BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL

SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 17, 2017

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: Senate Bill 584 and House Bill 1468 – Medical Records – Disclosure of Directory Information and Medical Records

Dear Governor Hogan:

We have reviewed for constitutionality and legal sufficiency Senate Bill 584 and House Bill 1468, "Medical Records – Disclosure of Directory Information and Medical Records." We hereby approve these bills for constitutionality and legal sufficiency. We write to advise you about an interpretation of a provision that specifies legislative intent.

Senate Bill 584 is identical to its cross-file House Bill 1468. These bills amend provisions of the Maryland Confidentiality of Medical Records Act (the "Act") regarding the disclosure of directory information and medical records to family members. Those provisions currently are more protective of mental health records than federal law; as amended by these bills, the provisions will conform to federal law. The bills also amend disclosure requirements related to directory information to conform to federal law. The bills contain uncodified language in Section 2 that states the intent of the General Assembly that the Act may not be interpreted as more restrictive than federal law, is not intended to be in conflict with federal law, and is to be interpreted as consistent with federal law. Despite this declaration of the General Assembly's intent, there are provisions of the Act that clearly are more protective of medical records than federal law. *See*, *e.g.*, Health-General Article ("HG"), § 4-302(d) (limits on redisclosure), § 4-305(b)(3), (4) (protections for mental health records), § 4-306(b)(2), (6), (7) (protections for mental health records), and § 4-307 (protections for mental health records).

Generally, provisions of State law that provide more protection for an individual's privacy rights than federal law are not pre-empted by the regulations implementing the Health Insurance Portability and Accountability Act ("HIPAA"). *See* 45 C.F.R. §§

160.202, 160.203. The Court of Appeals has held that '"a statement by present members of a legislative body as to what their predecessors intended in a statute enacted several years previously is not entitled to much weight.'" *Green v. Nassif*, 426 Md. 258, 288-89 (2012) (*quoting State v. Coleman*, 423 Md. 666, 683 (2011)). *See also Collier v. Connolley*, 285 Md. 123, 126 (1979) ("We do not place much weight upon what the legislature, in 1977, said was intended in a 1974 statute.") In *Green*, *Coleman*, and *Collier*, the Court went on to apply its usual principles of statutory construction. *See Green*, 426 Md. at 289-91; *Coleman*, 423 Md. at 683; *Collier*, 285 at 126. Thus, it is unlikely that a court would rely on the language in Section 2 of the bill to construe the Act contrary to its plain meaning and find that the Act is no more protective than HIPAA.

Sincerely,

Brian E. Frosh
Attorney General

BEF/SBB/kd

cc: The Honorable John C. Wobensmith
Chris Shank
Warren Deschenaux