



Maryland Association for Justice, Inc.

2021 Position Paper

Public Health – Medical Records – Fees HB 849 – FAVORABLE WITH AMENDMENTS

In response to abuses by the “healthcare information management” industry, which was charging patients thousands of dollars to obtain copies of their own medical records, Md. Health-Gen. Code § 4-304 was amended in 2016 to cap the total fees that could be charged to patients requesting an *electronic copy* (essentially, a .pdf file) of their electronic medical records. The cap applies to requests for records made by patients and their attorneys. § 4-301(l).

Section 4-304 also was amended in 2016 to incorporate federal regulations promulgated by the U.S. Department of Health and Human Services under its authority to implement the federal HIPAA and HITECH Acts, pertaining to patient access to electronic medical records. In a Privacy Rule Guidance issued by DHHS in 2016, medical record access fees were capped at the “Patient Rate” (45 CFR 164.524) of \$6.50 for electronic copies of electronic medical records.

The “health information management” industry challenged the “Patient Rate” in a lawsuit brought against the Trump Administration. *CIOX v. Azar*, 435 F. Supp. 3d 30 (D.D.C. 2020). On January 23, 2020, the federal judge in that case decided that 45 CFR 164.524 could not limit the fees that “health information management” charge for access to electronic medical records to individuals other than the patient.

Unfortunately, the Trump Administration chose not to appeal the *CIOX* decision, which has exposed guardians, medical powers-of-attorney, and patient advocates to the extortionate fees charged by the “health information management” industry.

As introduced, HB 849 *repeals* the 2016 cap on medical record copying fees. The state law cap on medical records copying fees is now the only barrier protecting Maryland patients from “health information management” companies charging thousands of dollars for access to electronic copies of electronic medical records.

Following discussions between the Office of the Attorney General and the sponsor of HB 849, the Maryland Association for Justice understands that the sponsor intends to amend HB 849 to preserve the cap on medical records access fees. If § 4-304 must be amended, the cap on fees charged for access to medical records must be preserved.

The Maryland Association for Justice respectfully requests that HB 849 be reported FAVORABLY WITH AMENDMENTS.