

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1040

(Senator Exum)

Education, Health, and Environmental Affairs

Health and Government Operations

State Government - Public Records - Personal Information About Individuals
with Disabilities

This bill requires a custodian of a public record to deny inspection of the part of the record that contains personal information about an individual with a disability or an individual perceived to have a disability as defined under Section 20 of Article 49B. The bill does not apply to nursing homes or assisted living facilities. If a custodian is required to provide the home address from the professional or occupational licensing record of an individual with a disability (or perceived disability), the custodian must redact all information that identifies the location as the home address of the individual.

Fiscal Summary

State Effect: The bill would not substantively change State activities or operations.

Local Effect: The bill would not substantially change local government activities or operations.

Small Business Effect: None.

Analysis

Current Law: Unless otherwise provided by law, a custodian of a public record must deny inspection of a part of a public record that contains medical or psychological information about an individual, other than an autopsy report of a medical examiner. A custodian of a public record must permit the person in interest to inspect the public record under specified conditions.

A custodian must deny inspection of the part of a public record that contains information about the licensing of an individual in an occupation or profession, except under specified circumstances. A custodian must permit inspection of the part of a public record that gives: the licensee's name; the licensee's business address, or if not available, the licensee's home address; the licensee's business telephone number; the licensee's educational and occupational background; the licensee's professional qualifications; any orders and findings resulting from formal disciplinary actions; and any evidence provided to the custodian to meet financial responsibility requirements.

A health care provider must comply within a reasonable time after a person in interest requests in writing to receive a copy of a medical record or to see and copy the medical record. If a medical record relates to a psychiatric or psychological problem and the attending health care provider believes disclosing any part of the medical record may injure the patient's or recipient's health, the provider may refuse to disclose that portion of the record to the patient, recipient, or person in interest. However, on written request, the provider must: • summarize the undisclosed portion of the record; • insert a copy of the summary in the record; • permit examination and copying of the medical record by another health care provider authorized to treat the patient or recipient for the same condition as the provider denying the request; and • inform the patient or recipient of the patient's or recipient's right to select another provider.

A noncertified copy of a birth certificate including confidential medical information may be provided to a unit of the Department of Health and Mental Hygiene (DHMH) to carry out its legal mandate or to conduct Institutional Review Board approved research or study. Any report resulting from this research or study may not contain personal identifiers unless authorized by the subject of the record or the subject's parent or authorized representative.

Under § 20 of Article 49B, "disability" means for an individual:

- a disability that substantially limits one or more of an individual's major life activities;
- a record of having a disability that substantially limits one or more of an individual's major life activities; or
- being regarded as having a disability that substantially limits one or more of an individual's major life activities.

This does not include current illegal use of or addiction to a controlled dangerous substance.

Background: DHMH assumes the bill would not interfere with the sharing of information between the department's Vital Statistics Administration and the Family Health Administration (FHA) when FHA carries out its legally mandated responsibilities to collect information through its birth defects reporting system, maternal mortality review, and other similar data collection programs.

A federal regulation implementing the Health Insurance Portability and Accountability Act's privacy and security requirements established the "Privacy Rule" which guarantees patients access to their medical records, gives them more control over how their protected health information is used and disclosed, and provides an avenue of recourse if their medical privacy is compromised. Protected health information is any health information that identifies an individual and is maintained or exchanged electronically or in hard copy. Health care organizations covered by the Privacy Rule are all health care providers who electronically transmit certain administrative and financial health information, all health plans, and all health care clearinghouses.

Additional Information

Prior Introductions: None.

Cross File: HB 1625 (Delegate Hubbard, *et al.*) – Health and Government Operations.

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

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