Circuit Court for Baltimore County
Case No. C-03-CV-22-003166

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1049

September Term, 2023

JANICE HOLLABAUGH

v.

MRO CORPORATION

Wells, C.J.,
Beachley,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: June 6, 2024

This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Appellant Janice Hollabaugh appeals the Circuit Court for Baltimore County's dismissal of her putative class action lawsuit against appellee MRO Corporation ("MRO"). MRO, a "national medical records provider," conducted a search for medical records at Hollabaugh's request; failing to find responsive records, MRO charged her a $22.88 fee. Hollabaugh filed suit, claiming that, because no records had been retrieved, the fee was prohibited by Maryland's Confidentiality of Medical Records Act ("CMRA"), codified at Maryland Code, Health—General Article ("HG") § 4-301 *et seq.*, which permits charges of up to $22.88 for "retrieval and preparation" of medical records. The circuit court found that the relevant provision, HG § 4-304, did not render the fee unlawful and dismissed Hollabaugh's suit. Hollabaugh timely appealed, presenting one question for our review:[1]

> Whether § 4-304(c) of Maryland's Confidentiality of Medical Records Act, which authorizes MRO, a medical records provider, to charge a fee of $22.88 "in addition to" the copying charges for medical records for the retrieval,

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[1] MRO phrases the questions presented differently, adding an additional question:

> 1. Did the Circuit Court correctly conclude that the CMRA permits a health care provider to charge a fee "for medical record retrieval and preparation" when it searches for but finds no medical records in response to a request because, as a matter of plain meaning and common sense, the phrase "medical record retrieval and preparation" necessarily encompasses a search for medical records?
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> 2. In the alternative, may the Circuit Court's dismissal of Ms. Hollabaugh's Complaint be affirmed on the ground that any claim under the CMRA would have to belong to her counsel who requested her records for use in litigation and was required to pay the allegedly unauthorized fee?

Though we affirm the circuit court based upon reasoning substantially similar to both MRO's question (1) and Hollabaugh's question presented, to the extent necessary to approach MRO's question (2), we address these issues in our consideration of standing and answer the question in the negative.

preparation, and production of such records, which also permits MRO to charge a fee of $22.88, after determining that no medical records exist for "retrieval and preparation"?

We answer in the affirmative and affirm the ruling of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

A. Maryland's Confidentiality of Medical Records Act and Relevant Federal Regulations

Maryland's CMRA, codified at Title 4, Subtitle 3 of the Health—General Article, HG § 4-301 *et seq.*, directs health care providers to maintain the confidentiality of medical records and to disclose them only as provided by the Subtitle or applicable law. HG § 4-302(a). HG § 4-304 directs providers to "comply within a reasonable time after a person in interest requests in writing" to receive a copy of, or to see and copy, a medical record. HG § 4-304(a).

Relevant to this case, HG § 4-304(c) sets forth the fees that providers are permitted to charge in connection with fulfilling such requests for records:

> (2) A health care provider may require a person in interest or any other authorized person who requests a copy of a medical record to pay for the cost of copying:
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> (i) For State facilities regulated by the Maryland Department of Health, as provided in § 4-206 of the General Provisions Article; or
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> (ii) For all other health care providers, **a reasonable cost-based fee for providing the information requested.**
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> (3)(i) Except as provided in subparagraph (iii) of this paragraph, for a copy of a medical record requested by a person in interest or any other authorized person under paragraph (2)(ii) of this subsection, a health care provider may charge a fee for copying and mailing not exceeding 76 cents for each page of the medical record.
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> (ii) **In addition to the fee charged under subparagraph (i) of this paragraph, a hospital or a health care provider may charge:**

> 1. Subject to the fee limitations that apply to persons in interest under 45 C.F.R. 164.524 and any guidance on those limitations issued by the U.S. Department of Health and Human Services, **a preparation fee not to exceed $22.88 for medical record retrieval and preparation;** and
> 2. The actual cost for postage and handling of the medical record.
>
> (iii) Subject to the fee limitations that apply to persons in interest under 45 C.F.R. 164.524 and any guidance on those limitations issued by the U.S. Department of Health and Human Services, a hospital or a health care provider that uses or maintains the requested medical records in an electronic format **may charge for an electronic copy of a medical record in an electronic format** requested by a person in interest or any other authorized person:
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> **1. A preparation fee not to exceed $22.88 for electronic format medical records retrieval and preparation;**
> 2. A per-page fee of 75% of the per-page fee charged by a health care provider under subparagraph (i) of this paragraph that may not exceed $80; and
> 3. The actual cost for postage and handling of the electronic format medical records.

Id. at (c)(2)–(3) (emphasis added).

Also, under Title 45, Section 164.524 of the Code of Federal Regulations, federal law provides that individuals have "a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set," with certain exceptions not relevant here. 45 C.F.R. § 164.524(a)(1). Fees are also controlled by Section 154.524, which states:

> (4) Fees. If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, **the covered entity may impose a reasonable, cost-based fee,** provided that the fee includes only the cost of:
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> (i) Labor for copying the protected health information requested by the individual, whether in paper or electronic form;

> (ii) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media;
> (iii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and
> (iv) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(iii) of this section.

Id. at (4).

B. Factual Background

In February 2020, Hollabaugh's counsel requested medical records—the nature of which is not in the record—from Glen Burnie Home Health, which in turn employed MRO to conduct a search for the records. MRO determined that Glen Burnie Home Health had no records responsive to the request and sent Hollabaugh's counsel a "Cancellation Invoice" for $22.88 on March 25, 2020.

On May 11, 2023, Hollabaugh filed a putative class action suit against MRO in the Circuit Court for Baltimore County, Maryland, alleging that the $22.88 fee for an unsuccessful records search was a violation of Maryland's Confidentiality of Medical Records Act, Consumer Protection Act, and Consumer Debt Collection Act, as well as for a declaratory judgment and restitution. MRO moved to dismiss. After a hearing on July 14, 2023, the circuit court dismissed all counts on the grounds that HG § 4-304(c) permitted MRO to charge the fee.

We will supply additional facts as necessary to support our analysis.

DISCUSSION

I. Hollabaugh Had Standing to Challenge the Circuit Court's Dismissal.

As a threshold issue, MRO argues that Hollabaugh did not have standing to challenge the circuit court's grant of its motion to dismiss. "We review de novo a circuit court's determinations of . . . a party's standing." *Ibru v. Ibru*, 239 Md. App. 17, 32–33 (2018).

MRO advances one argument as to why Hollabaugh does not have standing: that HG § 4-304 provides that a "person in interest" who requests copies of a medical record may be required to pay a fee. Because Hollabaugh was not the "person" required to pay a fee, MRO contends, she is not personally "aggrieved" by MRO's conduct, and therefore lacks the type of personal injury in fact which would give rise to standing to seek judicial relief.

We see nothing in the statute to indicate that the "person" contemplated in the statute may not make such a request by action of an agent. Here, there is no indication that Hollabaugh's counsel paid the fee in an individual capacity or sought her medical records of his own volition, nor any dispute appearing in the record before us that he requested records from MRO in a representative capacity as Hollabaugh's attorney. But even if a "person" under HG § 4-303 does not include the principal of an agent, it would not be dispositive of the question of standing. HG § 4-304 did not create the causes of action under which she sought relief, so our standing inquiry does not turn upon the definition of which "person" is obligated to pay a fee.

MRO draws our attention to *State ex rel. Healthport Techs., LLC v. Stucky*, 239 W. Va. 239, 800 S.E.2d 506 (2017), a West Virginia case challenging allegedly excessive fees for requested medical records, which the trial court dismissed for lack of standing. The Supreme Court of Appeals of West Virginia upheld the dismissal on the grounds that the West Virginia Code, § 16-29-1(d) [2014], permitted only "a patient, personal representative, authorized agent or authorized representative" to "enforce" the provisions of the statute. The distinction between *Stucky* and the instant case is illustrative: the CMRA does *not* purport to create a cause of action only available to certain enumerated persons, whereas the West Virginia statute did. As such, any reliance upon *Stucky* is misplaced.

Neither can we agree with MRO in its assertion that "Ms. Hollabaugh's own allegations demonstrate that she is not 'aggrieved' by anything MRO did"; on the contrary, she has forcefully asserted that she is aggrieved by the fee MRO charged her agent. We are unaware of any authority in Maryland law, and MRO points to none, holding that a principal lacks standing for an injury to her agent acting within the scope of his authority. Neither does there appear to be any genuine factual dispute that Hollabaugh's counsel acted as her agent here. As such, we proceed to consider the merits of the appeal.

II. The Circuit Court Did Not Err in Dismissing Hollabaugh's Claim, Because HG §4-304 Did Not Prohibit MRO From Charging $22.88 For Its Attempt to Retrieve Medical Records.

A. Standard of Review

"We review *de novo* both the grant of a motion to dismiss [ ] and the interpretation of a statute. . . . The grant of a motion to dismiss may be affirmed on 'any ground

adequately shown by the record, whether or not relied upon by the trial court.'" *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 142, 46 A.3d 443, 451 (2012) (cleaned up).

B. Parties' Contentions

Hollabaugh contends that fees allowed for medical record "retrieval and preparation" pursuant to HG § 4-304(c), may not be charged unless records responsive to the request are located, and MRO argues that they may. Each advances arguments based on methods of statutory interpretation.

Hollabaugh emphasizes what the text of HG § 4-304 omits, arguing that the word "retrieval" cannot be read to include "search" in both the plain text and legislative history of HG § 4-304. She also argues that the statute allows preparation fees "in addition to" per-page copying fees permitted under HG § 4-304 (c)(3)(i). Hollabaugh also draws our attention to the canon of *inclusio unius est exclusio alterius*, a rule of statutory construction which provides that an enumerated list should be read to imply that items not included were intended to be excluded; thus, a fee may be charged only for the "retrieval" or "preparation" of records, not merely a "search" for them.

Hollabaugh also contends that the CMRA is an inherently pro-consumer statute in which the legislature sought to forbid unreasonable fees charged by hospital and health care providers. Further, the legislature intended to disallow any fee not expressly provided for. Finally, she argues that the legislature consciously chose to omit language which would have capped fees for "medical record search" at $13 in the final text of the statute enacted in 1994, DEP'T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, H.B. 716 (Md. 1994), and

that an amendment in 2016 was intended to permit fees only where "cop[ies] of requested records" are provided. FLOOR REPORT, H.B. 724 (Md. 2016).

MRO responds that we should read no significance into the exclusion of the word "search," because it is equally likely that the legislature viewed it as superfluous and inherently included in the phrase "retrieval and preparation." MRO suggests that the natural meaning of "retrieval and preparation" is the "intended goal" of the statute, and searching for records is naturally contained within the broader activity of retrieving and preparing them. MRO also argues that *inclusio unius est exclusio alterius* is not helpful here because "retrieval and preparation" are not words mutually exclusive with "search"; rather, they can be read to include "search" within their definition.

MRO contends that the statute's purpose was not only consumer protection, but to allow medical records providers to charge a reasonable cost-based fee for retrieving records, and that purpose holds even where the provider's efforts to retrieve records are unsuccessful.[2]

C. Analysis

The circuit court granted MRO's motion to dismiss upon the finding that the CMRA permitted MRO's fee, as all of Hollabaugh's claims were based on her argument that HG

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[2] MRO advances additional arguments—that Hollabaugh is not a "consumer" in the context of the Commercial Law Article, which provided the basis for her suit, and that she failed to state a claim for money had or received—which do not appear to have formed the basis for the circuit court's grant of MRO's motion to dismiss. Because the circuit court resolved the matter solely upon consideration of whether the disputed fee was unlawful under the CMRA, we do not consider these issues further.

§ 4-304 rendered the fee unlawful.[3] Therefore, in determining whether the circuit court erred in granting MRO's motion to dismiss, the parties ask us to interpret the text of that provision.[4] In exercises of statutory interpretation, we engage in a multi-stage analysis:

> All '[l]egislation is created with a particular objective or purpose.' As such, '[t]he cardinal rule of statutory construction is to effectuate and carry out legislative intent.' When this Court is 'called upon to construe a particular statute, we begin our analysis with the statutory language itself since the words of the statute, construed according to their ordinary and natural import, are the primary source and most persuasive evidence of legislative intent.' However, '[w]here the statute's language is ambiguous or not clearly consistent with the statute's apparent purpose, the court 'search[es] for [the General Assembly's] intent in other indicia, including the history of the [statute] or other relevant sources intrinsic and extrinsic to the legislative process[,]' in light of: (1) 'the structure of the statute'; (2) 'how [the statute] relates to other laws'; (3) the statute's 'general purpose'; and (4) '[the] relative rationality and legal effect of various competing constructions.' With this in mind, in our statutory interpretation inquiry, we will consider the 'legislative history of [the relevant statute], including amendments that were considered and/or enacted as the statute passed through the Legislature,' as well as the related legislative documents and reports that were circulated during the pendency of the statute's enactment.

Mihailovich v. Dep't of Health & Mental Hygiene, 234 Md. App. 217, 224–25 (2017) (cleaned up).

We begin our analysis with the explicit text of HG § 4-304(c)(3).

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[3] The circuit court found, and Hollabaugh does not challenge in this appeal, that whether HG §4-304 permitted the fee "cuts through all of [the counts]," dismissing her entire case on the premise that all of her claims relied upon a finding that the fee was unlawful under the statute.

[4] Hollabaugh suggests that we would "modify" HG § 4-303 by adopting a definition that would permit MRO to charge a retrieval fee in this case. We disagree. Determining the legislature's intended meaning of words in a statute—here, whether "retrieval and preparation" countenanced retrievals that produce no results—is an act of statutory interpretation, not modification.

1. Plain Text

Subparagraph (c)(3)(i) provides that "for a copy of a medical record requested by a person in interest or any other authorized person . . . , a health care provider may charge a fee for copying and mailing not exceeding 76 cents for each page of the medical record." Subparagraph (ii) adds, "In addition to the fee charged under subparagraph (i) of this paragraph, a hospital or a health care provider may charge," in addition to a postage fee, "a preparation fee not to exceed $22.88 for medical record retrieval and preparation." Subparagraph (iii) provides that a hospital or health care provider may also charge a fee not to exceed $22.88 for records provided in electronic form. In addition, paragraph (c)(4) states that a "preparation fee" for either physical or electronic records may not be adjusted for inflation.

The crux of the parties' disagreement is simple: Hollabaugh argues that the words "retrieval and preparation" mean that a $22.88 fee is permitted *only* where records are located to be retrieved and prepared, while MRO argues that such a fee is permissible where, as here, no records were found. Both parties argue that we need go no further than the plain text of the statute to resolve this question. However, we do not rely upon a statute's text alone where the language used is ambiguous; that is, "when there are two or more reasonable alternative interpretations of the statute." *Deville v. State*, 383 Md. 217, 223 (2004) (citing *Price v. State*, 378 Md. 378, 387 (2003).

Here, neither party proposes an interpretation of the statutory text unreasonable upon its face. The words "retrieval and preparation" might or might not require the action

of retrieving a record; neither party proposes a reading of the phrase that the words cannot bear. Hollabaugh argues that "the term 'retrieval' appears conjunctively with 'preparation.'" Citing *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 642 n.6 (2018), she argues that a list of multiple items linked by the word "and" should be read to require that all items on that list are required.

However, MRO counters that we have interpreted lists linked by the word "and" to be read disjunctively in other cases, noting that the Supreme Court of Maryland read a fee "for the docking and storage of boats" to be permissible for only "docking" in *Tidewater/Havre de Grace, Inc. v. Mayor & City Council of Havre de Grace*, 337 Md. 338, 346 (1995). As such, MRO argues, the phrase "retrieval and preparation" need not necessarily be read to require the completed acts of both retrieval and preparation. Thus, the parties provide reasoned arguments why the word "and" should be read either disjunctively or conjunctively in this context, rendering its use in the text ambiguous.

Both parties also propose readings of the phrase "in addition to" which are potentially reasonable. Hollabaugh highlights text in the statute that the preparation fee is "[in] addition to" the copying fee per page found at Subparagraph (i), and argues that this was meant by the legislature to be read as a mandate that the retrieval and preparation fee may be imposed *if and only if* copying is done. MRO responds that this conclusion does not necessarily follow from the text, and that the effect of the words is effectively to say that both fees *may* be charged at once. Again, as both readings reasonable interpretations of the plain text, the legislature's intent in selecting this language is ambiguous.

Hollabaugh argues that the canon of *inclusio unius est exclusio alterius* should guide our interpretation of the statutory text. This canon of construction provides that the legislature's expression or inclusion of one thing implies the exclusion of the other, or of the alternative. *See Griffin v. Lindsey*, 444 Md. 278, 288 (2015) (quoting *Hudson v. Hous. Auth. of Balt. City*, 402 Md. 18, 30 (2007)). Because the legislature chose to include the words, "retrieval" and "preparation," Hollabaugh argues, it chose *not* to include the word "search" as activities that would permit a fee to be charged. However, we do not believe that this canon is helpful in determining the meaning of the statutory text here. At issue is whether MRO's attempt to retrieve records responsive to Hollabaugh's request falls within the scope of "retrieval" or "preparation," and whether the legislature intended to permit a fee to be charged for an attempted retrieval that does not result in the ultimate preparation of a copy. By suggesting that *inclusio unius est exclusio alterius* applies, Hollabaugh presupposes the truth of her own conclusion. That canon would only be relevant if we were to determine that "retrieval and preparation" does not include what she defines as a "search." The issue here is not whether the legislature chose to exclude certain terms that it may have included. Rather, the issue is the definition of the terms themselves. *Inclusio unius est exclusio alterius* is therefore not useful.

2. General Purpose of the Statute

Finding the plain text of the statute ambiguous, we turn to alternate tools of statutory construction, keeping in mind that our central objective is to effectuate the legislature's purpose in enacting the statute. We do not read statutory text in a manner that reaches a

result at odds with the legislature's clearly expressed purpose; that is, an absurd result. "We avoid interpretations that lead to illogical or absurd results, even where the legislation at issue is not necessarily identified as ambiguous." *Kemp v. Nationstar Mortg. Ass'n*, 248 Md. App. 1, 13 (2020), *aff'd in part, rev'd in part on other grounds sub nom. Nationstar Mortg. LLC v. Kemp*, 476 Md. 149 (2021) (citing *Goshen Run Homeowners Assoc., Inc. v. Cisneros*, 467 Md. 74, 109 (2020)). And, as the circuit court stated in granting MRO's motion to dismiss, accepting Hollabaugh's interpretation would lead to an illogical result:

> The Court's obligation here is, of course, to divine the intent of this statute, because it is the focal point of the Motion to Dismiss and the Plaintiff's argument. The overall intent of this statute is to permit the healthcare provider to charge a fee for an activity related to a response for a request of medical records, which include the production and copying of those records if they are available.
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> It seems to me, as I've pointed out in argument, that the term 'retrieval and preparation' must include by logical necessity a search for those records. There must be some activity related to a search for the records before there can be an [*sic*] retrieval and preparation. If a healthcare provider conducts a search which produces no available records, it strikes me that the better interpretation of this statute is that it has engaged in an effort to retrieve and prepare the documents, the records, for which the statutory fee, in this case $22.88, may be charged. I just don't see anything [*sic*] way to intelligently view the statute as a whole to find within it that there is a supposition that in every single request for medical records that there are records to be produced and that absent the availability of those records to be produced, the healthcare provider is not entitled to charge to engage in that retrieval and preparation process.

We agree with the circuit court; adopting a reading which would necessarily require "retrieval and preparation" to be a completed act for HG §4-304 to allow a fee would lead to an absurd result. On this point, MRO draws our attention to *Law Office of Brent Gaines v. Healthport Technologies, LLC*, a case in which the District Court for the Southern

District of Illinois was called upon to determine whether Illinois and Missouri's medical record fee statutes allowed a charge for a search that produced no results. No. 16-CV-00030-SMY-SCW, 2018 WL 2047926 (S.D. Ill. May 2, 2018). The court interpreted the plain text of both statutes to allow for such a fee, concluding:

> The Court is also persuaded that an opposite ruling would lead to an unreasonable result. Holding that the statute does not apply to fruitless searches might allow records providers to charge any price they choose for requests that do not result in the provision of records. Similarly, holding that the statute applies to such requests, but prohibits a charge, would unfairly place the burden of finding out where a patient received treatment on records providers without compensating them—they would be forced to do the work they normally are paid to undertake for free. As such, the Court concludes that Illinois' medical records statute applies to a request for medical records and allows for an initial handling fee, even when no record is furnished.
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> *Id.* at *5.

We think that the Southern District of Illinois' reasoning applies with equal force here. The conclusion Hollabaugh urges, essentially "that the statute applies to [her request], but prohibits a charge," *id.* at *5, would require at least some indication that the legislature intended that health care providers were required to conduct searches for records without demanding payment.[5] It is clear from the records that Hollabaugh voluntarily requested

[5] If we were to accept Hollabaugh's contention that the sole purpose of the CMRA is consumer protection, adopting her proposed reading of the statute would entertain the risk of vitiating the legislature's stated intent to set a statutory maximum on search fees. As noted in *Gaines*, a provider could charge any amount it chose so long as no responsive records were returned.

We note that interpreting to "allow records providers to charge any price they choose for requests that do not result in the provision of records" is not actually proposed by either party here. But to take a reading that would permit such an outcome would plainly sanction an illogical result that would undermine the purpose of the statute.

that MRO perform a search for her records. Thus, if we were to adopt her reading of HG § 4-303 permitting *no* fee for an unsuccessful search, that would require us to find the legislature's intent to mandate that MRO performed a free record search on her demand. We see nothing to convince us that the legislature intended such a result.

Indeed, though we agree with Hollabaugh that one of the legislature's purposes in enacting HG § 4-304 was to protect consumers from excessive fees for medical record retrieval, we *also* agree with the circuit court's finding that the legislature intended for health care providers to demand "a reasonable cost-based fee for providing the information requested." HG § 4-304(c)(2)(ii). As such, we reject Hollabaugh's proposed reading of the statute. "We seek to read statutes 'so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory.'" *State v. Pagano*, 341 Md. 129, 134 (1996) (quoting *Montgomery County v. Buckman*, 333 Md. 516, 524 (1994)). We need not rely upon canons of textual interpretation, as Hollabaugh urges, when the legislature saw fit to clearly and expressly state that it intended to permit providers to recover fees for the service of retrieving medical records. Finding that the legislature intended to disallow collection of a reasonable fee where a provider made a reasonable effort to retrieve records without success would contradict the statute's stated purpose. We decline to sanction such an absurd result or adopt a reading that would render statutory text nugatory.

Rather, the legislature set forth its intent for medical providers to recover a reasonable cost-based fee for providing the information requested, and entities like MRO plainly incur costs in performing searches whether or not they produce responsive records.

As MRO notes, "A provider has response costs that are not dependent on the number of records found, or, for that matter, on whether any records are found." It was undisputed below that MRO performed at least some labor in searching for Hollabaugh's requested records, so MRO incurred at least some costs, if only in the time that its agents or employees spent in performing a search.[6]

Hollabaugh's interpretation of the provision would therefore cut directly against the objective in statutory interpretation: giving effect to the legislature's intended purpose in enacting the statute. *See State v. Bey*, 452 Md. 255, 265 (2017) ("A court's primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny."). Here, neither party disputes that medical providers may charge a fee no greater than $22.88 for retrieving and preparing records in their possession. It would be absurd for the legislature to have set forth a detailed scheme of fee limitation for record retrieval, only to intend that no limitation applied so long as the medical provider failed to discover records in its possession. Absent some concrete indication that the legislature intended that illogical result, we will decline to adopt such a reading of the statute.

3. Legislative Intent

Because we have resolved the textual ambiguity here regarding the legislature's purpose in enacting HG § 4-304, consideration of the provision's legislative history is

[6] Hollabaugh did not challenge below, or before us, that the specific fee at issue in this case was unreasonable or not cost-based; she solely argues that *no* fee is permitted.

unnecessary. But even if we did consult the statute's legislative history, doing so wouldn't be helpful in determining the legislature's intent here.

Hollabaugh notes that the legislature considered, but rejected, an effort to amend the initial text of HG § 4-304 to include a cap for search fees at $13. The language permitting that fee was rejected in favor of a "retrieval and preparation" fee capped at $17, since raised to $22.88. *See* DEP'T OF LEGIS. SERVS., FISCAL AND POLICY NOTE, H.B. 716 (Md. 1994). The legislature's action in adopting the final language is capable of multiple interpretations. It could be true that, as Hollabaugh suggests, the 1994 legislature did not include a separate "search" fee because it did not intend to allow such fees. It could also be, however, that the legislature viewed the "retrieval and preparation" fee ultimately adopted as *inclusive* of searching, precisely the interpretation that MRO urges us to adopt. But we find nothing in the record to determinatively indicate which of these two meanings, if either, the legislature intended to communicate by selecting the final language. Rather than revealing the meaning of ambiguous language, Hollabaugh simply points to an ambiguity in the legislative history, and urges us to interpret it a particular way. Because we do not find indication that the legislature viewed a "search" as distinct from "retrieval and preparation," we do not read the selection of the latter terms as the legislature's indication of its intent to demarcate a "search" as a distinct activity. As such, we do not find this history informative of the question before us.

Additionally, Hollabaugh notes that the Floor Report for House Bill 724, the 2016 amendment to the statute, provided that the preparation fee may be charged "for a copy"

of paper records, or "for copies" of electronic records. FLOOR REPORT, H.B. 724 (Md. 2016). This again simply highlights that the same textual ambiguities which appear in the provision's final text also appear in its legislative history. We do not find this instructive in determining the legislature's intent.

Finally, we consider the meaning of HG § 4-304 in light of Maryland Code, General Provisions Article ("GP") § 4-206, a provision governing fees for requests of public records from an official custodian of records, which states that the custodian may charge a "reasonable fee" for "*the search for*, preparation of, and reproduction of a public record[.]" *Id.* at (b)(1) (emphasis added). HG § 4-304 cross-references GP § 4-206 and previous versions referenced Maryland Code, State Government Article § 10-621, the predecessor of GP § 4-206 first enacted in 1984. The relevant text of GP § 4-206 remains substantially unchanged from the language which the legislature enacted in 1984. Hollabaugh argues that the legislature that enacted HG § 4-304 in 1994 intentionally omitted the word "search" to signal that only preparation and retrieval fees are permitted for private medical providers.

However, GP § 4-206(c) also provides that "[t]he official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection." MRO contends that this indicates that the legislature intended to call attention to search specifically to make clear that search fees are *not* permitted in a public records context. The legislature's silence in HG § 4-304, therefore, could be read to indicate that it did not seek to forbid such fees for private medical providers.

We cannot conclude that the difference in language between the two statutes indicates the legislature's intent to forbid "search" fees in HG § 4-304. The legislature chose different terms in each statute: "search," "preparation," and "reproduction" were employed in GP § 4-206, "retrieval" and "preparation" in HG § 4-304. The choice of words reveals, if anything, that the legislature created two different fee regimes for public and private medical providers. We do not perceive great significance in the choice of different terms between the two statutes, especially when, as discussed at length above, the legislature chose to *explicitly* state its purpose in enacting HG § 4-304.

HG § 4-304 thus permitted the type of fee at issue, and the circuit court was correct in finding that MRO's $22.88 fee was permissible under the statutory scheme. Finding that the circuit court did not err as to Hollabaugh's sole claimed point of error, we affirm its judgment.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.