

SB385 Testimony20220207_11543878.pdf

Uploaded by: Pamela Beidle

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401
February 9, 2022

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.

OAG HEAU_FWA_SB0385.pdf

Uploaded by: Patricia O'Connor

Position: FWA

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Attorney General

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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

2022 MCHS SB 385 Senate Side 1.pdf

Uploaded by: Scott Tiffin

Position: FWA



Maryland Community Health System

Committee: Senate Finance Committee

Bill Number: Senate Bill 385 – Health - Disclosure of Medical Records - Penalty

Hearing Date: February 9, 2022

Position: Support with Amendment

Maryland Community Health System (MCHS) supports with amendment *Senate Bill 385 - Health - Disclosure of Medical Records - Penalty*. We are a network of federally qualified health centers with locations across Maryland and recognize the importance of access to medical records but are concerned about some possible negative outcomes.

Our understanding is that the bill is attempting to make the definition of a medical record more in line with HIPAA. We support aligning Maryland's medical records law with HIPAA so providers aren't being required to comply with different sets of rules. We are still in the process of reviewing the HIPAA definition compared to the definition in this bill but do support the concept of aligning the two definitions.

We understand the importance of timely access to patient records, and many of our providers have their own frustrating experience of dealing with delays in obtaining patient records. All of our providers take great care to ensure that patients receive requested records within the required 21 days, but sometimes issues can occur that result in delays. In our experience, most delays in releasing medical records are due to difficulties in getting appropriate authorization or copying fees from a patient. Whenever there is a delay, we communicate with the patient and do what we can to deliver the records as soon as possible.

The \$1,000 fine created by this bill would be very burdensome to federally qualified health centers. Our health centers are primarily funded by federal grants and Medicaid so it would be financially challenging for a health center to afford a \$1,000 fine whenever there was a delay in releasing a medical record, especially given that most delays are caused by external circumstances the health center does not control.

We believe there are already sufficient penalties for individuals who do not take seriously their responsibility to ensure that patients have access to their medical records. Current law provides criminal liability for providers who willfully fail to provide medical records within 21 days. Additionally, HIPAA includes possible sanctions for providers that fail to provide medical records timely.

We ask for an unfavorable report. If we can be help answer any questions, please let us know by contacting Scott Tiffin at stiffin@policypartners.net.

Luminis Health Opposition to Senate Bill 385.pdf

Uploaded by: Eric Crowder

Position: UNF

Senate Bill 385 – Health – Disclosure of Medical Records - Penalty**Position: *Oppose***February 9, 2022
Senate Finance Committee**Luminis Health, Inc.'s Position:**

Luminis Health is concerned with language in Senate Bill 385 – Health- Disclosure of Medical Records – Penalty. While it is unclear what problem the legislation intends to solve, it is clear that the bill would significantly expand the definition of a medical record beyond what is considered standard in the health care industry. This proposed expansion would make managing the “medical record” extraordinarily complicated and would likely have an adverse impact on patient care.

First, Maryland hospitals must adhere to the Conditions of Participation (“CoPs”) promulgated in federal regulations by the Centers for Medicare and Medicaid Services and applicable accreditation standards from entities such as The Joint Commission. Likely most Maryland hospitals, if not all of them, comply with the CoP codified at 42 CFR §482.24 – Condition of participation: Medical record services and The Joint Commission Hospital accreditation standards cited as Standard RC.01.01.01 et. seq. These standards set forth specific criteria for the maintenance and content of a patient medical record.

Second, the expanded definition in the bill would arguably be at odds with other legal requirements, such as peer review and utilization records that are privileged and not discoverable, psychotherapy notes that are excluded from discovery under HIPAA (45 CFR §164.524) and certain information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding (45 CFR §164.524). Therefore, passage of Senate Bill 385 would put Maryland hospitals in an impossible position to choose between compliance with peer review privilege laws and this new Maryland state law.

Third, the bill would have a chilling effect on providers’ using secure electronic modalities such as secured texting platforms, to efficiently communicate with other providers on patient care issues due to an interpretation that those text messages constitute “data or information relating to any electronic, oral, written, or other transmission regarding” health care.

Finally, the treatment of data or information relating to audits as 'medical records' merely because it relates a patient's health care is a seismic expansion of what federal and state law treat as responsive to a patient's request for medical records. This expansion no doubt will increase Maryland health care providers' collective burden to respond to patient requests and the requests of patient's interested persons.

Sincerely,



Eric Crowder, Esq.
Associate General Counsel
Government Relations Lead

CIOX Health Maryland SB385 Testimony (2.9.2022).pd

Uploaded by: Kyle Probst

Position: UNF



February 7, 2022

Via the Maryland General Assembly Website

Madam Chair Delores G. Kelley
Senate Finance Committee
Of the Maryland General Assembly

RE: Senate Bill 385 ("SB385")

Dear Madam Chair Kelley and Seante Finance Committee Members:

Thank you for accepting the testimony of Ciox Health, LLC ("Ciox") regarding SB 385. Ciox is the country's largest release of information company assisting medical providers with the proper disclosure of patient medical records while protecting patient privacy. Ciox serves some of the largest health systems and hospitals in the state of Maryland. If this bill passes as-is it will unnecessarily complicate the release of information process by requiring the disclosure of more information than is typically desired by the average requestor.

Ciox acknowledges certain third-party requestors of medical records may have a need to obtain the "data" defined in 4-301(j)(2)(v), however, Ciox is OPPOSED to SB385 in its current state for the following reasons:

- (1) First, there is no definition provided for "*data or information relating...to the health care of the patient...*" Without clarification, this vague statement will likely lead to confusion amongst medical provides and their business associates as to what is intended by the legislature to be disclosed in response to each and every request for medical records.
- (2) SB385 amends the definition of "medical record" by including "*data or information relating to any electronic, oral, written, or other transmission regarding the health care of a patient...*". Including data or information relating to the record in the definition of medical record is overly broad and unnecessary for the great majority of record requests. For example, a patient wanting their records for review to understand their current diagnoses and treatment plan will not typically need data about when the record was created, how it is maintained and stored, or when it was accessed and by whom. Providing "data" as described in the bill will not typically add value for the average request but will instead confuse the requestor leaving them wondering why they are receiving this information.
- (3) Producing the "data" as mentioned in SB385 will be wasteful and increase labor costs. Not only do the average requestors not want or need the "data" as defined





by SB385, obtaining such data and including it with each record request will require significant time and labor to retrieve and duplicate in electronic format. The “data” contemplated by SB 385 is not typically stored in a universally readable format with the actual medical records, so for the information to be retrieved and converted to a readable format by the recipient the information must with additional steps and converted to a universally readable format such as a .tiff, .jpg. or .pdf. This is additional time, labor and expense, that will go to waste as the typical requestor does not want or need this information.

Ciox suggests that if the bill is to require disclosure of “data” as defined in SB 385 then it further clarify what is included in “data and information” relating to the healthcare of the patient and that this data or information be required to be disclosed only in certain circumstances where appropriate and when specifically requested.

Respectfully submitted,

Kyle D. Probst
Deputy General Counsel and Director of Government Relations
Ciox Health, LLC

SB385 - Health - Disclosure of Medical Records - P

Uploaded by: Martha Nathanson

Position: UNF



CARE BRAVELY

SB385 – Health – Disclosure of Medical Records - Penalty

Senate Finance Committee – February 9, 2022

Testimony of Martha D. Nathanson, Esq., Vice President, Government Relations and Community Development LifeBridge Health

Position: **OPPOSE**

I am writing in OPPOSITION to SB385. LifeBridge Health is a regional health system comprising Sinai Hospital of Baltimore, an independent academic medical center; Levindale Geriatric Center and Hospital in Baltimore; Northwest Hospital, a community hospital in Baltimore County; Carroll Hospital, a sole community hospital in Carroll County, and; Grace Medical Center in Baltimore (formerly Bon Secours Hospital).

This bill unnecessarily expands the definition of medical records. This unnecessary expansion may create confusion for patients, impede access to timely care, and increase administrative burden for hospital staff. Medical records play an important role in patient care, providing patients and their caregivers with relevant, timely and historical medical information. Reading their record can help patients better understand their conditions and make informed decisions about their care, but in our experience, the information in these records can also overwhelm them at a time when they need appropriate levels of information to process.

SB385 will negatively impact this process. It requires hospitals to include information collected and maintained for auditing purposes only in the patients' medical records. Such information is required by regulators but is not intended to inform diagnosis or treatment related entries in the record, and will infuse the record with irrelevant and somewhat confusing documents and information. In addition, the inclusion of such irrelevant information may cause delays in patient care, as physicians or other providers will have to review significantly more information – again, much of which will be irrelevant to patient care and intended for audit purposes only – thereby increasing time needed for review and possibly delaying delivery of needed care.

We cannot ignore the administrative burden on hospital staff to manage additional resources required to manage the new information. While administrative burden is a concern at any time, it is especially concerning as we and other hospitals face deep workforce shortages.

For all the above stated reasons, we request an **UNFAVORABLE** report for SB385.

Contact: Martha D. Nathanson, Esq.
Vice President, Government Relations & Community Development
mnathans@lifebridgehealth.org
Mobile: 443-286-4812

2022 NASW SB 385 Senate Side.pdf

Uploaded by: Mary Beth DeMartino

Position: UNF

February 7, 2022

**Finance Committee
Support With Amendment**

SB 407 -- Health Occupations - Health Care Staffing Shortage Emergency - Declaration and Licensing and Practice Requirements (Health Care Heroes Act of 2022)

National Association of Social Workers Maryland Chapter (NASW-MD) supports the underlying intent of SB 407 Health Occupations - Health Care Staffing Shortage Emergency - Declaration and Licensing and Practice Requirements (Health Care Heroes Act of 2022) but believes it is in need of amendments.

Our understanding of the revisions to the definition of a medical record is that it is supposed to be aligning the state's definition with HIPAA. However, it is unclear how this definition interacts with the HIPAA rules governing psychotherapy notes. Under HIPAA, psychotherapy notes not stored with the medical record are not considered part of the medical record. There are various reasons it may be appropriate for a social worker to hold their psychotherapy notes separate from the medical record. For example, many providers require a separate explicit release authorization for psychotherapy notes to ensure that sensitive information is not disclosed. Although Maryland law does allow mental health records to be suppressed if the patient could be harmed by reading them, this bill does seem to be removing the broader psychotherapy notes exemption, which could reduce patient privacy.

We are also concerned about the bill's \$1,000 fine for failing to provide records within 21 days. Many social workers work in small private therapy practices that would have serious difficulty paying a \$1,000 fine. Social workers have an ethical obligation to provide patients with their records on request, but delays occasionally happen. Most delays are due to difficulties getting appropriate authorization or copying fees from a patient. Additionally, there are some scenarios where a social worker has an ethical obligation to sit down with their patient to go over their record before sharing it, which can cause delays. Whatever the reason for the delay, social workers are always in contact with their patients, trying to resolve the delay.

Finally, we believe that there are already sufficient penalties for individuals who do not take seriously their responsibility to ensure that patients have access to their medical records. Current law provides criminal liability for providers who willfully fail to provide medical records within 21 days. Additionally, HIPAA includes possible sanctions for providers who fail to provide medical records timely.

NASW-MD asks for an unfavorable report. If you have any questions, please feel free to contact Mary Beth DeMartino, Executive Director, NASW MD (mdemartino.naswmd@socialworkers.org).

SB 385 - Disclosure of Medical Records - Penalty -

Uploaded by: Michael Paddy

Position: UNF



Senate Bill 385 - Health - Disclosure of Medical Records - Penalty

Position: *Oppose*

February 9, 2022

Senate Finance Committee

MHA Position

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment in opposition of Senate Bill 385. We are concerned this bill would unnecessarily expand the definition of medical records, which may confuse patients, impede access to timely care, and increase administrative burden for hospital staff at a time when they can least afford it.

Maryland hospitals are dedicated to delivering the best care for our patients. Medical records can play a role in this process. A properly defined set of medical records gives patients important and relevant medical information. This can help patients better understand their conditions and make informed decisions about their care.

SB 385, however, would jeopardize this process. If enacted, the bill would require hospitals to expand patients' medical records to include information maintained for auditing purposes. Hospitals are required by regulators to maintain a variety of information for auditing purposes, much of which is not intended to help explain the patient's diagnosis or treatment. Forcing hospitals to include such information will flood the patient's medical records with large amounts of irrelevant documents. We are concerned this will confuse patients and make it harder for them to find what they need to understand their conditions or treatment.

We are also concerned the inclusion of a large volume of irrelevant information may delay patient care. A physician providing a consult or second opinion, for example, would have to sift through an expanded medical record containing a large amount of irrelevant auditing information. This will increase providers' review time and potentially delay the delivery of needed care.

Finally, the bill would require hospitals to divert resources and staff to capture the unnecessary information. The additional administrative burden would be difficult in the best of times, but will be especially challenging as hospitals confront COVID-19 and try to navigate the health care workforce shortage.

For these reasons, we urge an *unfavorable* report on SB 385.

For more information, please contact:
Michael Paddy, Director, Government Affairs

Mpaddy@mhaonline.org

Johns Hopkins – SB 385 – Health – Disclosure of Me

Uploaded by: Pamela Rayne

Position: UNF

SB 385
Unfavorable

TO: The Honorable Delores Kelley, Chair
Senate Finance Committee

FROM: Pamela Rayne
Practice Group Leader & Chief Legal Counsel – Privacy
Johns Hopkins Health System Corporation

DATE: February 9, 2022

Johns Hopkins urges an **unfavorable report** on **SB 385 – Health – Disclosure of Medical Records – Penalty**. Under Federal law, specifically HIPAA, patients currently have the right to request an accounting of certain disclosures. This right is limited to situations where information is disclosed outside of the provider’s workforce. This right does not require a provider to share information detailing who has had access to their medical record internally. The limitations on the current Federal law deliberately balanced the administrative burden on providers against the value this type of information would offer to patients. This proposed bill would substantially expand the current right granted to patients under Federal law by requiring providers to include, as part of a standard request for medical records, a full audit log or “access report” of every “transmission” of a patient’s health information.

In 2011, the Office for Civil Rights (“OCR”) issued a Notice of Proposed Rulemaking to require HIPAA Covered Entities to provide this type of “access report” to patients upon request. There was such substantial and legitimate concern raised by the health care industry over the significant costs and burden imposed on providers, the confusion such robust access logs may cause patients, and the risk to employee privacy, that OCR withdrew the proposed rule.

Given the complexity of the provision of health care at places like Johns Hopkins, even over a six-month period of time, these audit logs can be thousands of pages in length, with a file size of over 50MB, and contain tens of thousands of accesses by workforce members who are appropriately performing their job duties. These logs are difficult to read, are confusing and overwhelming to someone who does not have a thorough understanding of the way the electronic medical records system functions, and vary in structure depending on the electronic medical record system employed by the provider. Johns Hopkins receives over 1,000 requests for medical records per day, most of which request “all medical records.” Producing these logs is complicated and burdensome, and producing these logs with each request for medical records would delay a patient’s access to actual treatment information and increase the cost to patients for producing medical records. Additionally, it is presumed that once a patient receives a copy of this audit log, they will request assistance in interpreting it and understanding why each employee accessed their record. Adding this additional

requirement would be overwhelming to already overburdened staff.

In addition to the burden including these audit logs would place on providers, there are also significant employee and institutional privacy concerns. Providing a patient with the full name of every employee who accessed his or her medical record puts the employee at risk. Our staff is frequently the target of threats and violence and providing this detailed information to every patient who requests his or her medical record would increase the risk while offering very little benefit. Additionally, many of the accesses to a medical record may be the result of an internal quality improvement project or a privileged investigation into an adverse event, and disclosing this information could put any applicable privilege at risk and could have a chilling effect on these important activities.

To better protect patient privacy and to address any concerns patients may have as it relates to accesses to their records, each provider is already obligated under HIPAA to respond to privacy complaints issued by a patient. This typically includes an internal review of these audit logs by professionals who are specially trained in understanding what the logs mean and whether the accesses were appropriate or not. Complaints are then responded to with a comprehensive conclusion as to whether the patient's record has been appropriately accessed. We believe this process is sufficient and appropriately balances a patient's interest against the concerns outlined above.

For these reasons and others, Johns Hopkins Medicine recommends an **unfavorable report** of **SB 385 – Health – Disclosure of Medical Records – Penalty**.

SB 385 Health - Disclosure of Medical Records - Pe

Uploaded by: Pegeen A. Townsend

Position: UNF

SB 385 – Health – Disclosure of Medical Records - Penalty

Position: *Oppose*

February 9, 2022

Senate Finance Committee

Bill Summary

Senate Bill 385 would add information maintained for auditing purposes to the definition of medical record and creates a civil penalty for actual damages or \$1,000, whichever is greater, for violations.

Position

This bill would unnecessarily expand the definition of medical records, which may create confusion for patients, impede access to timely care, and increase the administrative burden for hospital staff at a time when they can least afford it.

MedStar Health is dedicated to providing the best care for our patients. Medical records can play a role in this process. A properly defined set of medical records provides patients with important, and relevant, medical information. This can help patients better understand their conditions and make informed decisions about their care.

SB 385, however, would jeopardize this process. If enacted, the bill would require hospitals to expand patients' medical records to include information maintained for auditing purposes. Hospitals are required by regulators to maintain a variety of information for auditing purposes, many of which are not intended to help explain the patient's diagnosis or treatment. Forcing hospitals to include such information will flood the patient's medical records with large amounts of irrelevant documents. We are concerned that this will confuse our patients and make it harder for them to find what they need to understand their conditions or treatment.

The inclusion of a large volume of irrelevant information may cause delays in patient care. A physician providing a consult or a second opinion, for example, must now sift through an expanded medical record containing large amount of irrelevant auditing information. This will increase providers' review time and potentially delay the delivery of needed care.

Finally, the bill will require hospitals to divert resources and staff to capture the extra information. The additional administrative burden would be difficult in the best of times but will be especially challenging as hospitals confront the Omicron surge and try to navigate the healthcare workforce shortage.

For the reasons listed above, we respectfully ask that you give SB 385 an ***unfavorable*** report.

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Uploaded by: Heather Shek

Position: INFO



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Damean W.E. Freas, D.O., Chair

2022 SESSION LETTER OF INFORMATION

BILL NO.: SB 385 – Health – Disclosure of Medical Records – Penalty
COMMITTEE: Finance
POSITION: Information

TITLE: Health – Disclosure of Medical Records – Penalty

POSITION & RATIONALE:

The Maryland Board of Physicians (the Board) is submitting this Letter of Information for SB 385 – Health – Disclosure of Medical Records - Penalty. As drafted, SB 385 does not state who would be responsible for imposing a civil fine on a health care provider that knowingly refuses to disclose a medical record within a reasonable time frame of no more than 21 working days.

Pursuant to Health Occupations Article § 14-404(a)(13), the Board currently has statutory authority to discipline a licensee who, on proper request, and in accordance with the provisions of Title 4, Subtitle 3 of the Health General Article, fails to provide details of a patient's medical record to the patient, another physician or a hospital.

The Board would like to confirm that the civil penalty noted in Health General Article § 4-309(a) in the bill is separate from the fine that the Board may impose on licensees for a violation of H.O. § 14-404(a)(13), and the Board seeks clarification on whether the Board or another agency would be responsible for imposing the civil penalty authorized by Health General § 4-309(a).

I appreciate your consideration. If you have questions or need additional information, please contact Matthew Dudzic, Health Policy Analyst, Maryland Board of Physicians, 410-764-5042.

Sincerely,

Damean W. E. Freas, D.O.
Chair, Maryland Board of Physicians

The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.

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