceedings, records, or files. Further, the board's proceedings, records, or files are not discoverable or admissible in any other civil or criminal action without express consent of all parties involved. Legislative Services estimates about 75 patients (or 5%) subpoenaed would contest medical record disclosure to the board. Accordingly, board special fund expenditures could increase by an estimated \$90,559, which accounts for the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring one administrative assistant to locate and mail out notifications as required and one staff attorney to handle increased litigation. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses

Salaries and Fringe Benefits	\$75,077
Operating Expenses	<u>15,482</u>
Total FY 2006 State Expenditures	\$90,559

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene (Board of Physicians), Department of Legislative Services

Fiscal Note History: First Reader - March 18, 2005
ncs/ljm

Analysis by: Susan D. John

Direct Inquiries to:
(410) 946-5510
(301) 970-5510