

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1098 (Delegate Love)
Economic Matters

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, subject to limitations on disclosure of mental health records.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Minimal.

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 a subpoena, summons, warrant, or court order 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 entered by a court expressly authorized disclosure of the medical record.

Chapter 300 of 2008 authorizes the expedited disclosure of medical records in Child in Need of Assistance proceedings. It reduces the timeframe from 30 to 15 days that a person in interest has to object to disclosure of a medical record that is requested for these proceedings. A medical record must be disclosed without authorization if 15 days have elapsed since the notice was sent to the person in interest. For disclosures made under these circumstances, the health care provider must receive copies of required documentation and the required notice that was sent by certified mail to the person in interest at least 15 days before the records are to be disclosed.

The federal Health Insurance Portability and Accountability Act establishes 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: The Injured Workers' Insurance Fund advises that the bill has a minimal but positive impact by reducing the administrative burden on employers and insurers and reducing the number of postponements.

Additional Information

Prior Introductions: This bill is similar to HB 1231 of 2007. HB 1231 was heard in the House Economic Matters Committee, but no further action was taken on the bill.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Injured Workers' Insurance Fund; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of Administrative Hearings; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; Department of Legislative Services

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