

Chapter 682

(Senate Bill 864)

AN ACT concerning

**Health – Emergency Evaluatees and Involuntarily Admitted or Committed
Individuals – Procedures**

FOR the purpose of ~~requiring a health care provider to disclose certain directory information about a patient to a certain division in the Office of the Public Defender under certain circumstances; requiring a health care provider to disclose certain directory information under a certain provision of this Act regardless of whether the request refers to the patient by name; requiring a health care provider to disclose a certain medical record and legal records without the authorization of a person in interest an individual to legal counsel for the patient a public defender who states in writing that the Office of the Public Defender represents the individual or recipient in connection with or for use in certain proceedings; requiring that certain records be provided within a certain time period and only under certain circumstances; requiring a certain emergency facility to notify a certain division in the Office in a certain manner and within a certain time period of after the acceptance completion of an application for the involuntary admission of an emergency evaluatee into the facility; providing that a certain notice requirement does not apply to a certain patient; prohibiting a hearing officer from ordering the release of a certain individual on the certain grounds that the emergency facility did not provide certain notice; requiring that notice be given to a certain division in the Office of a certain admission of an individual into a certain facility or certain hospital within a certain period of time after the admission of the individual into the facility or hospital; requiring a certain individual who has been involuntarily admitted to a certain facility or a certain hospital to be evaluated by certain staff within a certain time period before a certain hearing; requiring a certain facility to notify a certain division in the Office in a certain manner of a certain admission of an individual into the facility within a certain period of time after a certain change in the admission status of the individual; defining certain terms; making conforming and stylistic changes; and generally relating to the procedures related to emergency evaluatees and involuntarily admitted or committed individuals.~~

BY repealing and reenacting, with amendments,

Article – Health – General

Section ~~4-302(e), 4-306(b)(11) and (12), 4-307(k)(1)(v) and (vi), 10-624, 4-306(c), 10-625, 10-631(b), 10-632,~~ and 10-803

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

BY adding to

Article – Health – General

Section ~~4-306(b)(13), 4-307(k)(1)(vii), and 10-632(h)~~ 4-306(c) and 4-307(l)

Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, without amendments,
Article – Health – General
Section 10–631(a)
Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

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

Article – Health – General

~~4–302.~~

~~(e) (1) (I) Unless the patient has restricted or prohibited the disclosure of directory information, AND SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, a health care provider may disclose directory information about a patient to an individual who has asked for the patient by name.~~

~~[(2)] (H) A health care provider shall:~~

~~[(i)] 1. Inform a patient of the health care information that the health care provider may include in a directory and the persons to whom the health care provider may disclose the information; and~~

~~[(ii)] 2. As soon as practicable, provide the patient with the opportunity to restrict or prohibit disclosure of directory information.~~

~~[(3)] (HH) If providing an opportunity under [paragraph (2)(ii) of this subsection] SUBPARAGRAPH (H)2 OF THIS PARAGRAPH to restrict or prohibit the disclosure of directory information is not practicable because of the patient's incapacity or need for emergency care or treatment, a health care provider may disclose the patient's directory information if the disclosure is:~~

~~[(i)] 1. Consistent with a prior expressed preference of the patient that is known to the health care provider; and~~

~~[(ii)] 2. Determined to be, based on the health care provider's professional judgment, in the patient's best interest.~~

~~(2) (I) A HEALTH CARE PROVIDER SHALL DISCLOSE DIRECTORY INFORMATION ABOUT A PATIENT TO THE MENTAL HEALTH DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER IF THE PATIENT IS:~~

~~1. INVOLUNTARILY ADMITTED TO THE HEALTH CARE FACILITY UNDER TITLE 10, SUBTITLE 6 OF THIS ARTICLE; OR~~

~~2. ADMITTED TO THE HEALTH CARE FACILITY AS A COMMITTED PERSON UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE.~~

~~(H) A HEALTH CARE PROVIDER SHALL DISCLOSE DIRECTORY INFORMATION ABOUT A PATIENT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH REGARDLESS OF WHETHER THE REQUEST REFERS TO THE PATIENT BY NAME.~~

4-306.

~~(b) A health care provider shall disclose a medical record without the authorization of a person in interest:~~

~~(11) To a local drug overdose fatality review team established under Title 5, Subtitle 9 of this article as necessary to carry out its official functions, subject to:~~

~~(i) The additional limitations under § 4-307 of this subtitle for disclosure of a medical record developed primarily in connection with the provision of mental health services; and~~

~~(ii) Any additional limitations for disclosure or redisclosure of a medical record developed in connection with the provision of substance abuse treatment services under State law or 42 U.S.C. § 290DD-2 and 42 C.F.R. Part 2; [or]~~

~~(12) To a guardian ad litem appointed by a court to protect the best interests of a minor or a disabled or elderly individual who is a victim of a crime or a delinquent act, for the sole purpose and use of the guardian ad litem in carrying out the guardian ad litem's official function to protect the best interests of the minor or the disabled or elderly individual in a criminal or juvenile delinquency court proceeding as permitted under 42 C.F.R. § 164.512(e); OR~~

~~(13) TO LEGAL COUNSEL FOR THE PATIENT OR RECIPIENT IN CONNECTION WITH OR FOR USE IN:~~

(C) (1) SUBJECT TO PARAGRAPHS (2) THROUGH (4) OF THIS SUBSECTION, A HEALTH CARE PROVIDER SHALL DISCLOSE MEDICAL AND LEGAL RECORDS WITHOUT THE AUTHORIZATION OF AN INDIVIDUAL TO A PUBLIC DEFENDER WHO STATES IN WRITING THAT THE OFFICE OF THE PUBLIC DEFENDER REPRESENTS THE INDIVIDUAL IN:

(I) AN INVOLUNTARY ADMISSION PROCEEDING UNDER TITLE 10, SUBTITLE 6 OF THIS ARTICLE;

(II) A RELEASE PROCEEDING UNDER TITLE 10, SUBTITLE 8 OF THIS ARTICLE; OR

(III) A COMMITMENT OR RELEASE PROCEEDING UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE.

(2) LEGAL RECORDS REQUIRED TO BE DISCLOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDE:

(I) AN EMERGENCY PETITION;

(II) AN APPLICATION FOR INVOLUNTARY ADMISSION; AND

(III) A CERTIFICATION FOR INVOLUNTARY ADMISSION.

(3) THE RECORDS DISCLOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE LIMITED TO THOSE RECORDS NEEDED BY THE PUBLIC DEFENDER TO REPRESENT THE INDIVIDUAL IN THE PROCEEDINGS LISTED IN PARAGRAPH (1) OF THIS SUBSECTION.

(4) RECORDS PROVIDED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL BE PROVIDED:

(I) WITHIN 24 HOURS AFTER THE ~~CERTIFICATION OF INVOLUNTARY ADMISSION~~ HEALTH CARE PROVIDER RECEIVES A WRITTEN REQUEST FOR THE RECORDS FROM THE PUBLIC DEFENDER; AND

(II) ONLY IF THE INDIVIDUAL HAS NOT YET RETAINED PRIVATE COUNSEL.

[(c)] (D) When a disclosure is sought under this section:

(1) A written request for disclosure or written confirmation by the health care provider of an oral request that justifies the need for disclosure shall be inserted in the medical record of the patient or recipient; and

(2) Documentation of the disclosure shall be inserted in the medical record of the patient or recipient.

4-307.

~~(k) (1) A health care provider shall disclose a medical record without the authorization of a person in interest:~~

~~(v) In accordance with a subpoena for medical records on specific recipients:~~

~~1. To health professional licensing and disciplinary boards for the sole purpose of an investigation regarding licensure, certification, or discipline of a health professional or the improper practice of a health profession; and~~

~~2. To grand juries, prosecution agencies, and law enforcement agencies under the supervision of prosecution agencies for the sole purposes of investigation and prosecution of a provider for theft and fraud, related offenses, obstruction of justice, perjury, unlawful distribution of controlled substances, and of any criminal assault, neglect, patient abuse or sexual offense committed by the provider against a recipient, provided that the prosecution or law enforcement agency shall:~~

~~A. Have written procedures which shall be developed in consultation with the Director to maintain the medical records in a secure manner so as to protect the confidentiality of the records; and~~

~~B. In a criminal proceeding against a provider, to the maximum extent possible, remove and protect recipient identifying information from the medical records used in the proceeding; [or]~~

~~(vi) In the event of the death of a recipient, to the office of the medical examiner as authorized under § 5-309 or § 10-713 of this article; OR~~

~~(VII) TO LEGAL COUNSEL FOR THE RECIPIENT IN CONNECTION WITH OR FOR USE IN:~~

(L) (1) SUBJECT TO PARAGRAPHS (2) THROUGH (4) OF THIS SUBSECTION, A HEALTH CARE PROVIDER SHALL DISCLOSE MEDICAL AND LEGAL RECORDS WITHOUT THE AUTHORIZATION OF AN INDIVIDUAL TO A PUBLIC DEFENDER WHO STATES IN WRITING THAT THE OFFICE OF THE PUBLIC DEFENDER REPRESENTS THE INDIVIDUAL IN:

1. (I) AN INVOLUNTARY ADMISSION PROCEEDING UNDER TITLE 10, SUBTITLE 6 OF THIS ARTICLE;

2. (II) A RELEASE PROCEEDING UNDER TITLE 10, SUBTITLE 8 OF THIS ARTICLE; OR

3. (III) A COMMITMENT OR RELEASE PROCEEDING UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE.

(2) LEGAL RECORDS REQUIRED TO BE DISCLOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDE:

- (I) AN EMERGENCY PETITION;**
- (II) AN APPLICATION FOR INVOLUNTARY ADMISSION; AND**
- (III) A CERTIFICATION FOR INVOLUNTARY ADMISSION.**

(3) THE RECORDS DISCLOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE LIMITED TO THOSE RECORDS NEEDED BY THE PUBLIC DEFENDER TO REPRESENT THE INDIVIDUAL IN THE PROCEEDINGS LISTED IN PARAGRAPH (1) OF THIS SUBSECTION.

(4) RECORDS PROVIDED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL BE PROVIDED:

(I) WITHIN 24 HOURS AFTER THE ~~CERTIFICATION OF INVOLUNTARY ADMISSION~~ HEALTH CARE PROVIDER RECEIVES A WRITTEN REQUEST FOR THE RECORDS FROM THE PUBLIC DEFENDER; AND

(II) ONLY IF THE INDIVIDUAL HAS NOT YET RETAINED PRIVATE COUNSEL.

~~10-624.~~

~~(a) (1) A peace officer shall take an emergency evaluate to the nearest emergency facility if the peace officer has a petition under Part IV of this subtitle that:~~

~~(i) Has been endorsed by a court within the last 5 days; or~~

~~(ii) Is signed and submitted by a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, health officer or designee of a health officer, or peace officer.~~

~~(2) After a peace officer takes the emergency evaluate to an emergency facility, the peace officer need not stay unless, because the emergency evaluate is violent, a physician asks the supervisor of the peace officer to have the peace officer stay.~~

~~(3) A peace officer shall stay until the supervisor responds to the request for assistance. If the emergency evaluate is violent, the supervisor shall allow the peace officer to stay.~~

~~(4) If a physician asks that a peace officer stay, a physician shall examine the emergency evaluate as promptly as possible.~~

~~(b) (1) (H) If the petition is executed properly, the emergency facility shall accept the emergency evaluate.~~

10-625.

(a) If an emergency evaluate meets the requirements for an involuntary admission and is unable or unwilling to agree to a voluntary admission under this subtitle, the examining physician shall take the steps needed for involuntary admission of the emergency evaluate to an appropriate facility, which may be a general hospital with a licensed inpatient psychiatric unit.

(b) (1) If the examining physician is unable to have the emergency evaluate admitted to a facility, the physician shall notify the Department.

(2) Within 6 hours after notification, the Department shall provide for admission of the emergency evaluate to an appropriate facility.

~~(H) (C) (1) WITHIN ~~24~~ 30 HOURS AFTER THE ~~EMERGENCY FACILITY ACCEPTS THE EMERGENCY EVALUEE~~ EMERGENCY FACILITY COMPLETES AN APPLICATION FOR THE INVOLUNTARY ADMISSION OF AN EMERGENCY EVALUEE, THE EMERGENCY FACILITY SHALL NOTIFY THE MENTAL HEALTH DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER, BY E-MAIL OR FACSIMILE, OF THE ACCEPTANCE OF THE EMERGENCY EVALUEE INTO THE EMERGENCY FACILITY COMPLETION OF THE APPLICATION.~~

(2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE ANY LEGAL DOCUMENTS RELATING TO THE ACCEPTANCE OF THE EMERGENCY EVALUEE INTO THE EMERGENCY FACILITY, INCLUDING THE EMERGENCY PETITION, APPLICATION FOR INVOLUNTARY ADMISSION, AND CERTIFICATION FOR INVOLUNTARY ADMISSION.

~~(3) A HEARING OFFICER MAY NOT ORDER THE RELEASE OF AN INDIVIDUAL WHO MEETS THE REQUIREMENTS FOR INVOLUNTARY ADMISSION ON THE GROUNDS THAT THE EMERGENCY FACILITY DID NOT NOTIFY THE OFFICE OF THE PUBLIC DEFENDER OF THE CERTIFICATION OF THE EMERGENCY EVALUEE FOR INVOLUNTARY ADMISSION WITHIN 30 HOURS AFTER THE EMERGENCY FACILITY COMPLETES THE APPLICATION FOR INVOLUNTARY ADMISSION AS REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.~~

(4) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO A PATIENT WHO AGREES TO VOLUNTARY ADMISSION.

~~(2) Within 6 hours after an emergency evaluate is brought to an emergency facility, a physician shall examine the emergency evaluate, to determine whether the emergency evaluate meets the requirements for involuntary admission.~~

~~(3) Promptly after the examination, the emergency evaluate shall be released unless the emergency evaluate:~~

~~(i) Asks for voluntary admission; or~~

~~(ii) Meets the requirements for involuntary admission.~~

~~(4) An emergency evaluate may not be kept at an emergency facility for more than 30 hours.~~

10-631.

(a) The Administration shall prepare and provide each facility with standard forms that provide, in clear and simple words, at least the following information:

(1) Notice of the admission of the individual;

(2) The right of the individual to consult with a lawyer that the individual chooses;

(3) The availability of the services of the legal aid bureaus, lawyer referral services, and other agencies that exist for the referral of individuals who need legal counsel;

(4) The right of the individual to call or write a lawyer or a referral agency or to have someone do so on behalf of the individual; and

(5) In substance:

(i) Those provisions of this subtitle under which the individual is admitted;

(ii) The provisions of this section; and

(iii) The provisions of Subtitle 7 of this title.

(b) (1) Within 12 hours after initial confinement of an individual to any facility or a Veterans' Administration hospital, the form provided for in this section shall be read and given to the individual.

(2) If the individual does not understand the notice required by this section and its legal effect, the notice also shall be given to:

- (i) The parent, guardian, or next of kin of the individual;
- (ii) The applicant for an involuntary admission of the individual; and
- (iii) Any other individual who has a significant interest in the status of the individual.

(3) In any event, if possible, notice of the admission shall be given to the parent, guardian, or next of kin of the individual.

(4) Notice of the admission of a minor shall be given as promptly as possible.

(5) WITHIN 24 HOURS AFTER THE ADMISSION OF THE INDIVIDUAL, NOTICE OF THE ADMISSION SHALL BE GIVEN TO THE MENTAL HEALTH DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER.

~~10-632.~~

~~(H) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(H) "GERIATRIC EVALUATION SERVICES STAFF" MEANS THE STAFF OF COUNTY HEALTH DEPARTMENTS WHO EVALUATE THE APPROPRIATENESS OF ADMISSION TO FACILITIES OR VETERANS' ADMINISTRATION HOSPITALS OF INDIVIDUALS AT LEAST 65 YEARS OLD.~~

~~(H) "SEMIANNUAL HEARING" MEANS A SEMIANNUAL HEARING SCHEDULED BY A FACILITY OR VETERANS' ADMINISTRATION HOSPITAL TO DETERMINE WHETHER AN INDIVIDUAL WHO HAS BEEN ADMITTED INVOLUNTARILY TO THE FACILITY OR HOSPITAL CONTINUES TO MEET THE REQUIREMENTS FOR INVOLUNTARY ADMISSION UNDER § 10-617 OF THIS SUBTITLE.~~

~~(2) AN INDIVIDUAL WHO HAS BEEN ADMITTED INVOLUNTARILY UNDER PART III OF THIS SUBTITLE AND IS AT LEAST 65 YEARS OLD SHALL BE EVALUATED BY GERIATRIC EVALUATION SERVICES STAFF WITHIN 2 WEEKS BEFORE A SEMIANNUAL HEARING IS HELD BY THE FACILITY OR VETERANS' ADMINISTRATION HOSPITAL.~~

10-632.

(a) Any individual proposed for involuntary admission under Part III of this subtitle shall be afforded a hearing to determine whether the individual is to be admitted to

a facility or a Veterans' Administration hospital as an involuntary patient or released without being admitted.

(b) The hearing shall be conducted within 10 days of the date of the initial confinement of the individual.

(c) (1) The hearing may be postponed for good cause for no more than 7 days, and the reasons for the postponement shall be on the record.

(2) A decision shall be made within the time period provided in paragraph (1) of this subsection.

(d) The Secretary shall:

(1) Adopt rules and regulations on hearing procedures; and

(2) Designate an impartial hearing officer to conduct the hearings.

(e) The hearing officer shall:

(1) Consider all the evidence and testimony of record; and

(2) Order the release of the individual from the facility unless the record demonstrates by clear and convincing evidence that at the time of the hearing each of the following elements exist as to the individual whose involuntary admission is sought:

(i) The individual has a mental disorder;

(ii) The individual needs in-patient care or treatment;

(iii) The individual presents a danger to the life or safety of the individual or of others;

(iv) The individual is unable or unwilling to be voluntarily admitted to the facility;

(v) There is no available less restrictive form of intervention that is consistent with the welfare and safety of the individual; and

(vi) If the individual is 65 years old or older and is to be admitted to a State facility, the individual has been evaluated by a geriatric evaluation team and no less restrictive form of care or treatment was determined by the team to be appropriate.

(F) A HEARING OFFICER MAY NOT ORDER THE RELEASE OF AN INDIVIDUAL WHO MEETS THE REQUIREMENTS FOR INVOLUNTARY ADMISSION UNDER SUBSECTION (E)(2) OF THIS SECTION ON THE GROUNDS THAT A HEALTH CARE

PROVIDER OR AN EMERGENCY OR OTHER FACILITY DID NOT COMPLY WITH DISCLOSURE OR NOTICE REQUIREMENTS UNDER § 10-625(C) OR § 10-631(B)(5) OF THIS SUBTITLE, § 10-803(B)(2) OF THIS TITLE, OR § 4-306(C) OR § 4-307(L) OF THIS ARTICLE.

[(f)] (G) *The parent, guardian, or next of kin of an individual involuntarily admitted under this subtitle:*

(1) Shall be given notice of the hearing on the admission; and

(2) May testify at the hearing.

[(g)] (H) *If a hearing officer enters an order for involuntary commitment under Part III of this subtitle and the hearing officer determines that the individual cannot safely possess a firearm based on credible evidence of dangerousness to others, the hearing officer shall order the individual who is subject to the involuntary commitment to:*

(1) Surrender to law enforcement authorities any firearms in the individual's possession; and

(2) Refrain from possessing a firearm unless the individual is granted relief from firearms disqualification in accordance with § 5-133.3 of the Public Safety Article.

10-803.

(a) An individual who is admitted voluntarily to a facility, on an informal request, may leave the facility at any time between 9 a.m. and 4 p.m., unless the admission status of the individual has been changed to an involuntary admission.

(b) **(1)** An individual who has been admitted voluntarily, under a formal written application, may not be held for more than 3 days after the individual asks for release, unless the admission status of the individual has been changed to an involuntary admission.

(2) IF THE ADMISSION STATUS OF THE INDIVIDUAL IS CHANGED FROM A VOLUNTARY TO AN INVOLUNTARY ADMISSION, THE FACILITY SHALL NOTIFY THE MENTAL HEALTH DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER, BY E-MAIL OR FACSIMILE, OF THE INVOLUNTARY ADMISSION WITHIN 24 HOURS AFTER THE CHANGE IN ADMISSION STATUS IS MADE.

(c) A minor who has been admitted voluntarily, on the application of a parent or guardian of the minor, may not be held for more than 3 days after the applicant for the admission asks for release, unless the admission status of the minor has been changed to an involuntary admission.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Approved by the Governor, May 15, 2018.