



# POSITION PAPER 2024

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## **SB 144, HB 153 Attorney Requests Fees for Medical Records, Social Security cases FAVORABLE**

SB 144, HB 153, Medical Records – Fees – Attorneys Representing Patients permits the lawyer for a Social Security Disability applicant to save the **applicant** substantial money. Maryland law already states that the medical provider may not charge the patient (applicant) or some of the patient's agents, a fee for obtaining medical records. See Md. Health-General Code Ann. §4-304(c)(5). But that law does not expressly exempt the patient's lawyer from being charged an unlimited fee that ultimately comes out of the applicant's money. This bill resolves the issue that lawyers requesting or being sent the patient's medical records may not be charged any amount (sometimes hundreds or thousands of dollars) that ultimately is reimbursed or paid up front by the patient, reducing the money the patient gets for an award.

### Explanation

In Social Security Disability cases, the patient / applicant must prove that he / she is "unable to do any substantial work because of medical condition(s)" that will last for at least one year or will result in death. Typically, for that serious medical condition or combination of medical conditions, there is a long history of health care treatment with a huge number of medical records, all of which must be presented. Although Maryland law and the HITECH (federal law) say the "patient" can get those records for a nominal cost, the law does not limit the amount the patient's lawyer can be charged. In *Ciox Health, LLC v. Azar*, 435 F. Supp.3d 30 (D.D.C. 2020), the court held the HITECH limit on medical record charges for the "patient" do not apply to the patient's lawyer or when the patient requests that medical records be sent to a third party. Although not precisely on point, the case of *Silver v. Greater Balt. Med. Ctr., Inc.*, 248 Md. App. 666, 678 (2020) (not certifying a class action and not discussing *Ciox*), helps explain the issue. The lawyer requesting patient medical records was charged the patient rate for \$573.39 but the hospital maintained a distinction that a decision must be made in every request whether the lawyer or patient requested the records thereby preserving the right to charge the lawyer a higher amount.

Therefore, the lawyer representing the patient / applicant must either 1) advance money for medical records, 2) get the client to pay up front for medical records, 3) direct the patient to go to all health care providers to get medical records or otherwise get them, or 4) find some other way to get medical records. For a client who is disabled, there is significant difficulty in personally getting medical records. It benefits the client for the lawyer to request records to make sure that records are complete, obtained timely and efficiently, and can be evaluated for the client to qualify for the extremely high SS disability standard. For example, a client who is able to work in a gas station as a cashier may not be deemed sufficiently "unable to do any substantial work" as an illustration why all medical records are needed. Ultimately, the cost comes out of the patient's award, social security disability is awarded, reducing the disabled person's needed money.

This bill would benefit disabled persons and promote access to disability benefits.

**The MAJ requests a FAVORABLE Committee Report.**