

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 779

(Senator King)

Judicial Proceedings

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Office of the Chief Medical Examiner – Access to Records – Attorney General

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This bill requires the Office of the Chief Medical Examiner (OCME) to provide the Attorney General (or designee) with any “record” requested for the purpose of conducting a legal compliance audit of potential bias in the operation of OCME. OCME may not charge a fee for providing a record. The Office of the Attorney General (OAG) may redisclose any record provided only in accordance with specified current law. “Record” (1) means the original or a copy of any documentary material in any form that is in the custody of OCME and relates to the operation of OCME and (2) includes a medical record.

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Fiscal Summary

**State Effect:** General fund revenues (and, correspondingly, OAG general fund expenditures) decrease by an indeterminate amount from the prohibition on charging a fee for records provided under the bill. OCME can likely implement the bill with existing budgeted resources; to the extent that a significant number of records are requested, OCME general fund expenditures increase for additional personnel, as discussed below.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** OCME must keep complete records on each medical examiner’s (ME) case. The records must be properly indexed and include (1) the name, if known, of the deceased; (2) the place where the body was found; (3) the date, cause, and manner of death; and (4) all other available information about the death.

The original report of the ME who investigates an ME's case and the findings and conclusions of any autopsy must be attached to the ME's case record. The Chief ME (or in the absence of the Chief, the Deputy Chief ME or an assistant ME) and each deputy ME must promptly deliver to the appropriate county's State's Attorney each record that relates to a death for which the ME considers further investigation advisable.

The State's Attorney may obtain from OCME a copy of any record or other information that the State's Attorney considers necessary. A record (the result of an external examination of or an autopsy on a body excluding a statement of a witness or other individuals) or a certified transcript of the record of OCME or any deputy ME, if made by the ME or an individual under the ME's direct supervision or control, is competent evidence in any court in the State regarding its contents. OCME must charge a reasonable fee for reports as specified in a schedule of fees defined in regulations.

Pursuant to Maryland regulations (COMAR 10.35.01.14), individual files of the Chief ME are confidential medical records protected from disclosure. An ME's official autopsy report is an exception to this rule and is subject to disclosure under Maryland's Public Information Act. OCME's fee schedule is \$100 for a requested autopsy report and included consultation report. Other information or material, if releasable, is copied at a cost of \$1 per page with a minimum charge of \$25, excluding the cost of autopsy reports. Photographs, slides, and X-rays are copied electronically and charged a \$50 processing fee for each compact disc, plus \$5 per photograph, \$20 per slide image, and \$25 per X-ray copied. An additional fee of \$60 is applied for documents requested in digital format. Fees do not apply if releasable documents are viewed by appointment at OCME.

#### *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.

A health care provider may, under specified circumstances, disclose a medical record without the authorization of the person in interest to a government agency performing its lawful duties as authorized by an act of the General Assembly or the U.S. Congress, subject to specified limitations for medical records developed in connection with the provision of mental health services. A "person in interest" includes, among others, a duly appointed personal representative of a deceased person.

Chapters 700 and 701 of 2017 express 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 the Health Insurance Portability and Accountability Act of 1996 (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.

### *Health Insurance Portability and Accountability Act*

Under 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. Specifically, the privacy rule permits use and disclosure of protected health information, without an individual's authorization or permission, for 12 national priority purposes including disclosures (1) required by statute, regulation, or court orders; (2) for health oversight activities such as audits and investigations necessary for oversight of the health care system and government benefit programs; and (3) to ME's to identify a deceased person, determine the cause of death, and perform other authorized functions. These disclosures are permitted, although not required, by the privacy rule in recognition of the important uses made of health information outside of the health care context.

**State Fiscal Effect:** OCME is currently required to charge a reasonable fee for reports (noted above). As OCME is prohibited from charging a fee for records provided under the bill, OCME general fund revenues decrease by an indeterminate amount beginning in fiscal 2023. Conversely, OAG general fund expenditures decrease by a corresponding amount as any records must be provided at no cost.

OCME advises that it can likely implement the bill with existing resources. However, to the extent that a significant number of records are requested, general fund expenditures increase to hire up to one contractual records clerk.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 1074 (Delegate Pena-Melnyk) - Health and Government Operations.

**Information Source(s):** Office of the Attorney General; Maryland Department of Health;  
Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2022  
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