

SB0954/927774/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 954
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “HIPAA Consistency Act of 2012” and substitute “Enhancement or Coordination of Patient Care”; strike beginning with the comma in line 3 down through “terms;” in line 11 and substitute “certain health care providers to share medical records and certain information with certain insurance carriers and accountable care organizations for the purposes of enhancing or coordinating patient care and for certain other purposes under certain circumstances and subject to certain limitations; requiring certain notices when certain information is shared between health care providers and carriers or accountable care organizations under certain circumstances; establishing certain limits on the use of certain information shared by health care providers with carriers; clarifying that medical data and claims data is medical information;”; in line 12, strike “by a covered entity”; strike in their entirety lines 13 through 17, inclusive; and in line 20, strike “17-202.1” and substitute “4-305”.

AMENDMENT NO.2

On pages 2 and 3, strike in their entirety the lines beginning with line 4 on page 2 through line 4 on page 3, inclusive, and substitute:

“4-305.

(a) This section may not be construed to impose an obligation on a health care provider to disclose a medical record.

(b) A health care provider may disclose a medical record without the authorization of a person in interest:

(Over)

(1) (i) To the provider's authorized employees, agents, medical staff, medical students, or consultants for the sole purpose of offering, providing, evaluating, or seeking payment for health care to patients or recipients by the provider;

(ii) To the provider's legal counsel regarding only the information in the medical record that relates to the subject matter of the representation; or

(iii) To any provider's insurer or legal counsel, or the authorized employees or agents of a provider's insurer or legal counsel, for the sole purpose of handling a potential or actual claim against any provider if the medical record is maintained on the claimant and relates to the subject matter of the claim;

(2) If the person given access to the medical record signs an acknowledgment of the duty under this Act not to redisclose any patient identifying information, to a person for:

(i) Educational or research purposes, subject to the applicable requirements of an institutional review board;

(ii) Evaluation and management of health care delivery systems; or

(iii) Accreditation of a facility by professional standard setting entities;

(3) Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307 of this subtitle, to a government agency performing its lawful duties as authorized by an act of the Maryland General Assembly or the United States Congress;

(4) Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4–307 of this subtitle, to another health care provider for the sole purpose of treating the patient or recipient on whom the medical record is kept;

(5) If a claim has been or may be filed by, or with the authorization of a patient or recipient on behalf of the patient or recipient, for covered insureds, covered beneficiaries, or enrolled recipients only, to third party payors and their agents, if the payors or agents have met the applicable provisions of §§ 15–10B–01 to 15–10B–18 of the Insurance Article, including nonprofit health service plans, health maintenance organizations, fiscal intermediaries and carriers, the Department of Health and Mental Hygiene and its agents, the United States Department of Health and Human Services and its agents, or any other person obligated by contract or law to pay for the health care rendered for the sole purposes of:

(i) Submitting a bill to the third party payor;

(ii) Reasonable prospective, concurrent, or retrospective utilization review or predetermination of benefit coverage;

(iii) Review, audit, and investigation of a specific claim for payment of benefits; or

(iv) Coordinating benefit payments in accordance with the provisions of the Insurance Article under more than 1 sickness and accident, dental, or hospital and medical insurance policy;

(6) If a health care provider makes a professional determination that an immediate disclosure is necessary, to provide for the emergency health care needs of a patient or recipient;

(7) Except if the patient has instructed the health care provider not to make the disclosure, or if the record has been developed primarily in connection with the provision of mental health services, to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice;

(8) To an appropriate organ, tissue, or eye recovery agency under the restrictions of § 5–408 of this article for a patient whose organs and tissues may be donated for the purpose of evaluating the patient for possible organ and tissue donation;

(9) To the Department of Health and Mental Hygiene or an organ, tissue, or eye recovery agency designated by the Department for the purpose of conducting death record reviews under § 19–310 of this article; [or]

(10) Subject to subsection (c) of this section, if the purpose of the medical record disclosure is for the coordination of services and record retention within the Montgomery County Department of Health and Human Services; OR

(11) TO A CARRIER, AS DEFINED IN § 15-1301 OF THE INSURANCE ARTICLE, OR AN ACCOUNTABLE CARE ORGANIZATION, AS DEFINED IN § 3022 OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT, FOR THE SOLE PURPOSES OF ENHANCING OR COORDINATING PATIENT CARE, PROVIDED THAT:

(I) A DISCLOSURE UNDER THIS ITEM IS SUBJECT TO THE ADDITIONAL LIMITATIONS IN § 4-307 OF THIS SUBTITLE ON DISCLOSURE OF A MEDICAL RECORD DEVELOPED PRIMARILY IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH SERVICES;

(II) A MEDICAL RECORD MAY BE DISCLOSED ONLY IN ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND

ACCOUNTABILITY ACT OF 1996, ANY REGULATIONS ADOPTED UNDER THE ACT, AND ANY OTHER APPLICABLE FEDERAL PRIVACY LAWS, AND DISCLOSURES UNDER THIS ITEM MAY NOT BE MADE IN VIOLATION OF THE PROHIBITED USES OR DISCLOSURES UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996;

(III) A DISCLOSURE UNDER THIS ITEM MAY NOT BE USED FOR UNDERWRITING OR UTILIZATION REVIEW PURPOSES;

(IV) A HEALTH CARE PROVIDER THAT DISCLOSES A MEDICAL RECORD IN ACCORDANCE WITH THIS ITEM SHALL PROVIDE A NOTICE CONSISTENT WITH THE REQUIREMENTS OF 45 C.F.R. § 164.520 SPECIFYING THE INFORMATION TO BE SHARED, WITH WHOM IT WILL BE SHARED, AND THE SPECIFIC TYPES OF USES AND DISCLOSURES THAT THE HEALTH CARE PROVIDER MAY MAKE IN ACCORDANCE WITH THIS ITEM;

(V) THE NOTICE REQUIRED BY ITEM (IV) OF THIS ITEM SHALL INCLUDE AN OPPORTUNITY FOR THE INDIVIDUAL TO OPT-OUT OF THE SHARING OF THE INDIVIDUAL'S MEDICAL RECORD WITH A CARRIER OR AN ACCOUNTABLE CARE ORGANIZATION FOR THE PURPOSES IDENTIFIED IN THIS ITEM; AND

(VI) IF A HEALTH CARE PROVIDER DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA TO A CARRIER OR ACCOUNTABLE CARE ORGANIZATION THROUGH AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH INFORMATION AMONG ENTITIES NOT UNDER COMMON OWNERSHIP, THE HEALTH CARE PROVIDERS ARE SUBJECT TO THE REQUIREMENTS OF §§ 4-302.2 AND 4-302.3 OF THIS SUBTITLE.

(Over)

(c) (1) The disclosure of medical records under subsection (b)(10) of this section to a person that is not employed by or under contract with the Montgomery County Department of Health and Human Services shall be conducted in accordance with this subtitle.

(2) Under provisions of State law regarding confidentiality, the Montgomery County Department of Health and Human Services shall be considered to be one agency.”.

On page 3, strike beginning with “OR” in line 7 down through “ARTICLE” in line 8.

On page 3 in lines 10, 12, and 18, on page 4 in lines 23 and 26, and on page 5 in line 17, in each instance, after “medical” insert “OR CLAIMS”;

On page 3 in lines 11 and 17 and on page 4 in line 25, in each instance, after “information” insert “OR MEDICAL DATA”.

On page 3, in line 20, strike “the contents of” and substitute “SPECIFIC MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN”; and in the same line, after the second “medical” insert “OR CLAIMS”.

On page 4, in line 5, after “policy” insert “OR TO EVALUATE AND CALCULATE PROVIDER FISCAL INCENTIVES OR OTHER TYPES OF PROVIDER PAYMENTS”; in line 8, strike “or”; in line 13, after “policyholder” insert “; OR

(12) TO THE INSURED’S TREATING PROVIDERS FOR THE SOLE PURPOSES OF ENHANCING OR COORDINATING PATIENT CARE OR ASSISTING THE TREATING PROVIDERS’ CLINICAL DECISION MAKING, PROVIDED THAT:

(I) A DISCLOSURE UNDER THIS ITEM IS SUBJECT TO THE ADDITIONAL LIMITATIONS IN § 4-307 OF THE HEALTH – GENERAL ARTICLE ON DISCLOSURE OF A MEDICAL RECORD DEVELOPED PRIMARILY IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH SERVICES;

(II) MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INSURED’S MEDICAL OR CLAIMS RECORDS MAY BE DISCLOSED ONLY IN ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, ANY REGULATIONS ADOPTED UNDER THE ACT, AND ANY OTHER APPLICABLE FEDERAL PRIVACY LAWS, AND DISCLOSURES UNDER THIS ITEM MAY NOT BE MADE IN VIOLATION OF THE PROHIBITED USES OR DISCLOSURES UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996;

(III) AN INSURER OR AN INSURANCE SERVICE ORGANIZATION THAT DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INSURED’S MEDICAL OR CLAIMS RECORDS IN ACCORDANCE WITH THIS ITEM SHALL PROVIDE A NOTICE CONSISTENT WITH THE REQUIREMENTS OF 45 C.F.R. § 164.520 SPECIFYING THE INFORMATION TO BE SHARED, WITH WHOM IT WILL BE SHARED, AND THE SPECIFIC TYPES OF USES AND DISCLOSURES THAT THE INSURER OR INSURANCE SERVICE ORGANIZATION MAY MAKE IN ACCORDANCE WITH THIS ITEM;

(IV) THE NOTICE REQUIRED BY ITEM (III) OF THIS ITEM SHALL INCLUDE AN OPPORTUNITY FOR THE INSURED TO OPT-OUT OF THE SHARING OF THE INSURED’S MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN THE INSURED’S MEDICAL OR CLAIMS RECORDS WITH THE INSURED’S TREATING PROVIDERS FOR THE PURPOSES IDENTIFIED IN THIS ITEM; AND

(Over)

(V) IF AN INSURER OR AN INSURANCE SERVICE ORGANIZATION DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA THROUGH AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH INFORMATION, AS DEFINED IN § 4-301 OF THE HEALTH - GENERAL ARTICLE, AMONG ENTITIES NOT UNDER COMMON OWNERSHIP, THE INSURER IS SUBJECT TO THE REQUIREMENTS OF §§ 4-302.2 AND 4-302.3 OF THE HEALTH - GENERAL ARTICLE”;

and strike beginning with “OR” in line 20 down through “ARTICLE” in line 21.

On page 5, in line 14, strike “or”; and in line 19, after “payor” insert “;

(8) TO EVALUATE AND ADJUST A CLAIM FOR BENEFITS UNDER A POLICY OR TO EVALUATE AND CALCULATE PROVIDER FISCAL INCENTIVES OR OTHER TYPES OF PROVIDER PAYMENTS; OR

(9) TO THE INDIVIDUAL’S TREATING PROVIDERS FOR THE SOLE PURPOSES OF ENHANCING OR COORDINATING PATIENT CARE OR ASSISTING THE TREATING PROVIDERS’ CLINICAL DECISION MAKING, PROVIDED THAT:

(I) A DISCLOSURE UNDER THIS ITEM IS SUBJECT TO THE ADDITIONAL LIMITATIONS IN § 4-307 OF THE HEALTH - GENERAL ARTICLE ON DISCLOSURE OF A MEDICAL RECORD DEVELOPED PRIMARILY IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH SERVICES;

(II) MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INSURED’S MEDICAL OR CLAIMS RECORDS MAY BE DISCLOSED ONLY IN ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND

ACCOUNTABILITY ACT OF 1996, ANY REGULATIONS ADOPTED UNDER THE ACT, AND ANY OTHER APPLICABLE FEDERAL PRIVACY LAWS, AND DISCLOSURES UNDER THIS ITEM MAY NOT BE MADE IN VIOLATION OF THE PROHIBITED USES OR DISCLOSURES UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996;

(III) A NONPROFIT HEALTH SERVICE PLAN OR BLUE CROSS OR BLUE SHIELD PLAN THAT DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INSURED'S MEDICAL OR CLAIMS RECORDS IN ACCORDANCE WITH THIS ITEM SHALL PROVIDE A NOTICE CONSISTENT WITH THE REQUIREMENTS OF 45 C.F.R. § 164.520 SPECIFYING THE INFORMATION TO BE SHARED, WITH WHOM IT WILL BE SHARED, AND THE SPECIFIC TYPES OF USES AND DISCLOSURES THAT THE NONPROFIT HEALTH SERVICE PLAN OR BLUE CROSS OR BLUE SHIELD PLAN MAY MAKE IN ACCORDANCE WITH THIS ITEM;

(IV) THE NOTICE REQUIRED BY ITEM (III) OF THIS ITEM SHALL INCLUDE AN OPPORTUNITY FOR THE INDIVIDUAL TO OPT-OUT OF THE SHARING OF THE INDIVIDUAL'S MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INDIVIDUAL'S MEDICAL OR CLAIMS RECORDS WITH THE INDIVIDUAL'S TREATING PROVIDERS FOR THE PURPOSES IDENTIFIED IN THIS ITEM; AND

(V) IF A NONPROFIT HEALTH SERVICE PLAN OR BLUE CROSS OR BLUE SHIELD PLAN DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA THROUGH AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH INFORMATION, AS DEFINED IN § 4-301 OF THE HEALTH - GENERAL ARTICLE, AMONG ENTITIES NOT UNDER COMMON OWNERSHIP, THE NONPROFIT HEALTH SERVICE PLAN OR BLUE CROSS OR BLUE SHIELD PLAN IS SUBJECT TO THE

SB0954/927774/1
Amendments to SB 954
Page 10 of 10

FIN

**REQUIREMENTS OF §§ 4-302.2 AND 4-302.3 OF THE HEALTH - GENERAL
ARTICLE**".