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SB 568

February 23, 2022

TO: Members of the Senate Judicial Proceedings Committee
FROM: Natasha Mehu, Director, Office of Government Relations
RE: Senate Bill 568 - Health Records and Reporting of Overdoses - Limitations on Use in Criminal Investigation or Prosecution

POSITION: SUPPORT WITH AMENDMENTS

Chairman Smith, Vice-Chairman Waldstreicher, and members of the committee, please be advised that the Baltimore City Administration (BCA) **supports SB 568 with amendments.**

This bill clarifies the original legislative intent of Health-General Article § 13-3602. It would save the lives of numerous overdose victims, and have little, if any, impact on criminal investigations while protecting the relationship between emergency medical services providers and some of their most desperate patients. Our amendment further clarifies that we are seeking to protect the individuals' medical records.

The Issue:

In 2018, the General Assembly created Health-General Article § 13-3602, Reporting an overdose. This statute effectively required¹ emergency medical services providers (such as municipal fire department medics) to report overdose information to overdose mapping applications. The statute specified that the “[o]verdose information reported by an emergency medical services provider” to these mapping applications “**may not be used for a criminal investigation or prosecution.**” H-G § 13-3602(e) (emphasis added). This, however, created ambiguity.

¹ Although H-G § 13-3602(a) only says emergency medical services providers “may” report overdose information to such applications, H-G § 13-3602(d) says that the Maryland Institute for Emergency Medical Services Systems (“MIEMSS”) “shall” report it, and COMAR 30.03.04.04 requires all emergency medical services providers to report to MIEMSS, so H-G § 13-3602 effectively requires all overdose information to be reported, even if indirectly.

The Ambiguity:

Some people read H-G § 13-3602(e)'s ban on using such medic-provided overdose information in criminal investigations as a privacy protection for the overdose victims that shields the medical record created as a result of the 911 call from being examined for criminal investigator purposes. Such protections are important to ensure that overdose victims and their associates are willing to call 911 in an emergency, and willing to provide accurate information once a medic has arrived, even when the patient is overdosing on illicitly obtained substances.

Other people read the ban as much more limited – merely preventing criminal investigators from taking the medic-reported information *directly from the mapping applications*, while still allowing law enforcement and prosecutors to obtain the same information from the separately maintained, medic-created medical records concerning these overdoses.

The Problem:

Under the latter, less restrictive reading, the ban provides no real privacy protection, as criminal investigators can use a mapping application as a shopping list to tell them what overdose victims' medical record information they wish to obtain from the emergency medical services providers' records, even if they cannot get this information directly from the mapping applications. Read this way, the ban in H-G § 13-3602(e) is effectively meaningless.²

Moreover, if a criminal investigator is allowed to obtain overdose victims' medical record information directly from emergency medical providers for use in criminal investigations and prosecutions, the fear of police involvement will dissuade overdose victims and their associates from calling 911 at all, thereby resulting in more overdose deaths.

The Solution:

The amendments to H-G § 13-3602 and Health-General Article § 4-306 proposed in SB568 merely make it clear that the ban in H-G § 13-3602(e) was intended to help keep overdose victims alive by making sure that the fear of criminal investigation does not dissuade overdose victims from seeking help. By clarifying that criminal investigators may not obtain this overdose information directly from the medical records held by emergency medical services providers, SB 568 maintains the key distinction between seeking emergency medical assistance and inviting criminal investigation of an overdose. In addition to altering the text of H-G § 13-3602(e) itself, this bill also amends H-G § 4-306 simply to clarify that emergency medical services providers are not required to provide the medical records for criminal investigations that H-G § 13-3602(e) says cannot be used for criminal investigations or prosecutions.

An important point to note is that SB 568 only clarifies that criminal investigators cannot invade the privacy of the patient-medic relationship to obtain the information from the emergency medical records. For instance, when a 911 call comes in explicitly requesting assistance with an "overdose," jurisdictions are free to dispatch both medics and police officers to the scene (as many do) so that police can investigate a possible crime while medics provide healthcare. This bill does nothing to change that.

However, many overdose victims and their associates (generally, those using illegally obtained substances) specifically will not mention an overdose or drugs to the 911 operator, but will instead describe the emergency as "breathing trouble" or the like, in order to avoid having

² Because we do not believe that the General Assembly intended the ban in H-G § 13-3602(e) to be meaningless, we believe that SB568 merely clarifies this statute's original intent.

police officers dispatched along with the medics. It is these overdose victims – those already attempting to hide from criminal investigators – whose overdose information will be kept private in their emergency medical records, because it is precisely these victims who will stop calling 911 if even a “breathing trouble” emergency call also results in police involvement.

H-G § 13-3602 was passed to ensure that overdose information could be quickly and accurately collected and shared so that public health authorities could respond with resources that could save people’s lives. The ban on using overdose information in criminal investigations or prosecutions in H-G § 13-3602(e) was intended to make sure that this collecting and sharing would not discourage people from calling 911 for emergency medical assistance during an overdose, and SB568 merely clarifies what is prohibited by that ban. Indeed, if overdose victims and their associates stop calling 911, the emergency medical services providers will stop having the overdose information to report, thereby defeating the entire purpose of H-G § 13-3602 as a whole.

If criminal investigations scare these people away from calling 911 at all, more overdose victims will needlessly die. And any small value to criminal investigations that access to these emergency medical records might have provided will quickly evaporate, as these 911 calls dwindle in number, and as even the few victims that continue to call begin providing fake names and fake contact information to emergency medical service providers. If criminal investigators are allowed to pry into these emergency medical records for use in criminal investigations, any value to such investigations will be short-lived, but the trust between overdose victims and medics will be gone forever.

The clarifying statutory amendments in SB 568 preserve that trust. This bill allows overdose victims to call 911 without fear of police involvement. It encourages overdose victims to continue to provide accurate information to their emergency healthcare providers. It allows medics to continue to respond to as many overdoses calls as possible, to report as many of those calls to mapping applications as possible, and to save as many lives as possible.

For these reasons, we request a **favorable with amendments** report on SB 568.