

**Department of Legislative Services**  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 459

(Senator Waldstreicher)

Finance

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**Medical Records - Compulsory Process Requests - Advisory Protocol and  
Voluntary Training**

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This bill requires the Office of the Attorney General (OAG), by September 30, 2020, to develop an advisory protocol and voluntary training program for health care providers regarding how to respond to compulsory process requests for medical records. The program must include information regarding the requirements of specified provisions of State and federal law. In developing the program, OAG must consult with the Maryland Department of Health (MDH) and various health professional associations and public health entities. **The bill takes effect July 1, 2019.**

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**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$76,200 in FY 2020 to hire staff. Future years reflect annualization. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	76,200	94,900	98,100	101,500	104,900
Net Effect	(\$76,200)	(\$94,900)	(\$98,100)	(\$101,500)	(\$104,900)

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

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Current Law:** “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.

“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.

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. 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 Expenditures:** General fund expenditures increase by \$76,195 in fiscal 2020, which accounts a 90-day start-up delay. This estimate reflects the cost of hiring one staff attorney to consult with MDH and specified stakeholders, develop the training protocol, and conduct the required trainings. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$70,836
One-time Start-Up Expenses	4,890
Other Operating Expenses	<u>469</u>
<b>Total FY 2020 State Expenditures</b>	<b>\$76,195</b>

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

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### **Additional Information**

**Prior Introductions:** HB 1481 of 2013, a bill with similar provisions, passed the House as amended and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 557, was enacted as Chapter 287 of 2013; however, the Act did not ultimately include the provisions of this bill.

**Cross File:** HB 868 (Delegate Barron, *et al.*) - 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 - April 1, 2019  
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