

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1358 (Delegate Grammer)
 Health and Government Operations

Health - Protection of Personal Medical Information

This emergency bill generally establishes that each individual in the State has a right to confidentiality and privacy concerning their “personal medical information.” Thus, a person (except an individual’s personal health care provider, caretaker, or guardian, but including a school, college, university, agency, or department, whether public or private) is prohibited from (1) adopting a policy that limits an individual’s autonomy, decision making, freedom of expression, or access based on the individual’s personal medical information or (2) requiring the release or revelation of an individual’s personal medical information. A public official, employee, or agent of the State or any of its political subdivisions may not impose, collect, enforce, or effectuate any penalty in the State that violates the bill’s protections. A violation of the prohibition is a misdemeanor and, on conviction, a violator is subject to a fine of up to \$1,000. The Attorney General must prosecute or defend the rights established under the bill.

Fiscal Summary

State Effect: General fund expenditures increase for the Office of the Attorney General (OAG) by \$73,200 in FY 2022 and may increase for the Judiciary. Federal fund revenues and expenditures are potentially at risk, as discussed below.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
FF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$73,200	\$233,200	\$242,000	\$248,700	\$255,200
FF Expenditure	(-)	(-)	(-)	(-)	(-)
Net Effect	(\$73,200)	(\$233,200)	(\$242,000)	(\$248,700)	(\$255,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Federal fund revenues and expenditures are potentially at risk, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Personal medical information” means information related to or revealing specifics or details of an individual’s medical or dental condition, diagnosis, treatment, operation, procedure, medication, immunization, genetic modulation, inoculation, or any other similar or related information.

An employer may not request or require the release or revelation of an individual’s personal medical information in connection with a hiring, promotion, demotion, retention, disciplinary action, or other related decision. An employer may require or perform a drug screening in compliance with an employer’s policy.

A health care provider may not use an individual’s personal medical information to deny the individual access to health care services.

Current Law:

Immunizations

Against COVID-19: According to [guidance](#) provided by the U.S. Equal Employment Opportunity Commission specific to the COVID-19 pandemic, an employer may require its employees to receive a COVID-19 vaccine. The guidance includes information for employers who do so to ensure compliance with other applicable federal laws, such as the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1991, which generally allow for medical and religious objection exemptions.

Maryland imposed a vaccine requirement, effective September 1, 2021, for all staff of residential facilities operated by the Maryland Department of Health (MDH) or a local health department (LHD), State correctional facilities, State facilities operated by the Department of Juvenile Services, Charlotte Hall Veterans Home, other State congregate living facilities, and all nursing homes and hospitals. Employees must show proof of vaccination or adhere to strict face covering requirements and submit to regular, ongoing COVID-19 testing. In addition, State colleges and universities require all students, faculty, and staff to be vaccinated to be on campus.

In November 2021, the federal Centers for Medicare and Medicaid Services issued an interim final rule with comment period establishing COVID-19 vaccination requirements for staff at specified Medicare- and Medicaid-certified providers and suppliers. Noncompliant providers and suppliers are potentially subject to enforcement remedies available under federal law, including loss of federal funding.

Against Other Diseases: In cooperation with the State Board of Education and the Statewide Advisory Commission on Immunizations, MDH must adopt rules and regulations regarding immunizations required of children entering schools. Unless the Secretary of Health declares an emergency or an epidemic of disease, a child whose parent or guardian objects to immunization on the ground that it conflicts with the parent's or guardian's *bona fide* religious beliefs and practices may not be required to present a physician's certification of immunization in order to be admitted to school. The Secretary of Health must adopt rules and regulations for religious exemptions.

“Related institutions” (generally nursing homes and assisted living facilities) must immunize residents and employees against the influenza virus and immunize residents against pneumococcal disease in accordance with recommendations established by the Advisory Committee on Immunization Practices of the U.S. Centers for Disease Control and Prevention. A resident or employee is not required to receive a vaccine if it is (1) medically contraindicated; (2) against the resident's or employee's religious beliefs; or (3) the resident or employee refuses the vaccine (after being fully informed of the health risks associated with not receiving the vaccine).

An individual enrolled in an institution of higher education who resides in on-campus student housing must be vaccinated against meningococcal disease. An individual is exempt from this requirement if (1) the institution of higher education provides detailed information on the risks associated with meningococcal disease and the availability and effectiveness of any vaccine to the individual or the individual's parent or guardian and (2) the individual or the individual's parent or guardian signs a written waiver that the individual has received and reviewed the information provided and has chosen not to be vaccinated against meningococcal disease.

Health Insurance Portability and Accountability Act

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.

Confidentiality of Medical Records Act

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. Chapters 165 and 166 of 2017 expanded the exception to redisclosure to include instances where the medical record was disclosed to a guardian *ad litem* and certain criteria are met.

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.

Chapters 700 and 701 of 2017 expressed the intent of the General Assembly that Maryland's Confidentiality of Medical Records Act (1) not be interpreted to be more restrictive than the federal privacy regulations adopted under HIPAA; (2) is not intended to be in conflict with HIPAA; and (3) is to be interpreted in a way that is consistent with any federal regulations adopted under HIPAA, federal policy guidance on HIPAA, and any judicial decisions relating to HIPAA.

State/Local/Small Business Fiscal Effect: Most State agencies do not require employees to be vaccinated against COVID-19; however, many require either vaccination or a testing protocol, which necessitates disclosure of immunization status. Also, based on recent federal vaccination requirements for staff at Medicare- and Medicaid-certified providers and suppliers, certain employees of MDH at medical facilities have been required to be vaccinated against COVID-19.

The Department of Legislative Services (DLS) advises that federal funding to State and local health care facilities is potentially at risk to the extent that the bill results in noncompliance with federal vaccination requirements for Medicare- and Medicaid-certified providers. Thus, federal fund revenues and expenditures for MDH and LHDs potentially decrease as early as fiscal 2022. Any such impact, however, cannot be reliably predicted at this time. Further, small businesses, such as home health agencies, may likewise come out of compliance due to the bill.

Otherwise, it is generally assumed that the bill’s prohibition does not have a material effect on most State, local government, or small business finances. Nevertheless, many public employers must change their policies that necessitate disclosure of immunization status. Certain employers, such as State colleges and universities and some local school systems (including Baltimore City Public Schools) must change their policies that currently require vaccination against COVID-19.

Further, small businesses that require disclosure of COVID-19 vaccination to gain access to an event, such as a concert, must change their policies.

Office of the Attorney General

The Attorney General must prosecute or defend the rights established under the bill. OAG advises that additional staff are required, including one assistant Attorney General to prosecute and/or defend the rights under the bill and one administrative aide to support the attorney. DLS concurs that additional staff is likely required, particularly given the bill’s emergency status and many entities currently requiring disclosure of “personal medical information” related to COVID-19 vaccination. Accordingly, general fund expenditures increase by \$73,199 in fiscal 2022. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$59,573
Operating Expenses	<u>13,626</u>
Total FY 2022 State Expenditures	\$73,199

Future year expenditures (\$233,185 in fiscal 2023 and \$255,241 in fiscal 2026) reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Judiciary

The Judiciary advises that any increase in the District Court’s caseload results in additional clerical and court time. Accordingly, general fund expenditures may increase to handle the additional caseload under the bill; that increase cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland School for the Deaf; Baltimore City Community College; Morgan State University; Department of Budget and Management; Maryland Department of Health; Maryland Department of Transportation; Baltimore City Public Schools; Prince George's County Public Schools; Department of Legislative Services

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