

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 954  
Finance

(Senator Middleton)

Health and Government Operations

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Medical Records - Enhancement or Coordination of Patient Care

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This bill authorizes specific medical information or medical data contained in an individual's medical or claims records to be disclosed to the individual's treating providers or to the individual's carrier or accountable care organization (ACO) for the sole purposes of enhancing or coordinating patient care or assisting the treating providers' clinical decision making.

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Fiscal Summary

**State Effect:** The bill does not materially affect governmental finances.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** A disclosure for these purposes may occur if the disclosure is made in accordance with (1) statutory limitations on disclosure of mental health records; (2) the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), any related regulations, and any other applicable federal privacy laws; and (3) any applicable statutory requirements for disclosures made through a health information exchange.

A disclosure may not be used for underwriting or utilization review purposes. Carriers, ACOs, and health care providers must provide a specific notice regarding the information to be shared, with whom it will be shared, and the specific types of uses and disclosures

that may be made. This notice must include an opportunity for an individual to opt-out of the sharing of the individual's medical record.

An insurer, an insurance service organization whose functions include the collection of medical data, and a nonprofit health service plan or Blue Cross or Blue Shield plan may disclose specific medical information or medical data contained in a medical or claims record without the authorization of the insured to evaluate and calculate provider fiscal incentives or other types of provider payments.

**Current Law:** The federal HIPAA privacy rule defines "covered entities" as health plans, health care clearinghouses, and health care providers. "Protected health information" is individually identifiable health information that is transmitted or maintained by electronic media or any other form or medium, excluding individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, student health records for individuals attending an institution of postsecondary education who are at least 18 years old, and employment records held by a covered entity in its role as employer.

Under HIPAA, covered entities may not use or disclose protected health information except either as the privacy rule permits or as an individual authorizes in writing. Covered entities may disclose protected health information without an individual's authorization for such purposes as treatment, payment, health care operations, and public interest activities.

Maryland's Confidentiality of Medical Records Act requires health care providers and facilities to keep the medical record of a patient confidential and obtain written consent for disclosure, even for purposes of treatment and payment. Generally, a person to whom a medical record is disclosed may not redisclose the medical record unless authorized by the person in interest. Exceptions are made for such purposes as provision of health care services, billing, utilization review, and legal claims.

An insurer is generally prohibited from disclosing an insured's medical records without written authorization. Exceptions include legal proceedings, coordination of benefits, reinsurance, renewal of insurance, and claims administration.

**Background:** According to CareFirst BlueCross BlueShield, as Maryland's Confidentiality of Medical Records Act is more stringent than the federal HIPAA privacy rules, health insurance carriers cannot easily share medical records with treating providers without first obtaining patient consent.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - March 19, 2012  
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