

BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

Writer's Direct Email:
poconnor@oag.state.md.us



WILLIAM D. GRUHN
Chief
Consumer Protection Division

Writer's Direct Fax No.
(410) 576-6571

Writer's Direct Dial No.
(410) 576-6515

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

February 7, 2022

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: The Office of the Attorney General's Health Education and Advocacy Unit

Re: Senate Bill 385 (Health - Disclosure of Medical Records - Penalty: Support with Amendments)

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports Senate Bill 385 and foresees potential amendments being appropriate, based on when the updated HIPAA Privacy Rule is published, and the provisions in the Final Rule, as explained below.

This bill would increase the types of damages payable in a civil action by a health care provider who 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, from actual damages only to the greater of actual damages or a \$1,000 penalty. The HEAU assists consumers whose providers engage in conduct meeting this standard and support the deterrent effect intended by subjecting nonresponsive providers to a \$1,000 penalty when the harms suffered by consumers are not quantifiable as actual damages or are de minimis.

We also want to advise the committee that the HIPAA Privacy Rule is being amended for the first time in 8 years and if the draft Rule is adopted imminently as expected, the Final Rule's definition of electronic health record will be different from the definition of medical records that this bill would enact which adds terms relating to electronic health records.

See <https://www.federalregister.gov/documents/2021/01/21/2020-27157/proposed-modifications-to-the-hipaa-privacy-rule-to-support-and-remove-barriers-to-coordinated-care> at page 6532.

The anticipated Final Rule also is likely to reduce from 30 days to 15 days the response time to a request, with only a single 15-day extension permitted if requested.

We see value in aligning state and federal definitions and terms, when appropriate, and would welcome the opportunity to work with the Sponsor and other stakeholders in this regard.

We ask the committee for a favorable report, with foreseeable amendments.

cc: Sponsor