

PAMELA G. BEIDLE  
Legislative District 32  
Anne Arundel County

Finance Committee

Vice Chair

Executive Nominations Committee



James Senate Office Building  
11 Bladen Street, Room 202  
Annapolis, Maryland 21401  
410-841-3593 · 301-858-3593  
800-492-7122 Ext. 3593  
Pamela.Beidle@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401  
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**SB 385**

**Health - Disclosure of Medical Records – Penalty**

Good Afternoon Chair Kelley, Vice Chair Feldman and Member of the Finance Committee:

In medicine, information is critically important. When a patient requests copies of his or her medical records, the patient should be entitled to all information his providers recorded about his health. The information should be provided in a timely fashion. When medical records are incomplete and patients are denied access to them, patients are at increased risk.

The current statutory definition of a patient's "medical record" is circular. Existing law defines "*medical record*" 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..." Md. Health-Gen. Code § 4-301(a). In other words, a "record" is information "entered into the record." In part, this Bill is intended to clarify this error and update the Maryland statute to reflect the federal statute.

There are three additional reasons for updating current law:

First, the existing definition of "medical record" fails to take into consideration the way modern care is provided. Modern medicine involves the transfer of patient information through electronic means, such as texts, emails, photographs, videos, and electronic documents. Many of this information is exchanged through third-party apps and programs.

The current definition of "medical record" does not require such information to be included in a patient's record. Because the law does not require it, health care providers do not incorporate significant information exchanged electronically into their patient's medical records. When the information is exchanged through third party apps, they also claim in litigation that they cannot produce it, because they do not have custody or control over the data. This allows for a secret "shadow record" of communications and decision-making, to which the patient is refused access (if the patient even knows that it exists in the first place).

The law should be updated to provide that all information exchanged about patient's health care is a part of his or her medical record, and is required to be produced upon request.

Second, Maryland's definition should be brought up to speed with federal HIPAA regulations, which require health care providers to maintain "access" or "audit" logs identifying when the patient's medical record was accessed, by whom, and what changes to the record were made at the time of access. Maryland's statutory definition should provide that such logs are part of the patient's medical record and are required to be produced upon request.

Third, when records are produced, they are often incomplete, forcing the patient to take more time to obtain complete information. There is no recourse built into the law to protect the patient when his or her records are held hostage. The statute should be updated to provide patients a remedy if their medical records are withheld from them unreasonably.

Thank you for the opportunity to present SB385, I respectfully request a favorable report.