



## 2026 WRITTEN TESTIMONY

### HEALTH GENERAL - CONFIDENTIALITY OF MEDICAL RECORDS DEFINITION OF MEDICAL RECORDS

#### HB 316 - FAVORABLE

The Maryland Association for Justice requests a favorable report on HB 316. HB 316 seeks to clarify existing State<sup>1</sup> and Federal law<sup>2</sup> with respect to what constitutes an individual's medical record. Adopting this bill protects the access of patients and their loved ones to communications between health care providers regarding treatment decisions made about their own private medical care.

Many Maryland health care providers and hospital systems are currently using electronic means, including text messaging applications and other software, to facilitate communications between providers regarding treatment of patients. These communications are currently maintained for very short periods of time within the software programs (generally thirty days) and thus are unavailable to patients and their loved ones after this short time period expires.

These electronic messaging communications, which include critical medical decision-making between providers, frequently contain information that is not documented within the patient's Electronic Health Record ("EHR"), and is thus unavailable to the patient. This Bill does not require these communications to be integrated into the patient's EHR, rather, it simply requires that the communications be preserved for the time periods set forth under Maryland law, and thus available to the patient upon request.

The companies that provide health care messaging software programs advertise ways for their users to preserve or archive these messages, and the cost of doing so is minimal.<sup>3</sup>

Patients and their loved ones have a right to know what happened to them when they are in their most vulnerable state receiving medical treatment – especially when something bad happens. This Bill clarifies existing Maryland and Federal law, ensuring that a patient's right to access their private medical records is safeguarded through preservation of provider-to-provider communications.

## The Maryland Association for Justice urges a FAVORABLE Report on HB 316.

1. Md Health General §4-403 codifies the time periods for which medical records must be preserved.
2. 45 C.F.R. § 164.501 provides individuals with a right to access, inspect, and maintain a copy of protected health information about the individual in a designated record set. "Designated record set" is defined as "a group of records maintained by or for a covered entity" used for the care of the patient. 45 C.F.R. § 164.501 further specifies that "the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity."
3. See attached sample advertisement from TigerConnect, along with a sample contract showing the annual user fee for archiving of \$12.80.

### About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

10440 Little Patuxent Parkway, Suite 250  
Columbia, MD 21044  
(410) 872-0990 | FAX (410) 872-0993  
info@mdforjustice.com  
mdforjustice.com



## 2026 WRITTEN TESTIMONY

### **HB 316: Health General – Confidentiality of Medical Records – Favorable**

The following is a non-exhaustive list of examples of patient care in which electronic communications have been critical to a complete understanding of what actually happened to the patient:

1. In a case involving a child who suffered a severe brain injury due to delay in delivery, electronic messages between midwives caring for the mother discussed their concerns about lack of physician support and the fact that delivery was not occurring quickly enough. One message specifically noted the likelihood of litigation after delivery due to the profound medical treatment failures and avoidable consequences.
2. In a case of delayed diagnosis of bowel obstruction that caused a patient's death, a surgeon and a hospitalist caring for the patient denied that they knew critical information about her condition, and disputed when they learned the information. Electronic messages showed that the hospitalist sent screenshots of x-rays showing the bowel obstruction to the surgeon, who failed to act and thus avoid the tragic outcome.
3. In a case involving the death of an elderly patient following elective (not urgent) surgery, electronic messages revealed extensive communications between nurses and surgeon wherein the nurses expressed concern that the patient should not undergo surgery due to her blood sugar levels. The surgeon disregarded their warnings, and the woman died because of the unnecessary surgery.
4. In a case involving a testicular torsion in a teenage boy, a nurse, through electronic messaging, communicated the severity of the boy's condition to the urology service on shift at the hospital. Urology did not come to see patient for more than 12 hours, at which time the testicle was unsalvageable.
5. In another case involving a child who suffered profound brain damage, there were questions in litigation regarding the timing of the infant's resuscitation and status at various points in time. Electronic messages between nurses detailed significant information as to the child's status and the timing of the injury.
6. In a case involving a newborn who suffered an injury from a misplaced IV that caused toxic material to leak into his tissues, the providers shared photographs of the baby by electronic message discussing the nature, cause, and treatment of the baby's injury.