

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 142

(Senator Hollinger, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Care Providers - Disclosures of Mental Health Records - Subpoenas

This bill provides that a health care provider must disclose a mental health record to a health occupations board even without the authorization of a person in interest only if specified documents are attached to the subpoena. These documents include: a written assurance that there has been no objection to disclosure of the record or the objections have been resolved; proof that the court has waived service of the subpoena; or a court order that expressly authorizes disclosure.

These documents do not need to be attached if the investigation of the health occupations board is as a result of a complaint by the person in interest or if the investigation is a review of all or part of a health care provider's practice conducted by either the board or by a peer review committee.

Fiscal Summary

State Effect: The bill's requirements could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: When a medical record developed in connection with providing mental health services is disclosed without the authorization of the person of interest, only the information relevant to the reason the disclosure was sought may be released. A health

care provider must disclose a medical record without the authorization of the person in interest in accordance with a subpoena for medical records on specific recipients to health professional licensing and disciplinary boards for an investigation regarding licensure, certification, or the discipline of a health professional or the improper practice of a health profession.

A health care provider must disclose a medical record without the authorization of the person in interest under specified conditions. Under one of those conditions, disclosure of the medical record must be made subject to additional limitations for a medical record developed primarily in connection with providing mental health services, and except as otherwise provided in statute, if the subpoena, summons, warrant, or court order contains one of the following certifications: (1) that a copy of the subpoena, summons, warrant, or court order was served on the person whose records are sought by the party seeking the disclosure or production of the records; or (2) that service of the subpoena, summons, warrant, or court order was waived by the court for good cause in accordance with a stipulation by a patient or person in interest or in accordance with a discovery request permitted by law to be made in court, an administrative tribunal, or a party to a civil court, administrative, or health claims arbitration proceeding.

The definition of a person in interest includes an adult on whom a health care provider maintains a medical record and a parent of a minor, except if the parent's authority to consent to health care for the minor is limited by a court order or valid separation agreement entered into by the minor's parents.

A medical record must be disclosed by a health care provider in accordance with compulsory process without authorization if the provider receives:

- a written assurance from the party or the attorney representing the party seeking the medical records that a person in interest has not objected to the disclosure and 30 days have passed since the notice was sent, or a person in interest's objections were resolved and the disclosure request is in accordance with the resolution; (2) proof that service of the subpoena, summons, warrant, or court order was waived by the court for good cause; or (3) a copy of an order entered by a court expressly authorizing disclosure of the designated medical records; and
- for the disclosures mentioned above, copies of the following items that were mailed by certified mail to the person in interest by the person requesting the disclosure at least 30 days before the records are to be disclosed: (1) the subpoena, summons, warrant, or court order seeking the disclosure or production of the records; (2) this section of statute; and (3) a notice in a form set in statute under the bill or a substantially similar form.

Background: The State Board of Physicians reports that it annually subpoenas approximately 30 mental health records. The Psychiatric Society reports that following a third party's complaint regarding a physician, the board believes that it has the authority to subpoena any of a physician's other records. In one particular case that was the impetus for the bill, an estranged spouse made a complaint to the board regarding a physician. Consequently, the board sought the records of the other spouse and a minor child in the physician's care. The physician refused to give the board these records upon the direction of his patients. As a result, the board charged the physician with failing to cooperate with a board investigation.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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