

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1231
Economic Matters

(Delegate Krysiak)

Workers' Compensation - Medical Records - Authorized Disclosures

This bill requires a health care provider to disclose a medical record without the authorization of the patient when presented with a subpoena or an authorization for the release of medical records for a case before the Workers' Compensation Commission (WCC), subject to limitations on disclosure of mental health records.

Fiscal Summary

State Effect: None. The bill would not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A health care provider must disclose a medical record without the authorization of the person in interest under specified conditions, particularly as those relate to civil, criminal, or professional licensing investigations. Requests for disclosure of medical records must be made in writing and inserted in an individual's medical record. Additional provisions further restrict disclosure of mental health records.

An individual may authorize the disclosure of the individual's medical record or the record of a dependent for a period of up to one year in a written, dated, and signed statement that identifies the health care provider and the person to whom the record is disclosed. Without the express authorization of the person in interest, the provider can

disclose a record in accordance with compulsory process only: (1) with written assurance from the party or counsel that 30 days have passed since notice was sent and the party has not objected to the disclosure; (2) with proof that service of the subpoena, summons, warrant, or court order was waived by the court; or (3) if a copy of the order ordered by a court expressly authorized disclosure of the medical record.

The federal Health Insurance Portability and Accountability Act (HIPAA) established additional guidelines on the disclosure and electronic transmission of medical records. Federal regulations implementing the Act include the “Privacy Rule,” which requires health care providers, health plans, and health care clearinghouses to implement certain standards to protect against misuse of individually identifiable health information.

The Privacy Rule does not generally apply to workers’ compensation insurers, administrative agencies, or employers. Health information may be transmitted without the authorization of the individual for benefits provided without regard to fault, to obtain payment for a health care provider for an ill or injured worker, or as otherwise required by state law. When authorization is expressly offered by the person in interest, disclosure is limited to the amount of protected health information necessary to accomplish the workers’ compensation purpose.

Background: Chapter 503 of 2005 prohibits health care providers from providing medical information without a person’s authorization unless the person has been given notice of the request and has 30 days to object. These disclosure requirements can result in delays in adjusting claims and postponement of hearings. WCC advises that the bill may encourage the voluntary exchange of medical records, but anticipates no fiscal impact as a result of the legislation.

The Injured Workers’ Insurance Fund advises that the bill would have a minimal but positive impact by reducing the administrative burden on employers and insurers and reducing the number of postponements.

Additional Information

Prior Introductions: Similar bills, HB 749/SB 802 (cross files), were introduced in 2006. HB 749 received an unfavorable report from the House Economic Matters Committee. SB 802 passed the Senate as amended by the Senate Finance Committee but received an unfavorable report from Economic Matters.

Cross File: None.

Information Source(s): Workers' Compensation Commission, Injured Workers' Insurance Fund, Uninsured Employers' Fund, Subsequent Injury Fund, Maryland Insurance Administration, Department of Health and Mental Hygiene, Department of Legislative Services

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