
By: Senator Hollinger (Chairman, Health Subcommittee) and Senators Craig, Pinsky, Sfikas, Teitelbaum, and Roesser

Introduced and read first time: January 24, 1997

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Records - Maintenance, Disclosure, and Confidentiality**

3 FOR the purpose of specifying a certain time frame for the disclosure of medical records
4 by health care providers; prohibiting health care providers from refusing to disclose
5 a medical record under specified circumstances; altering a certain penalty; requiring
6 certain individuals to take certain actions before the destruction or transfer of
7 certain medical records; making certain individuals who violate specified provisions
8 of law liable for actual damages; making certain stylistic changes; and generally
9 relating to the maintenance, disclosure, and confidentiality of medical records.

10 BY repealing and reenacting, with amendments,
11 Article - Health - General
12 Section 4-301(g), 4-309, and 4-403
13 Annotated Code of Maryland
14 (1994 Replacement Volume and 1996 Supplement)

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

17 **Article - Health - General**

18 4-301.

19 (g) (1) "Medical record" means any oral, written, or other transmission IN ANY
20 FORM OR MEDIUM of information that:

- 21 (i) Is [written] ENTERED in the record of a patient or recipient;
- 22 (ii) Identifies or can readily be associated with the identity of a patient
23 or recipient; and
- 24 (iii) Relates to the health care of the patient or recipient.

25 (2) "Medical record" includes any [documentation]:

26 (I) DOCUMENTATION of disclosures of a medical record to any
27 person who is not an employee, agent, or consultant of the health care provider[.

28 (3) "Medical record" includes any file];

2

1 (II) FILE or record maintained under § 12-505 of the Health
2 Occupations Article by a pharmacy of a prescription order for drugs, medicines, or
3 devices that identifies or may be readily associated with the identity of a patient[.]; AND

4 (III) DOCUMENTATION OF AN EXAMINATION OF A PATIENT
5 REGARDLESS OF WHO:

- 6 1. REQUESTED THE EXAMINATION; OR
7 2. IS MAKING PAYMENT FOR THE EXAMINATION.

8 4-309.

9 (a) If a health care provider knowingly refuses to disclose a medical record within
10 [a reasonable time] 14 DAYS after THE DATE a person in interest requests the
11 disclosure, the health care provider is liable for actual damages.

12 (B) A HEALTH CARE PROVIDER MAY NOT REFUSE TO DISCLOSE A MEDICAL
13 RECORD ON THE REQUEST OF A PERSON IN INTEREST BECAUSE OF THE FAILURE OF
14 THE PERSON IN INTEREST TO PAY FOR HEALTH CARE RENDERED BY THE HEALTH
15 CARE PROVIDER.

16 [(b)] (C) A health care provider or any other person is in violation of this subtitle
17 if the health care provider or any other person:

18 (1) Requests or obtains a medical record under false pretenses or through
19 deception; or

20 (2) Discloses a medical record in violation of this subtitle.

21 [(c)] (D) A health care provider or any other person, INCLUDING AN OFFICER
22 OR EMPLOYEE OF A GOVERNMENTAL UNIT, who knowingly and willfully violates any
23 provision of this subtitle is guilty of a misdemeanor and on conviction is subject to [a fine
24 not exceeding \$1,000 for the first offense and not exceeding \$5,000 for each subsequent
25 conviction] THE FOLLOWING PENALTIES for a violation of any provision of this subtitle:

26 (1) A FINE NOT EXCEEDING \$50,000, IMPRISONMENT FOR NOT MORE
27 THAN 1 YEAR, OR BOTH;

28 (2) IF THE OFFENSE IS COMMITTED UNDER FALSE PRETENSES, A FINE
29 NOT EXCEEDING \$100,000, IMPRISONMENT FOR NOT MORE THAN 5 YEARS, OR BOTH;
30 AND

31 (3) IF THE OFFENSE IS COMMITTED WITH INTENT TO SELL, TRANSFER,
32 OR USE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION FOR COMMERCIAL
33 ADVANTAGE, PERSONAL GAIN, OR MALICIOUS HARM, A FINE NOT EXCEEDING
34 \$250,000, IMPRISONMENT FOR NOT MORE THAN 10 YEARS, OR BOTH.

35 [(d)] (E) A health care provider or any other person who knowingly violates any
36 provision of this subtitle is liable for actual damages.

37 4-403.

38 (a) In this section, a "health care provider" means:

3

- 1 (1) An audiologist;
- 2 (2) A chiropractor;
- 3 (3) A dietitian;
- 4 (4) A dentist;
- 5 (5) An electrologist;
- 6 (6) A mortician;
- 7 (7) A nurse;
- 8 (8) A nutritionist;
- 9 (9) An occupational therapist;
- 10 (10) An optometrist;
- 11 (11) A physical therapist;
- 12 (12) A physician;
- 13 (13) A podiatrist;
- 14 (14) A professional counselor;
- 15 (15) A psychologist;
- 16 (16) A social worker; and
- 17 (17) A speech-language pathologist.

18 (b) Except for a minor patient, unless a patient is notified, a health care provider
19 may not destroy a medical record or laboratory or X-ray report about a patient for 5 years
20 after the record or report is made.

21 (c) In the case of a minor patient, a medical record or laboratory or X-ray report
22 about a minor patient may not be destroyed until the patient attains the age of majority
23 plus 3 years or for 5 years after the record or report is made, whichever is later, unless:

- 24 (1) The parent or guardian of the minor patient is notified; or
- 25 (2) If the medical care documented in the record was provided under §
26 20-102(c) or § 20-103(c) of the Health - General Article, the minor patient is notified.

27 (d) The notice under subsections (b) and (c) of this section shall:

- 28 (1) Be made by first-class mail to the last known address of the patient;
- 29 (2) Include the date on which the record of the patient shall be destroyed;
30 and
- 31 (3) Include a statement that the record or synopsis of the record, if wanted,
32 must be retrieved at a designated location within 30 days of the proposed date of
33 destruction.

4

1 (e) After the death, RETIREMENT, SURRENDER OF THE LICENSE, OR
2 DISCONTINUANCE OF THE PRACTICE OR BUSINESS of a health care provider [who was
3 a sole practitioner], THE HEALTH CARE PROVIDER, the administrator of the estate, or
4 a designee WHO AGREES TO PROVIDE FOR THE MAINTENANCE OF THE MEDICAL
5 RECORDS OF THE PRACTICE OR BUSINESS AND WHO STATES, IN WRITING, THAT THE
6 RECORDS WILL BE MAINTAINED IN COMPLIANCE WITH THIS SECTION, shall:

7 (1) Forward the notice required in this section before the destruction or
8 transfer of medical records; or

9 (2) Publish a notice in a daily newspaper that is circulated locally for 2
10 consecutive weeks:

11 (i) Stating the date that the medical records will be destroyed or
12 transferred; and

13 (ii) Designating a location, date, and time where the medical records
14 may be retrieved, if wanted.

15 (F) A HEALTH CARE PROVIDER OR ANY OTHER PERSON WHO KNOWINGLY
16 VIOLATES ANY PROVISION OF THIS SUBTITLE IS LIABLE FOR ACTUAL DAMAGES.

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