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**By: Senator Stone**

Introduced and read first time: January 17, 1996

Assigned to: Economic and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Mental Health Records - Disclosure to Primary Caregivers**

3 FOR the purpose of altering certain provisions of law regarding disclosure of certain  
4 medical records; requiring certain providers of mental health services to ask  
5 recipients whether they consent to the disclosure of limited mental health  
6 information to primary caregivers under certain circumstances; requiring certain  
7 providers of mental health services to disclose limited mental health information to  
8 primary caregivers under certain circumstances; requiring the providers to provide  
9 certain notice to certain individuals under certain circumstances; permitting certain  
10 individuals to appeal decisions of providers to the Director of the Mental Hygiene  
11 Administration; requiring the Director to disclose limited mental health  
12 information to primary caregivers under certain circumstances; providing that  
13 recipients have certain rights in certain proceedings; requiring the Department to  
14 adopt certain regulations; defining certain terms; and generally relating to the  
15 disclosure of certain mental health records to certain individuals under certain  
16 circumstances.

17 BY repealing and reenacting, without amendments,  
18 Article - Health - General  
19 Section 4-301(a), (c), (i), (l), and (m)  
20 Annotated Code of Maryland  
21 (1994 Replacement Volume and 1995 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article - Health - General  
24 Section 4-304(a) and 4-305(b)  
25 Annotated Code of Maryland  
26 (1994 Replacement Volume and 1995 Supplement)

27 BY adding to  
28 Article - Health - General  
29 Section 4-307.1  
30 Annotated Code of Maryland  
31 (1994 Replacement Volume and 1995 Supplement)

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

3 **Article - Health - General**

4 4-301.

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

6 (c) "Disclose or disclosure" means the transmission or communication of  
7 information in a medical record, including an acknowledgment that a medical record on  
8 a particular patient or recipient exists.

9 (i) (1) "Mental health services" means health care rendered to a recipient  
10 primarily in connection with the diagnosis, evaluation, treatment, casemanagement, or  
11 rehabilitation of any mental disorder.

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

15 (l) "Primary provider of mental health services" means the designated mental  
16 health services provider who:

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

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

20 (m) "Recipient" means a person who has applied for, for whom an application has  
21 been submitted, or who has received mental health services.

22 4-304.

23 (a) (1) Except as otherwise provided in this subtitle, a health care provider shall  
24 comply within a reasonable time after a person in interest requests in writing:

25 (i) To receive a copy of a medical record; or

26 (ii) To see and copy the medical record.

27 (2) [If] EXCEPT AS OTHERWISE PROVIDED IN § 4-307.1 OF THIS  
28 SUBTITLE, IF a medical record relates to a psychiatric or psychological problem and the  
29 attending health care provider, with any available and feasible input from a primary  
30 provider of mental health services, believes disclosure of any portion of the medical  
31 record to be injurious to the health of a patient or recipient, the health care provider may  
32 refuse to disclose that portion of the medical record to the patient, recipient, or person in  
33 interest but, on written request, shall:

34 (i) Make a summary of the undisclosed portion of the medical record  
35 available to the patient, recipient, or person in interest;

36 (ii) Insert a copy of the summary in the medical record of the patient  
37 or recipient;

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1 (iii) Permit examination and copying of the medical record by another  
2 health care provider who is authorized to treat the patient or recipient for the same  
3 condition as the health care provider denying the request; and

4 (iv) Inform the patient or recipient of the patient's or recipient's right  
5 to select another health care provider under this subsection.

6 4-305.

7 (b) A health care provider may disclose a medical record without the  
8 authorization of a person in interest:

9 (1) (i) To the provider's authorized employees, agents, medical staff,  
10 medical students, or consultants for the sole purpose of offering, providing, evaluating, or  
11 seeking payment for health care to patients or recipients by the provider;

12 (ii) To the provider's legal counsel regarding only the information in  
13 the medical record that relates to the subject matter of the representation; or

14 (iii) To any provider's insurer or legal counsel, or the authorized  
15 employees or agents of a provider's insurer or legal counsel, for the sole purpose of  
16 handling a potential or actual claim against any provider;

17 (2) If the person given access to the medical record signs an  
18 acknowledgment of the duty under this Act not to redisclose any patient identifying  
19 information, to a person for:

20 (i) Educational or research purposes, subject to the applicable  
21 requirements of an institutional review board;

22 (ii) Evaluation and management of health care delivery systems; or

23 (iii) Accreditation of a facility by professional standard setting entities;

24 (3) Subject to the additional limitations for a medical record developed  
25 primarily in connection with the provision of mental health services in § 4-307 of this  
26 subtitle, to a government agency performing its lawful duties as authorized by an act of  
27 the Maryland General Assembly or the United States Congress;

28 (4) Subject to the additional limitations for a medical record developed  
29 primarily in connection with the provision of mental health services in § 4-307 of this  
30 subtitle, to another health care provider for the sole purpose of treating the patient or  
31 recipient on whom the medical record is kept;

32 (5) If a claim has been or may be filed by, or with the authorization of a  
33 patient or recipient on behalf of the patient or recipient, for covered insureds, covered  
34 beneficiaries, or enrolled recipients only, to third party payors and their agents, if the  
35 payors or agents have met the applicable provisions of Title 19, Subtitle 13 of the Health  
36 - General Article, including nonprofit health service plans, health maintenance  
37 organizations, fiscal intermediaries and carriers, the Department of Health and Mental  
38 Hygiene and its agents, the United States Department of Health and Human Services and  
39 its agents, or any other person obligated by contract or law to pay for the health care  
40 rendered for the sole purposes of:

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- 1 (i) Submitting a bill to the third party payor;
- 2 (ii) Reasonable prospective, concurrent, or retrospective utilization  
3 review or predetermination of benefit coverage;
- 4 (iii) Review, audit, and investigation of a specific claim for payment of  
5 benefits; or
- 6 (iv) Coordinating benefit payments in accordance with the provisions  
7 of Article 48A of the Code under more than 1 sickness and accident, dental, or hospital  
8 and medical insurance policy;

9 (6) If a health care provider makes a professional determination that an  
10 immediate disclosure is necessary, to provide for the emergency health care needs of a  
11 patient or recipient;

12 (7) Except if the patient has instructed the health care provider not to make  
13 the disclosure, [or if the record has been developed primarily in connection with the  
14 provision of mental health services.] to immediate family members of the patient or any  
15 other individual with whom the patient is known to have a close personal relationship, if  
16 made in accordance with good medical or other professional practice; [or]

17 (8) AS PROVIDED IN § 4-307.1 OF THIS SUBTITLE IF THE RECORD HAS  
18 BEEN DEVELOPED IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH  
19 SERVICES; OR

20 [(8)] (9) To organ and tissue procurement personnel under the restrictions  
21 of § 5-408 of this article at the request of a physician for a patient whose organs and  
22 tissues may be donated for the purpose of evaluating the patient for possible organ and  
23 tissue donation.

24 4-307.1.

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
26 INDICATED.

27 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE MENTAL HYGIENE  
28 ADMINISTRATION OR A DESIGNEE OF THE DIRECTOR.

29 (3) "LIMITED MENTAL HEALTH INFORMATION" MEANS:

- 30 (I) THE DIAGNOSIS OF THE RECIPIENT;
- 31 (II) THE NAMES OF MEDICATIONS PRESCRIBED FOR THE  
32 RECIPIENT;
- 33 (III) THE POTENTIAL SIDE EFFECTS OF THE MEDICATIONS  
34 PRESCRIBED; AND
- 35 (IV) INFORMATION ABOUT COMMUNITY SUPPORT SERVICES.

36 (4) "PRIMARY CAREGIVER" MEANS AN INDIVIDUAL:

- 37 (I) WHO IS RESPONSIBLE FOR TAKING CARE OF A RECIPIENT; AND

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1 (II) WHOSE ASSISTANCE IS NECESSARY TO PREVENT THE  
2 SIGNIFICANT DETERIORATION OF A RECIPIENT'S DAILY FUNCTIONING.

3 (B) EACH PRIMARY PROVIDER OF MENTAL HEALTH SERVICES SHALL:

4 (1) ASK EACH RECIPIENT WHETHER THE RECIPIENT CONSENTS TO THE  
5 DISCLOSURE OF LIMITED MENTAL HEALTH INFORMATION TO THE RECIPIENT'S  
6 PRIMARY CAREGIVER ON THE REQUEST OF THE PRIMARY CAREGIVER; AND

7 (2) INFORM THE RECIPIENT OF THE SPECIFIC INFORMATION THAT  
8 WOULD BE DISCLOSED.

9 (C) A PRIMARY PROVIDER OF MENTAL HEALTH SERVICES SHALL DISCLOSE  
10 THE LIMITED MENTAL HEALTH INFORMATION TO THE RECIPIENT'S PRIMARY  
11 CAREGIVER IF:

12 (1) THE PRIMARY CAREGIVER REQUESTS LIMITED MENTAL HEALTH  
13 INFORMATION; AND

14 (2) THE RECIPIENT CONSENTED TO THE DISCLOSURE.

15 (D) IF A PRIMARY CAREGIVER REQUESTS LIMITED MENTAL HEALTH  
16 INFORMATION AND THE RECIPIENT DID NOT CONSENT TO THE DISCLOSURE, THE  
17 PRIMARY PROVIDER OF MENTAL HEALTH SERVICES SHALL INFORM THE PRIMARY  
18 CAREGIVER OF:

19 (1) THE RECIPIENT'S REFUSAL TO CONSENT IN WRITING WITHIN 3  
20 BUSINESS DAYS AFTER THE DATE OF THE REQUEST; AND

21 (2) THE PRIMARY CAREGIVER'S RIGHT TO REQUEST DISCLOSURE  
22 FROM THE PRIMARY PROVIDER OF MENTAL HEALTH SERVICES WITHIN 3 BUSINESS  
23 DAYS AFTER THE DATE OF RECEIPT OF THE NOTICE UNDER PARAGRAPH (1) OF THIS  
24 SUBSECTION.

25 (E) IF A PRIMARY CAREGIVER REQUESTS DISCLOSURE UNDER SUBSECTION  
26 (D) OF THIS SECTION, THE PRIMARY PROVIDER OF MENTAL HEALTH SERVICES  
27 SHALL:

28 (1) INFORM THE RECIPIENT IN WRITING;

29 (2) SPEAK DIRECTLY WITH THE PRIMARY CAREGIVER AND THE  
30 RECIPIENT;

31 (3) ATTEMPT TO DETERMINE:

32 (I) WHY THE RECIPIENT DID NOT CONSENT TO DISCLOSURE OF  
33 THE INFORMATION; AND

34 (II) HOW THE INFORMATION WOULD ASSIST THE PRIMARY  
35 CAREGIVER;

36 (4) RENDER A DECISION WITHIN 10 BUSINESS DAYS AFTER THE DATE  
37 OF THE REQUEST;

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1 (5) PROVIDE WRITTEN NOTICE OF THE DECISION TO THE RECIPIENT  
2 AND THE PRIMARY CAREGIVER OF THE DECISION AND OF THEIR APPEAL RIGHTS  
3 UNDER SUBSECTION (G) OF THIS SECTION; AND

4 (6) PROVIDE WRITTEN NOTICE OF THE DECISION TO THE DIRECTOR.

5 (F) IN RENDERING A DECISION UNDER SUBSECTION (E)(4) OF THIS SECTION,  
6 A PRIMARY PROVIDER OF MENTAL HEALTH SERVICES SHALL CONSIDER WHETHER:

7 (1) DISCLOSURE WOULD DIRECTLY ASSIST THE PRIMARY CAREGIVER  
8 CARE FOR THE RECIPIENT; AND

9 (2) THE BENEFIT TO THE RECIPIENT EXCEEDS ANY LIKELY  
10 DETRIMENTAL IMPACT.

11 (G) (1) A RECIPIENT OR A PRIMARY CAREGIVER MAY APPEAL A DECISION  
12 OF A PRIMARY PROVIDER OF MENTAL HEALTH SERVICES TO THE DIRECTOR  
13 WITHIN 10 BUSINESS DAYS AFTER THE DATE OF RECEIVING NOTICE OF THE  
14 DECISION UNDER SUBSECTION (E)(5) OF THIS SECTION.

15 (2) THE DIRECTOR SHALL:

16 (I) SPEAK DIRECTLY WITH THE PRIMARY CAREGIVER AND THE  
17 RECIPIENT;

18 (II) ATTEMPT TO DETERMINE:

19 1. WHY THE RECIPIENT DID NOT CONSENT TO DISCLOSURE;  
20 AND

21 2. HOW THE INFORMATION SOUGHT WOULD ASSIST THE  
22 PRIMARY CAREGIVER;

23 (III) RENDER A DECISION WITHIN 15 BUSINESS DAYS AFTER THE  
24 DATE OF RECEIPT OF THE APPEAL; AND

25 (IV) PROVIDE WRITTEN NOTICE OF THE DECISION TO THE  
26 RECIPIENT AND THE PRIMARY CAREGIVER.

27 (H) (1) IN RENDERING A DECISION UNDER SUBSECTION (G)(2)(III) OF THIS  
28 SECTION, THE DIRECTOR SHALL CONSIDER WHETHER:

29 (I) DISCLOSURE WOULD DIRECTLY ASSIST THE PRIMARY  
30 CAREGIVER CARE FOR THE RECIPIENT; AND

31 (II) THE BENEFIT TO THE RECIPIENT EXCEEDS ANY LIKELY  
32 DETRIMENTAL IMPACT.

33 (2) THE DECISION OF THE DIRECTOR IS FINAL.

34 (I) A RECIPIENT MAY:

35 (1) ATTEND ALL PROCEEDINGS UNDER THIS SECTION;

36 (2) HEAR ALL INFORMATION PRESENTED; AND

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1                   (3) BE ACCOMPANIED BY COUNSEL OR ANY OTHER INDIVIDUAL THE  
2 RECIPIENT CHOOSES.

3                   (J) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THIS  
4 SECTION.

5                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 1996.