

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 258

(Senator Frosh, *et al.*)

Education, Health, and Environmental Affairs

Health and Government
Operations

State Board of Physicians - Subpoenas - Medical Records for Mental Health Services

This bill requires the State Board of Physicians (MBP) to notify a patient of the right to oppose the sharing of medical information when the board subpoenas the patient's medical records for mental health services as a result of a complaint from another person.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: MBP must notify: • the patient by certified mail, return receipt requested, that the board is issuing the subpoena for the records and that the patient has certain rights; and • the subpoena recipient by certified mail, return receipt requested, that the patient has been sent the required notice.

Specifically, the patient has the right to assert any constitutional right or other legal authority in opposition to the disclosure of the medical record by filing a motion to quash or a motion for a protective order in the circuit court for the jurisdiction in which the patient resides within 30 days after receiving the notice. In addition, the patient may request a hearing on the motion in the circuit court.

If the patient who receives the required notice does not assert the right to oppose the release of medical records within 30 days after receiving the notice, MBP may require the subpoena recipient to disclose the patient's medical records for mental health services.

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

MBP may issue subpoenas and administer oaths in connection with any investigation prior to taking any disciplinary action or other actions and any hearing or proceeding before it.

Background: MBP advises that it subpoenas the patient medical records of approximately 30 psychiatrists annually.

State Fiscal Effect: Since MBP typically subpoenas the patient medical records of approximately 30 psychiatrists annually, existing MBP staff could handle the new notification requirements under the bill and verify if any patient opposed the release of medical records.

MBP advises that special fund expenditures would increase by \$67,080 in fiscal 2008 to hire a part-time staff attorney and full-time administrative specialist. MBP advises that the staff attorney would ensure the notifications are legally correct, determine whether any response received is legally compliant, and represent the board in any court hearings. The administrative specialist would determine a patient's address, keep notification records, and determine whether a patient has asserted his right to oppose the release of his medical records.

The Department of Legislative Services disagrees with this assessment. However, MBP special fund expenditures could increase in future years if the number of psychiatrists subpoenaed annually by the board increases and the patients affected oppose disclosure. If so, additional resources could be requested through the annual budget process.

Additional Information

Prior Introductions: None.

Cross File: HB 361 is designated as a cross file, but it is not identical.

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

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ncs/ljm

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