

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1481

(Delegate Waldstreicher)

Health and Government Operations

Judicial Proceedings

Medical Records - Disclosure in Response to Compulsory Process

This bill requires that a specified notice and other documentation (which must be sent to specified parties in order to require a health care provider to disclose a medical record) be sent by first-class mail – as well as by certified mail, as specified in current law – to the person in interest and, if applicable, by first-class mail to the court and parties in a criminal or juvenile delinquency case. The bill also alters the content of the notice.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: “Person in interest” means (1) an adult on whom a health care provider maintains a medical record; (2) a person authorized to consent to health care for an adult consistent with the authority granted; (3) a duly appointed personal representative of a deceased person; (4) a minor, if the medical record concerns treatment to which the minor has the right to consent and has consented; (5) a parent, guardian, custodian, or representative of the minor designated by a court, in the discretion of the attending physician who provided the treatment to the minor; (6) if the previous two items do not apply to a minor, a person authorized to consent to health care for the minor consistent with the authority granted or, except if the parent’s authority to consent to health care for

the minor has been specifically limited by a court order or a valid separation agreement entered into by the parents of the minor, a parent of the minor; or (7) an attorney appointed in writing by any of the aforementioned persons.

“Compulsory process” includes a subpoena, summons, warrant, or court order that appears on its face to have been issued on lawful authority. A health care provider must disclose a medical record without the authorization of a person in interest in accordance with compulsory process, subject to specified limitations, if the person receives specified notice and the subpoena, summons, warrant, or court order seeking the disclosure or production of the records.

Under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), covered entities may not use or disclose protected health information except either as the privacy rule permits or as an individual authorizes in writing. Covered entities may disclose protected health information without an individual’s authorization for such purposes as treatment, payment, health care operations, and public interest activities. The HIPAA privacy rule defines “covered entities” as health plans, health care clearinghouses, and health care providers. “Protected health information” is individually identifiable health information that is transmitted or maintained by electronic media or any other form or medium, excluding individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, student health records for individuals attending an institution of postsecondary education who are at least age 18, and employment records held by a covered entity in its role as employer.

Maryland’s Confidentiality of Medical Records Act requires health care providers and facilities to keep the medical record of a patient confidential and obtain written consent for disclosure, even for purposes of treatment and payment. Generally, a person to whom a medical record is disclosed may not redisclose the medical record unless authorized by the person in interest. Exceptions are made for such purposes as provision of health care services, billing, utilization review, and legal claims.

A health care provider may, under specified circumstances, disclose a medical record without the authorization of the person in interest if (1) the health care provider receives a written assurance from the party or the attorney representing the party that, in all other proceedings, a person in interest has not objected to the disclosure of the designated medical records within 30 days after the notice was sent or (2) a specified notice and other documentation is mailed by certified mail to the person in interest by the person requesting the disclosure at least 30 days before the records are to be disclosed.

Additional Information

Prior Introductions: None.

Cross File: SB 557 (Senator Stone) - Judicial Proceedings.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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