

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 385
Finance

(Senators Beidle and Feldman)

Health - Disclosure of Medical Records - Penalty

This bill (1) alters the definition of “medical record” and (2) increases the civil penalty for a health care provider who knowingly refuses to disclose a medical record, as specified.

Fiscal Summary

State Effect: The bill is not anticipated to have a material impact on State operations or finances.

Local Effect: The bill is not anticipated to have a material impact on local government operations or finances.

Small Business Effect: Assuming compliance, increasing the minimum civil penalty will not impact small business practitioners.

Analysis

Bill Summary/Current Law: Under current law, “medical record” means any oral, written, or other transmission in any form of medium of information that is (1) entered in the record of a patient or recipient; (2) identifies or can be readily associated with the identify of a patient or recipient; and (3) relates to the health care of the patient or recipient.

The bill alters this definition to include any *electronic*, oral, written, or other transmission in any form or medium of *data or* information that is entered in the record of a patient or recipient, identifies or can be readily associated with the identity of a patient or recipient, and relates *in any way* to the health care of the patient or recipient.

Under current law, “medical record” includes:

- documentation of disclosures of a medical record to any person who is not an employee, agent, or consultant of the health care provider;
- file or record maintained by a pharmacy of a prescription order that identifies or may be readily associated with the identity of a patient;
- documentation of an examination of a patient regardless of who requested the examination or is making payment for the examination; and
- file or record received from another health care provider that relates to the health care of a patient or recipient received from that health care provider and identifies or can readily be associated with the identity of the patient or recipient.

The bill adds that a “medical record” includes data or information relating to any electronic, oral, written, or other transmission regarding the health care of a patient or recipient (1) regardless of how or by whom the data or information was initially created or is maintained or stored and (2) maintained for auditing purposes, including by the American Society for Testing and Materials.

Under current law, a health care provider who in good faith discloses or does not disclose a medical record is not liable in any cause of action arising from the disclosure or nondisclosure of the medical record.

Civil Penalties

Under current law, if a health care provider knowingly refuses to disclose a medical record within a reasonable time but no more than 21 working days after the date a person in interest requests the disclosure, the health care provider is liable for actual damages. In addition, any person, including a health care provider, who knowingly violates any provision of Title 4, Subtitle 3 of the Health-General Article is liable for actual damages.

The bill increases this civil penalty to the greater of actual damages or \$1,000.

Criminal Penalties

Under current law, a health care provider may not refuse to disclose a medical record on the request of a person because of the failure of the person to pay for health care rendered. A health care provider who violates this provision is guilty of a misdemeanor and subject to a fine of up to \$1,000 for a first offense and up to \$5,000 for each subsequent conviction.

A person who knowingly and willfully violates the confidentiality of a medical record is guilty of a misdemeanor and subject to a penalty of up to \$50,000 and/or imprisonment for

one year. If the violation is committed under false pretenses, the maximum penalty is a fine of \$100,000 and/or imprisonment for five years. If the violation is committed with intent to sell, transfer, or use individually identified health information for commercial advantage, personal gain, or malicious harm, the maximum penalty is a fine of \$250,000 and/or imprisonment for 10 years.

The bill does not alter the criminal penalties under current law.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 643 (Delegate Bagnall) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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