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**By: Delegates C. Davis, Harrison, and Branch**

Introduced and read first time: January 16, 1997

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Health - Information Privacy - Disclosure of Medical Records**

3 FOR the purpose of requiring a patient's consent before a health care provider may  
4 disclose certain medical records under certain circumstances; limiting the  
5 circumstances under which a health care provider may disclose medical records  
6 without the patient's consent; restricting the type of demographic information that  
7 the Maryland medical care data base may collect; restricting the circumstances  
8 under which the Health Care Access and Cost Commission may collect patient  
9 information; and generally relating to the confidentiality of a patient's medical  
10 records.

11 BY repealing and reenacting, with amendments,  
12 Article - Health - General  
13 Section 4-302, 4-305, and 4-307(c)  
14 Annotated Code of Maryland  
15 (1994 Replacement Volume and 1996 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article - Health - General  
18 Section 19-1507  
19 Annotated Code of Maryland  
20 (1996 Replacement Volume and 1996 Supplement)

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

23 **Article - Health - General**

24 4-302.

25 (a) A health care provider shall:

26 (1) Keep the medical record of a patient or recipient confidential; and

27 (2) Disclose the medical record only:

28 (i) As provided by this subtitle; or

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1 (ii) As otherwise provided by law.

2 (b) The provisions of this subtitle do not apply to information:

3 (1) Not kept in the medical record of a patient or recipient that is related to  
4 the administration of a health care facility, including:

5 (i) Risk management;

6 (ii) Quality assurance; and

7 (iii) Any activities of a medical or dental review committee that are  
8 confidential under the provisions of Title 4, Subtitle 5 and Title 14, Subtitle 5 of the  
9 Health Occupations Article and any activities of a pharmacy review committee;

10 (2) Governed by the federal confidentiality of alcohol and drug abuse  
11 patient records regulations, 42 CFR Part 2 and the provisions of § 8-601(c) of this article;  
12 or

13 (3) Governed by the developmental disability confidentiality provisions in §§  
14 7-1008 through 7-1011 of this article.

15 (c) A health care provider may NOT disclose directory information about a  
16 patient without the authorization of a person in interest[, except if the patient has  
17 instructed the health care provider in writing not to disclose directory information]  
18 UNLESS OTHERWISE PERMITTED BY THIS SUBTITLE OR OTHER LAW.

19 (d) A person to whom a medical record is disclosed may not redisclose the  
20 medical record to any other person unless the redisclosure is:

21 (1) Authorized by the person in interest;

22 (2) Otherwise permitted by this subtitle; OR

23 (3) Permitted under Article 88A, § 6(b) of the Code[]; or

24 (4) Directory information].

25 (e) The provisions of this subtitle may not be construed to constitute an exception  
26 to the reporting requirements of Title 5, Subtitle 7 and Title 14, Subtitle 3 of the Family  
27 Law Article.

28 4-305.

29 (a) This section may not be construed to impose an obligation on a health care  
30 provider to disclose a medical record.

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

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

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

3 (iii)] To any provider's insurer or legal counsel, or the authorized  
4 employees or agents of a provider's insurer or legal counsel, for the sole purpose of  
5 handling [a potential or] AN actual claim against any provider;

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

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

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

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

13 (3)] (2) Subject to the additional limitations for a medical record  
14 developed primarily in connection with the provision of mental health services in § 4-307  
15 of this subtitle, to a government agency performing its lawful duties as authorized by an  
16 act of the Maryland General Assembly or the United States Congress;

17 [(4)] (3) Subject to the additional limitations for a medical record  
18 developed primarily in connection with the provision of mental health services in § 4-307  
19 of this subtitle, to another health care provider for the sole purpose of treating the patient  
20 or recipient on whom the medical record is kept;

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

30 (i) Submitting a bill to the third party payor;

31 (ii) Reasonable prospective, concurrent, or retrospective utilization  
32 review or predetermination of benefit coverage;

33 (iii) Review, audit, and investigation of a specific claim for payment of  
34 benefits; or

35 (iv) Coordinating benefit payments in accordance with the provisions  
36 of Article 48A of the Code under more than 1 sickness and accident, dental, or hospital  
37 and medical insurance policy;

38 (6)] (4) If a health care provider makes a professional determination that  
39 an immediate disclosure is necessary, to provide for the emergency health care needs of a  
40 patient or recipient;

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

6 (8) (5) To organ and tissue procurement personnel under the restrictions  
 7 of § 5-408 of this article at the request of a physician for a patient whose organs and  
 8 tissues may be donated for the purpose of evaluating the patient for possible organ and  
 9 tissue donation; or

10 [(9) (6) Subject to subsection (c) of this section, if the purpose of the  
 11 medical record disclosure is for the coordination of services and record retention within  
 12 the Montgomery County Department of Health and Human Services.

13 (c) (1) The disclosure of medical records under subsection [(b)(9)] (B)(6) of  
 14 this section to a person that is not employed by or under contract with the Montgomery  
 15 County Department of Health and Human Services shall be conducted in accordance with  
 16 this subtitle.

17 (2) Under provisions of State law regarding confidentiality, the Montgomery  
 18 County Department of Health and Human Services shall be considered to be one agency.

19 4-307.

20 (c) [When a] A medical record developed in connection with the provision of  
 21 mental health services [is] MAY NOT BE disclosed without the authorization of a person  
 22 in interest[, only the information in the record relevant to the purpose for which  
 23 disclosure is sought may be released] UNLESS OTHERWISE PERMITTED BY THIS  
 24 SUBTITLE OR OTHER LAW.

25 19-1507.

26 (a) The Commission shall establish a Maryland medical care data base to compile  
 27 statewide data on health services rendered by health care practitioners and office  
 28 facilities selected by the Commission.

29 (b) In addition to any other information the Commission may require by  
 30 regulation, the medical care data base shall:

31 (1) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (C) OF THIS  
 32 SECTION, COLLECT [Collect] for each type of patient encounter with a health care  
 33 practitioner or office facility designated by the Commission:

34 (i) The demographic characteristics of the patient, EXCEPT THAT  
 35 THE DATE OF BIRTH OF A PATIENT MAY NOT CONTAIN MORE THAN THE MONTH  
 36 AND YEAR OF BIRTH;

37 (ii) The principal diagnosis;

38 (iii) The procedure performed;

39 (iv) The date and location of where the procedure was performed;

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1 (v) The charge for the procedure;

2 (vi) If the bill for the procedure was submitted on an assigned or  
3 nonassigned basis; and

4 (vii) If applicable, a health care practitioner's universal identification  
5 number;

6 (2) Collect appropriate information relating to prescription drugs for each  
7 type of patient encounter with a pharmacist designated by the Commission; and

8 (3) Collect appropriate information relating to health care costs, utilization,  
9 or resources from payors and governmental agencies.

10 (C) THE COMMISSION MAY NOT COLLECT ANY DATA UNDER THIS SECTION  
11 FOR ANY PATIENT ENCOUNTER FOR WHICH THE PATIENT ELECTS TO SELF-PAY  
12 RATHER THAN SEEK REIMBURSEMENT BY A PAYOR.

13 [(c)] (D) (1) The Commission shall adopt regulations governing the access and  
14 retrieval of all medical claims data and other information collected and stored in the  
15 medical care data base and any claims clearinghouse licensed by the Commission and may  
16 set reasonable fees covering the costs of accessing and retrieving the stored data.

17 (2) These regulations shall ensure that confidential or privileged patient  
18 information is kept confidential.

19 (3) Records or information protected by the privilege between a health care  
20 practitioner and a patient, or otherwise required by law to be held confidential, shall be  
21 filed in a manner that does not disclose the identity of the person protected.

22 [(d)] (E) (1) To the extent practicable, when collecting the data required under  
23 subsection (b) of this section, the Commission shall utilize any standardized claim form or  
24 electronic transfer system being used by health care practitioners, office facilities, and  
25 payors.

26 (2) The Commission shall develop appropriate methods for collecting the  
27 data required under subsection (b) of this section on subscribers or enrollees of health  
28 maintenance organizations.

29 [(e)] (F) Until the provisions of § 19-1508 of this subtitle are fully implemented,  
30 where appropriate, the Commission may limit the data collection under this section.

31 [(f)] (G) By October 1, 1995 and each year thereafter, the Commission shall  
32 publish an annual report on those health care services selected by the Commission that:

33 (1) Describes the variation in fees charged by health care practitioners and  
34 office facilities on a statewide basis and in each health service area for those health care  
35 services; and

36 (2) Describes the geographic variation in the utilization of those health care  
37 services.

38 [(g)] (H) In developing the medical care data base, the Commission shall consult  
39 with:

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1 (1) Representatives of health care practitioners, payors, and hospitals; and

2 (2) Representatives of the Health Services Cost Review Commission and  
3 the Health Resources Planning Commission to ensure that the medical care data base is  
4 compatible with, may be merged with, and does not duplicate information collected by the  
5 Health Services Cost Review Commission hospital discharge data base, or data collected  
6 by the Health Resources Planning Commission as authorized in § 19-107 of this title.

7 (i) The Commission, in consultation with the Insurance Commissioner, payors,  
8 health care practitioners, and hospitals, may adopt by regulation standards for the  
9 electronic submission of data and submission and transfer of the uniform claims forms  
10 established under Article 48A, § 490P of the Code.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 1997.