

February 7, 2022

**Health and Government Operations Committee
Opposed**

HB 643 Health - Disclosure of Medical Records – Penalty

National Association of Social Workers Maryland Chapter (NASW-MD) **is opposed to HB 643 Health - Disclosure of Medical Records – Penalty**. This bill modifies the definition of medical record and creates a \$1,000 fine for failure to timely provide a medical record. Although we recognize that it is important that patients have timely access to their medical record, we feel this bill could lead to adverse consequences.

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 that 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).