

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 876 (Delegate Morhaim)
Health and Government Operations

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

This bill requires the Maryland Board of Physicians to notify a “person of interest” of the right to oppose the sharing of medical information when the board subpoenas the person’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: The board has to notify • the person of interest by certified mail, return receipt requested, that the board is issuing the subpoena for the records, and that the person has certain rights; and • the subpoena recipient by certified mail, return receipt requested, that the person has been sent the required notice.

Specifically, the person 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

person resides within 30 days after receiving the notice. In addition, the person may request a hearing on the motion in the circuit court.

If the person 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 person's medical records for mental health services.

Current Law: A person of interest means • an adult on whom a health care provider maintains a medical record; • a person authorized to consent to health care for an adult consistent with the authority granted; • a duly appointed personal representative of a deceased person; • a minor, if the medical record concerns treatment to which the minor has the right to consent; • a parent, guardian, custodian, or a representative of the minor designated by a court; • a parent of the minor, except if the parent's authority to consent to the minor's health care has been limited by a court order or valid separation agreement; • a person authorized to consent to health care for the minor; and • an appropriately appointed attorney.

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 persons

affected oppose disclosure. If so, additional resources could be requested through the annual budget process.

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: SB 443 (Senator Frosh, *et al.*) – Education, Health, and Environmental Affairs.

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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