

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 443

(Senator Frosh, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

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

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This bill requires the Maryland Board of Physicians 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.

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**Fiscal Summary**

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

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The board has to 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, the board may require the subpoena recipient to disclose the patient's medical records for mental health services.

**Current Law:** A health care provider has to disclose a medical record without the authorization of a person of 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.

The board 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:** The board advises that it subpoenas the patient medical records of approximately 4,000 providers annually. Historically, however, it has subpoenaed the patient medical records of approximately just 30 psychiatrists annually.

**State Fiscal Effect:** Since the board typically subpoenas the patient medical records of approximately 30 psychiatrists annually, existing staff could handle the new notification requirements under the bill.

The board advises that special fund expenditures would increase by \$71,720 in fiscal 2009 to hire a part-time staff attorney and full-time administrative specialist to handle the notifications. The Department of Legislative Services disagrees with this assessment. However, 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.

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### **Additional Information**

**Prior Introductions:** A similar bill, SB 258 of 2007, passed the Senate and was heard by the House Health and Government Operations Committee, but no further action was taken. Its designated cross file, HB361 of 2007, was heard by the House committee and subsequently withdrawn.

**Cross File:** HB 876 (Delegate Morhaim) – Health and Government Operations.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - February 18, 2008  
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