

HOUSE BILL 784

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11r1901
CF SB 723

By: **Delegates Pendergrass, Costa, Elliott, Kach, A. Kelly, Kipke,
Nathan-Pulliam, Pena-Melnyk, and Tarrant**

Introduced and read first time: February 10, 2011

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Records – Health Information Exchanges**

3 FOR the purpose of authorizing the Maryland Health Care Commission to adopt
4 regulations for the privacy and security of protected health information
5 obtained or released through a health information exchange by certain persons;
6 providing that the regulations may not apply to protected health information
7 exchanged between and among certain persons; requiring the Commission to
8 consult with certain persons before adopting the regulations; requiring certain
9 payors that release protected health information through a health information
10 exchange to certain health care providers to connect and provide the protected
11 health information electronically to the health information exchange designated
12 by the Commission and the Health Services Cost Review Commission under a
13 certain provision of law; providing that the existence of a health information
14 exchange does not, in itself, change a certain standard of care for obtaining or
15 releasing protected health information; providing that, in certain actions, a
16 health information exchange or a health care provider may not be held liable
17 based solely on certain actions relating to a health information exchange, except
18 under certain circumstances; providing that certain provisions of this Act do not
19 create a new cause of action against a health information exchange or a health
20 care provider; defining certain terms; and generally relating to obtaining and
21 releasing protected health information through a health information exchange.

22 BY repealing and reenacting, with amendments,
23 Article – Health – General
24 Section 4–301
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2010 Supplement)

27 BY adding to
28 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 4–302.2, 4–302.3, and 4–302.4
2 Annotated Code of Maryland
3 (2009 Replacement Volume and 2010 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – Health – General**

7 4–301.

8 (a) In this subtitle the following words have the meanings indicated.

9 (b) (1) “Directory information” means information concerning the
10 presence and general health condition of a patient who has been admitted to a health
11 care facility or who is currently receiving emergency health care in a health care
12 facility.

13 (2) “Directory information” does not include health care information
14 developed primarily in connection with mental health services.

15 (c) “Disclose or disclosure” means the transmission or communication of
16 information in a medical record, including an acknowledgment that a medical record
17 on a particular patient or recipient exists.

18 (d) “Emergency” means a situation when, in the professional opinion of the
19 health care provider, a clear and significant risk of death or imminent serious injury
20 or harm to a patient or recipient exists.

21 (e) “General health condition” means the health status of a patient described
22 in terms of “critical”, “poor”, “fair”, “good”, “excellent”, or terms denoting similar
23 conditions.

24 (f) “Health care” means any care, treatment, or procedure by a health care
25 provider:

26 (1) To diagnose, evaluate, rehabilitate, manage, treat, or maintain the
27 physical or mental condition of a patient or recipient; or

28 (2) That affects the structure or any function of the human body.

29 (g) (1) “Health care provider” means:

30 (i) A person who is licensed, certified, or otherwise authorized
31 under the Health Occupations Article or § 13–516 of the Education Article to provide
32 health care in the ordinary course of business or practice of a profession or in an
33 approved education or training program; or

1 (ii) A facility where health care is provided to patients or
2 recipients, including a facility as defined in § 10–101(e) of this article, a hospital as
3 defined in § 19–301 of this article, a related institution as defined in § 19–301 of this
4 article, a health maintenance organization as defined in § 19–701(g) of this article, an
5 outpatient clinic, and a medical laboratory.

6 (2) “Health care provider” includes the agents, employees, officers, and
7 directors of a facility and the agents and employees of a health care provider.

8 **(H) “HEALTH INFORMATION EXCHANGE” MEANS AN INFRASTRUCTURE**
9 **THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE**
10 **EXCHANGE OF PROTECTED HEALTH INFORMATION ELECTRONICALLY AMONG**
11 **ENTITIES NOT UNDER COMMON OWNERSHIP.**

12 **[(h)] (I)** (1) “Medical record” means any oral, written, or other
13 transmission in any form or medium of information that:

14 (i) Is entered in the record of a patient or recipient;

15 (ii) Identifies or can readily be associated with the identity of a
16 patient or recipient; and

17 (iii) Relates to the health care of the patient or recipient.

18 (2) “Medical record” includes any:

19 (i) Documentation of disclosures of a medical record to any
20 person who is not an employee, agent, or consultant of the health care provider;

21 (ii) File or record maintained under § 12–403(b)(13) of the
22 Health Occupations Article by a pharmacy of a prescription order for drugs, medicines,
23 or devices that identifies or may be readily associated with the identity of a patient;

24 (iii) Documentation of an examination of a patient regardless of
25 who:

26 1. Requested the examination; or

27 2. Is making payment for the examination; and

28 (iv) File or record received from another health care provider
29 that:

30 1. Relates to the health care of a patient or recipient
31 received from that health care provider; and

1 2. Identifies or can readily be associated with the
2 identity of the patient or recipient.

3 **[(j)] (J)** (1) “Mental health services” means health care rendered to a
4 recipient primarily in connection with the diagnosis, evaluation, treatment, case
5 management, or rehabilitation of any mental disorder.

6 (2) For acute general hospital services, mental health services are
7 considered to be the primarily rendered service only if service is provided pursuant to
8 Title 10, Subtitle 6 or Title 12 of this article.

9 **[(j)] (K)** “Patient” means a person who receives health care and on whom a
10 medical record is maintained.

11 **[(k)] (L)** “Person in interest” means:

12 (1) An adult on whom a health care provider maintains a medical
13 record;

14 (2) A person authorized to consent to health care for an adult
15 consistent with the authority granted;

16 (3) A duly appointed personal representative of a deceased person;

17 (4) (i) A minor, if the medical record concerns treatment to which
18 the minor has the right to consent and has consented under Title 20, Subtitle 1 of this
19 article; or

20 (ii) A parent, guardian, custodian, or a representative of the
21 minor designated by a court, in the discretion of the attending physician who provided
22 the treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

23 (5) If item (4) of this subsection does not apply to a minor:

24 (i) A parent of the minor, except if the parent’s authority to
25 consent to health care for the minor has been specifically limited by a court order or a
26 valid separation agreement entered into by the parents of the minor; or

27 (ii) A person authorized to consent to health care for the minor
28 consistent with the authority granted; or

29 (6) An attorney appointed in writing by a person listed in item (1), (2),
30 (3), (4), or (5) of this subsection.

31 **[(l)] (M)** “Primary provider of mental health services” means the designated
32 mental health services provider who:

1 (1) Has primary responsibility for the development of the mental
2 health treatment plan for the recipient; and

3 (2) Is actively involved in providing that treatment.

4 (N) **“PROTECTED HEALTH INFORMATION” MEANS ALL INDIVIDUALLY**
5 **IDENTIFIABLE HEALTH INFORMATION HELD OR TRANSMITTED BY A COVERED**
6 **ENTITY OR ITS BUSINESS ASSOCIATE PROTECTED UNDER THE U.S.**
7 **DEPARTMENT OF HEALTH AND HUMAN SERVICES PRIVACY RULE.**

8 [(m)] (O) “Recipient” means a person who has applied for, for whom an
9 application has been submitted, or who has received mental health services.

10 **4-302.2.**

11 (A) **THE MARYLAND HEALTH CARE COMMISSION MAY ADOPT**
12 **REGULATIONS FOR THE PRIVACY AND SECURITY OF PROTECTED HEALTH**
13 **INFORMATION OBTAINED OR RELEASED THROUGH A HEALTH INFORMATION**
14 **EXCHANGE BY:**

15 (1) **A HEALTH CARE PROVIDER; OR**

16 (2) **A PAYOR THAT HOLDS A VALID CERTIFICATE OF AUTHORITY**
17 **ISSUED BY THE MARYLAND INSURANCE COMMISSIONER.**

18 (B) **ANY REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS**
19 **SECTION MAY NOT APPLY TO PROTECTED HEALTH INFORMATION EXCHANGED:**

20 (1) **BETWEEN A HOSPITAL AND CREDENTIALLED MEMBERS OF THE**
21 **HOSPITAL’S MEDICAL STAFF; OR**

22 (2) **AMONG CREDENTIALLED MEMBERS OF A HOSPITAL’S MEDICAL**
23 **STAFF.**

24 (C) **THE MARYLAND HEALTH CARE COMMISSION SHALL CONSULT**
25 **WITH HEALTH CARE PROVIDERS, PAYORS, STATE HEALTH AGENCIES,**
26 **CONSUMER ADVOCATES, AND EMPLOYERS BEFORE ADOPTING ANY**
27 **REGULATIONS UNDER SUBSECTION (A) OF THIS SECTION.**

28 **4-302.3.**

29 (A) **THIS SECTION APPLIES TO A PAYOR THAT:**

1 **(1) HOLDS A VALID CERTIFICATE OF AUTHORITY ISSUED BY THE**
2 **MARYLAND INSURANCE COMMISSIONER; AND**

3 **(2) ACTS AS, OPERATES, OR OWNS A HEALTH INFORMATION**
4 **EXCHANGE.**

5 **(B) A PAYOR TO WHICH THIS SECTION APPLIES THAT RELEASES**
6 **PROTECTED HEALTH INFORMATION THROUGH A HEALTH INFORMATION**
7 **EXCHANGE TO A HEALTH CARE PROVIDER THAT IS NOT THE HEALTH CARE**
8 **PROVIDER THAT GENERATED THE PROTECTED HEALTH INFORMATION SHALL**
9 **CONNECT AND PROVIDE THE PROTECTED HEALTH INFORMATION**
10 **ELECTRONICALLY TO THE HEALTH INFORMATION EXCHANGE DESIGNATED BY**
11 **THE MARYLAND HEALTH CARE COMMISSION AND THE HEALTH SERVICES**
12 **COST REVIEW COMMISSION UNDER § 19-143 OF THIS ARTICLE.**

13 **4-302.4.**

14 **(A) THE EXISTENCE OF A HEALTH INFORMATION EXCHANGE DOES NOT,**
15 **IN ITSELF, CHANGE THE STANDARD OF CARE APPLICABLE TO HEALTH CARE**
16 **PROVIDERS FOR OBTAINING OR RELEASING PROTECTED HEALTH**
17 **INFORMATION.**

18 **(B) IN ANY ACTION AGAINST A HEALTH CARE PROVIDER OR A HEALTH**
19 **INFORMATION EXCHANGE FOR DAMAGES OR OTHER RELIEF OR FOR PENALTIES**
20 **OF ANY NATURE, THE HEALTH CARE PROVIDER OR HEALTH INFORMATION**
21 **EXCHANGE MAY NOT BE HELD LIABLE BASED SOLELY ON OBTAINING OR**
22 **FAILING TO OBTAIN, OR RELEASING OR FAILING TO RELEASE, PROTECTED**
23 **HEALTH INFORMATION THROUGH A HEALTH INFORMATION EXCHANGE, UNLESS:**

24 **(1) WITH RESPECT TO A HEALTH CARE PROVIDER, THE HEALTH**
25 **CARE PROVIDER VIOLATED AN APPLICABLE STANDARD OF CARE; OR**

26 **(2) WITH RESPECT TO A HEALTH INFORMATION EXCHANGE, THE**
27 **HEALTH INFORMATION EXCHANGE VIOLATED AN APPLICABLE STATE OR**
28 **FEDERAL LAW.**

29 **(C) THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION AGAINST**
30 **A HEALTH INFORMATION EXCHANGE OR A HEALTH CARE PROVIDER.**

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2011.