

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1364 (Delegate Sossi)
Health and Government Operations

Medical Records - Disclosure - Blood Alcohol Concentration

This bill authorizes a health care provider to disclose a medical record to a law enforcement agency or officer without the authorization of a person in interest. This authorization applies *if* the health care provider providing medical care immediately after a motor vehicle accident to an individual reasonably believed to be the operator of a motor vehicle involved in the accident becomes aware that the individual's blood alcohol concentration meets or exceeds 0.08%.

Fiscal Summary

State Effect: General fund revenues and expenditures could increase minimally due to a possible increase in drunk driving cases and convictions. Transportation Trust Fund revenues and expenditures could increase minimally due to a possible increase in license suspensions, renewals, and reinstatements under the bill.

Local Effect: Potential minimal increase in expenditures due to a possible increase in drunk driving cases and convictions.

Small Business Effect: None.

Analysis

Current Law: A person may not drive or attempt to drive any vehicle while • under the influence of alcohol or under the influence of alcohol *per se*; • impaired by alcohol; • impaired by drugs, or drugs and alcohol; or • impaired by a controlled dangerous substance. An individual is deemed to be under the influence of alcohol "*per se*" if an

alcohol test result indicates a blood alcohol concentration of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test. This applies to a person who is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense. However, a person may not be compelled to submit to a test to determine the alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in death or a life-threatening injury to another person.

With a conviction for an alcohol- and/or drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by the Motor Vehicle Administration. A person convicted of driving under the influence, under the influence of alcohol *per se*, or while impaired by a controlled dangerous substance is subject to fines ranging from \$1,000 to \$3,000 and/or a maximum imprisonment term of one to three years. A repeat conviction within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as well as a mandatory alcohol or drug abuse assessment.

A conviction for lesser included offenses subjects the violator to a fine of \$500 and/or imprisonment not exceeding two months. However, for repeat offenders maximum prison terms increase to a year. If an offender is transporting a minor at the time of the alcohol- and/or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

Statute specifies situations in which a health care provider can disclose a medical record without the consent of the person in interest. Situations typically include disclosure for legal, research, emergency care, or organ donation purposes.

The federal Health Insurance Portability and Accountability Act established additional guidelines on the disclosure and electronic transmission of medical records. Federal regulations implementing HIPAA 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. HIPAA allows the disclosure of protected health information without the written consent of the individual for law enforcement purposes in a number of specified situations. Two examples are as follows: • for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person; and • when required by law to do so. For example, state laws often require health care providers to report gunshot or stab wound incidents or other violent injuries, and they can do so legally under HIPAA.

State Revenues: General fund revenues could increase minimally as a result of additional drunk driving cases heard in the District Court. TTF revenues could increase slightly in future years due to more license renewal and reinstatement fees being paid by those with suspended or revoked licenses.

State Expenditures: General fund expenditures could increase minimally if more people are committed to Division of Correction facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal. Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 per month. TTF expenditures could increase minimally mostly in future years due to the cost of providing for additional suspension or revocation hearings that may occur due to the bill.

Local Fiscal Effect: Expenditures could increase minimally due to a possible increase in incarcerations for drunk driving convictions. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$40 to \$129 per inmate in fiscal 2009.

Additional Comments: Legislative Services advises that litigation *could* arise on the grounds that the blood sample obtained by a health care provider is protected health information and that disclosure violates HIPAA. Two recent state court decisions in Ohio and Wisconsin have held that blood samples obtained solely for law enforcement purposes do not fall under the protections of HIPAA because the samples were not taken for the purpose of obtaining health care. However, since this bill applies to a blood test performed in the course of providing medical care, it is unclear whether or not litigation would result.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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