

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 724

(Delegate Oaks, *et al.*)

Health and Government Operations

Finance

Public Health - Copies of Medical Records - Fees

This bill authorizes a hospital or health care provider that uses or maintains medical records in an electronic format to charge a separate fee for an electronic copy of a medical record, subject to the fee limitations that apply to persons in interest under the federal Health Insurance Portability and Accountability Act (HIPAA) and related federal guidance. The bill also alters and clarifies the fees a health care provider may charge for a paper copy of a medical record. The fees charged for retrieval and preparation of a medical record in any format may not be annually adjusted for inflation.

Fiscal Summary

State Effect: Any change in State activities does not materially affect State finances.

Local Effect: Any change in local health department activities does not materially affect local government finances.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A health care provider (other than specified State facilities) may require a person in interest or any other authorized person to pay a reasonable *cost-based fee* for a copy of a medical record.

A health care provider may charge a fee of up to 76 cents per page for paper medical records, while a hospital or health care provider may charge a per-page fee of 75% of the

per-page fee for paper medical records for an electronic format medical record (subject to a cap of \$80).

For paper or electronic format medical records, a hospital or health care provider may charge a preparation fee of up to \$22.88 for records retrieval and preparation, as well as the actual cost for postage and handling. For paper medical records, only the retrieval and preparation fee is subject to the fee limitations that apply to persons in interest under HIPAA and related federal guidance.

Current Law: The HIPAA Privacy Rule (45 C.F.R. 164.524) requires a health care provider to provide an individual with access to the individual's protected health information (PHI) in the form and format requested by the individual, if it is readily producible in such form and format or, if not, in a readable hard copy form or such other form and format as agreed to by the health care provider and the individual. The health care provider may impose a reasonable, cost-based fee, as long as the fee includes only the cost of (1) labor for copying the PHI requested by the individual, whether in paper or electronic form; (2) supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and (3) postage, when the individual has requested that the copy, or the summary or explanation, be mailed.

Under § 4-304 of the Health-General Article, a health care provider must comply within a reasonable time after a "person in interest" requests, in writing, to receive a copy of a "medical record." A medical record is defined as any oral, written, or other transmission, in any form or medium of information that is entered in the record of a patient or recipient and relates to the health care of the patient or recipient. A person in interest includes an attorney appointed in writing by a patient. A health care provider may charge a fee for a copy of a medical record. The fee for copying and mailing may not exceed 50 cents per page. A health care provider may also charge a preparation fee of up to \$15, plus the actual cost for postage and handling. These fees represent the maximum base fees for 1994 and may be adjusted annually, beginning July 1, 1995, for inflation in accordance with the Consumer Price Index; thus, providers may charge higher fees due to inflation.

Background: The Maryland Board of Physicians and the Maryland Board of Podiatric Medical Examiners post the current fees on their respective websites, advising that, as of January 1, 2014, a health care provider may charge a preparation fee of \$22.88, plus a fee of no more than 76 cents per page copied, plus the actual cost of shipping and handling. The boards advise that federal HIPAA regulations prohibit a preparation fee for medical records provided directly to a patient.

Some states, including Illinois, Louisiana, Maine, Missouri, New Mexico, North Dakota, Texas, and Virginia, establish a separate fee structure for medical records provided in electronic form.

According to the Maryland Health Care Commission (MHCC) and the Maryland Hospital Association (MHA), although the HIPAA Privacy Rule requires health care providers to make medical records available to patients in the format requested by the patient, the technology for doing so is not yet readily available. MHCC staff advises that the necessary technology is still some years away. MHA staff advises that hospitals are at different stages of electronic health record implementation. Some hospitals may not be capable of sending health records in a form that complies with the HIPAA security standard.

Additional Information

Prior Introductions: None.

Cross File: SB 462 (Senator Conway) - Finance.

Information Source(s): Maryland Association of County Health Officers, Department of Health and Mental Hygiene, Maryland Hospital Association, Department of Legislative Services

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