



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

***Confidentiality of Medical Records - Definition of Medical Record
(HB316)***

Good afternoon Chair Bagnall, Vice Chair Cullison, and members of the Committee. My name is Delegate Aaron Kaufman, and I am requesting a favorable report on House Bill 316, Confidentiality of Medical Records - Definition of Medical Record.

This bill addresses a serious and growing gap in modern health care. Today, patient charts often tell only part of the story in hospital settings.

Across hospitals and health systems, clinicians routinely use secure, HIPAA-compliant electronic messaging within Electronic Health Record platforms to make real-time clinical decisions—consulting specialists, clarifying medications, discussing diagnostic findings, and coordinating care. These are not casual conversations; they involve substantive medical judgment. Yet in many systems, these clinically relevant communications are not preserved as part of the patient’s official medical record.

When those messages disappear, the clinical reasoning behind care decisions disappears with them. That creates risks for continuity of care, patient transparency, and patient safety—especially during handoffs or transfers, when new providers must rely on an incomplete record.

The consequences are not theoretical. The Maryland Association for Justice has provided real-world examples of cases in which preserving clinically relevant electronic communications could have prevented tragic outcomes.

In one case, electronic messages between clinicians documented concerns that a laboring mother was not receiving timely physician support and that delivery delays posed serious risks. Those concerns never appeared in the medical chart, despite catastrophic outcomes for the child.

In another case, electronic messages showed a hospitalist sending x-ray images of a bowel obstruction to a surgeon who later denied knowledge of the condition; the failure to act led to the patient's death.

HB 316 establishes a simple and commonsense principle: if a communication informs patient care, it belongs in the medical record.

While some electronic clinical messages may be technically discoverable during litigation, they are often not retained as part of the patient's official medical record. As a result, those messages may be deleted, overwritten, or lost under routine data-retention practices long before a patient, provider, or court ever knows they exist.

HB 316 ensures that clinically relevant messages are maintained, not merely theoretically discoverable. If a communication informs diagnosis, treatment, or clinical decision-making, it should be preserved as part of the patient's medical record—just like progress notes, orders, or test results.

This bill is not about restricting or chilling doctor-to-doctor communication. It does not require documentation of personal opinions, informal discussions, or non-clinical exchanges. It applies only to substantive clinical communications that affect patient care.

At its core, this is a patient access and patient rights issue. Medical records belong to the patient. Patients cannot access information that was never preserved, even when that information directly influenced their care. Ensuring these messages are retained protects patients, supports providers, and strengthens trust in the medical record.

This is both a patient-safety bill and a provider-support bill. Preserving these communications protects patients by ensuring continuity and transparency, and it protects clinicians by documenting appropriate clinical judgment and decision-making—particularly during transitions of care or retrospective review.

Importantly, this bill does not compromise privacy. Hospitals already rely almost entirely on electronic medical records stored in HIPAA-compliant systems. Medical records are legally the property of the patient regardless of where they are stored. HB 316 simply ensures that all clinically meaningful information is treated with the same accountability.

The need for this bill is underscored by data. A multi-site study cited by the American Medical Association found that clinicians across 14 hospitals and 263 outpatient clinics exchanged more than 9.6 million secure messages in six months, with usage increasing by nearly 30 percent as systems were fully adopted. Additional NIH-published research shows messaging volume growing from fewer than 10,000 messages per month to well over 200,000 per month in a single health system. Clinical decision-making is already happening in these platforms; policy has not kept pace.

At its core, HB 316 modernizes medical-record standards to reflect modern medical practice. It strengthens continuity of care, improves transparency, enhances patient safety, and supports providers. For these reasons, I respectfully request a favorable report on HB 316. Thank you, and I am happy to answer any questions.

Footnotes

1. Department of Health & Human Services Centers for Medicare & Medicaid Services. Center for Medicare and Medicaid Services. (n.d).
<https://www.cms.gov/files/document/qso-25-24-hospitals.pdf>
2. Agency for Healthcare Research and Quality (AHRQ), Health Information Security & Privacy Collaboration (HISPC) Toolkit (2023),
<https://digital.ahrq.gov/health-it-tools-and-resources/health-information-security-and-privacy-collaboration-toolkit>
3. Joint Commission / CMS — Secure Text Messaging & EHR Documentation FAQ (2024), “Use of Secure Text Messaging for Patient Information and Orders,”
<https://www.jointcommission.org/standards/standard-faqs/hospital-and-hospital-clinics/information-management-im/000002483/>.
4. National Institute of Health — Growth And Patterns of Secure Clinical Messaging in U.S. Health Systems. National Institutes of Health, PubMed Central, <https://pmc.ncbi.nlm.nih.gov/articles/PMC10152424/>
5. American Medical Association— Big Jump Seen In EHR Secure Messaging. American Medical Association, Practice Management: Digital Health,
<https://www.ama-assn.org/practice-management/digital-health/big-jump-seen-ehr-secure-messaging-good-thing>