
By: Senator Hollinger

Introduced and read first time: January 30, 1997

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Disclosure of Medical Records - Mental Health Services**

3 FOR the purpose of authorizing health care providers to maintain personal notes
4 regarding recipients of mental health services; establishing that personal notes
5 constitute the work product and personal property of health care providers and are
6 not discoverable or admissible in evidence in certain proceedings; establishing that
7 medical records do not include personal notes of health care providers under
8 specified circumstances; making a certain exception; prohibiting the disclosure of
9 medical records relating to psychological tests under specified circumstances;
10 making certain exceptions; providing that certain medical records are not
11 discoverable or admissible in evidence in certain proceedings; defining a certain
12 term; and generally relating to the disclosure of medical records by providers of
13 mental health services.

14 BY repealing and reenacting, with amendments,
15 Article - Health - General
16 Section 4-307
17 Annotated Code of Maryland
18 (1994 Replacement Volume and 1996 Supplement)

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

21 **Article - Health - General**

22 4-307.

23 (a) In this section the following words have the meanings indicated.

24 (1) "Case management" means an individualized recipient centered service
25 designed to assist a recipient in obtaining effective mental health services through the
26 assessing, planning, coordinating, and monitoring of services on behalf of the recipient.

27 (2) "Core service agency" means an organization approved by the Mental
28 Hygiene Administration to manage mental health resources and services in a designated
29 area or to a designated target population.

1 (3) "Director" means the Director of the Mental Hygiene Administration or
2 the designee of the Director.

3 (4) "Mental health director" means the health care professional who
4 performs the functions of a clinical director or the designee of that person in a health
5 care, detention, or correctional facility.

6 (5) "PERSONAL NOTE" MEANS:

7 (I) INFORMATION DISCLOSED TO A HEALTH CARE PROVIDER IN
8 CONFIDENCE BY A PERSON OTHER THAN A RECIPIENT RELATING TO THE
9 RECIPIENT ON CONDITION THAT THE INFORMATION MAY NOT BE DISCLOSED TO
10 THE RECIPIENT OR ANY OTHER PERSON;

11 (II) INFORMATION DISCLOSED TO A HEALTH CARE PROVIDER BY
12 A RECIPIENT THAT WOULD BE INJURIOUS TO THE RECIPIENT'S RELATIONSHIP WITH
13 ANOTHER PERSON; AND

14 (III) A HEALTH CARE PROVIDER'S THOUGHTS AND IMPRESSIONS
15 RELATING TO A RECIPIENT.

16 (b) The disclosure of a medical record developed in connection with the provision
17 of mental health services shall be governed by the provisions of this section in addition to
18 the other provisions of this subtitle.

19 (c) When a medical record developed in connection with the provision of mental
20 health services is disclosed without the authorization of a person in interest, only the
21 information in the record relevant to the purpose for which disclosure is sought may be
22 released.

23 (D) (1) A HEALTH CARE PROVIDER MAY, TO THE EXTENT THE PROVIDER
24 DETERMINES IT NECESSARY AND APPROPRIATE, MAINTAIN A PERSONAL NOTE
25 REGARDING A RECIPIENT.

26 (2) A PERSONAL NOTE IS:

27 (I) THE WORK PRODUCT AND PERSONAL PROPERTY OF A HEALTH
28 CARE PROVIDER; AND

29 (II) NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY
30 CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION.

31 (3) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (4) OF THIS
32 SUBSECTION, A MEDICAL RECORD DOES NOT INCLUDE A PERSONAL NOTE OF A
33 HEALTH CARE PROVIDER, IF THE HEALTH CARE PROVIDER:

34 (I) KEEPS THE PERSONAL NOTE IN THE HEALTH CARE
35 PROVIDER'S SOLE POSSESSION FOR THE PROVIDER'S OWN PERSONAL USE; AND

36 (II) DOES NOT DISCLOSE THE PERSONAL NOTE TO ANY OTHER
37 PERSON EXCEPT THE HEALTH CARE PROVIDER'S SUPERVISING HEALTH CARE
38 PROVIDER, A CONSULTING HEALTH CARE PROVIDER, OR AN ATTORNEY OF THE
39 HEALTH CARE PROVIDER.

(4) IF AT ANY TIME A HEALTH CARE PROVIDER DISCLOSES A PERSONAL NOTE TO A PERSON OTHER THAN THE PROVIDER'S SUPERVISING HEALTH CARE PROVIDER, A CONSULTING HEALTH CARE PROVIDER, OR AN ATTORNEY OF THE HEALTH CARE PROVIDER, THE PERSONAL NOTE SHALL BE CONSIDERED PART OF THE RECIPIENT'S MEDICAL RECORD.

(E) (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (3) AND (4) OF THIS SUBSECTION, IF THE DISCLOSURE OF A MEDICAL RECORD RELATING TO A PSYCHOLOGICAL TEST WOULD COMPROMISE THE OBJECTIVITY OR FAIRNESS OF THE TEST OR THE TESTING PROCESS, A HEALTH CARE PROVIDER MAY NOT DISCLOSE THE MEDICAL RECORD TO ANY PERSON, INCLUDING A SUBJECT OF THE TEST.

(2) THE MEDICAL RECORD IS NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION.

(3) (I) A RECIPIENT WHO HAS BEEN THE SUBJECT OF A PSYCHOLOGICAL TEST MAY DESIGNATE A PSYCHOLOGIST LICENSED UNDER TITLE 18 OF THE HEALTH OCCUPATIONS ARTICLE TO WHOM A HEALTH CARE PROVIDER MAY DISCLOSE THE MEDICAL RECORD.

(II) THE RECIPIENT SHALL:

1. REQUEST THE DISCLOSURE AUTHORIZED UNDER THIS PARAGRAPH IN WRITING; AND

2. COMPLY WITH THE PROVISIONS OF § 4-304 OF THIS SUBTITLE.

(4) A HEALTH CARE PROVIDER MAY DISCLOSE A MEDICAL RECORD RELATING TO A PSYCHOLOGICAL TEST AS PROVIDED UNDER § 4-305(B)(2)(I) OF THIS SUBTITLE.

[(d)] (F) A health care provider may disclose a medical record that relates to and identifies more than one recipient in group or family therapy only:

(1) On the authorization of a person in interest for each recipient;

(2) As provided in this subtitle; or

(3) As otherwise provided by law.

[(e)] (G) This section may not be construed to prevent the disclosure of a medical record that relates to the provision of mental health services between or among the health care providers that participate in the approved plan of a core service agency for the delivery of mental health services, if a recipient:

(1) Has received a current list of the participating providers; and

(2) Has signed a written agreement with the core service agency to participate in the client information system developed by the agency.

[(f)] (H) If an individual given access to a medical record that relates to the provision of mental health services signs an acknowledgment of the duty under this Act

4

1 not to redisclose personal identifying information about a recipient, this section may not
 2 be construed to prevent the disclosure of the medical record for rate review, auditing,
 3 health planning, licensure, approval, or accreditation of a facility by governmental or
 4 professional standard setting entities.

5 [(g)] (I) (1) A health care provider may disclose a medical record without the
 6 authorization of a person in interest:

7 (i) To the medical or mental health director of a juvenile or adult
 8 detention or correctional facility if:

9 1. The recipient has been involuntarily committed under State
 10 law or a court order to the detention or correctional facility requesting the medical
 11 record; and

12 2. After a review of the medical record, the health care provider
 13 who is the custodian of the record is satisfied that disclosure is necessary for the proper
 14 care and treatment of the recipient;

15 (ii) As provided in § 5-316 of the Courts and Judicial Proceedings
 16 Article;

17 (iii) 1. If a health care provider is a facility as defined in § 10-101 of
 18 this article, to a law enforcement agency concerning a recipient who:

19 A. Has been admitted involuntarily or by court order to the
 20 facility; and

21 B. Is on an unauthorized absence or has otherwise left the
 22 facility without being discharged or released;

23 2. The facility director may disclose to the law enforcement
 24 agency identifying information and only such further information that the director
 25 believes is necessary to aid the law enforcement agency in locating and apprehending the
 26 recipient for the purpose of:

27 A. Safely returning the recipient to custody; or

28 B. Fulfilling the provisions of subparagraph (ii) of this
 29 paragraph;

30 (iv) If a health care provider is a facility as defined in § 10-101 of this
 31 article, the facility director may confirm or deny the presence in the facility of a recipient
 32 to a parent, guardian, next of kin, or any individual who has a significant interest in the
 33 status of the recipient if that individual has filed a missing persons report regarding the
 34 recipient; and

35 (v) To allow for the service of process or a court order in a facility
 36 when appropriate arrangements have been made with the facility director so as to
 37 minimize loss of confidentiality.

38 (2) When a disclosure is made under this subsection, documentation of the
 39 disclosure shall be inserted in the medical record of the recipient.

6

1 4. A party to a court, administrative, or arbitration proceeding;

2 (v) In accordance with service of compulsory process or a discovery
3 request, as permitted under § 9-109(d), § 9-109.1(d), or § 9-121(d) of the Courts and
4 Judicial Proceedings Article, or as otherwise provided by law, to a court, an
5 administrative tribunal, or a party to a civil court, administrative, or health claims
6 arbitration proceeding, if:

7 1. The request for issuance of compulsory process or the
8 request for discovery filed with the court or administrative tribunal and served on the
9 health care provider is accompanied by a copy of a certificate directed to the recipient,
10 the person in interest, or counsel for the recipient or the person in interest; and

11 2. The certificate:

12 A. Notifies the recipient or the person in interest that disclosure
13 of the recipient's medical record is sought;

14 B. Notifies the recipient or the person in interest of the
15 provisions of this subsection or any other provision of law on which the requesting party
16 relies in seeking disclosure of the information;

17 C. Notifies the recipient or the person in interest of the
18 procedure for filing a motion to quash or a motion for a protective order;

19 D. Is attached to a copy of the request for issuance of a
20 compulsory process or request for discovery; and

21 E. Is mailed to the recipient, the person in interest, or counsel
22 for the recipient or person in interest by certified mail, return receipt requested, on or
23 before the date of filing the request for issuance of compulsory process or the request for
24 discovery;

25 (vi) In accordance with a subpoena for medical records on specific
26 recipients:

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

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

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

7

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

4 (vii) In the event of the death of a recipient, to the office of the medical
5 examiner as authorized under § 5-309 or § 10-714 of this article.

6 (2) If a recipient believes that a medical record has been inappropriately
7 obtained, maintained, or disclosed under the provisions of subparagraph (vi) of paragraph
8 (1) of this section, the recipient may petition the State prosecutor for an investigation of
9 the allegation.

10 (3) Except in a proceeding relating to payment for the health care of a
11 recipient, the medical record of a recipient and any information obtained as a result of
12 disclosure under subparagraph (vi) of paragraph (1) of this section is disclosable,
13 notwithstanding any privilege in law, but may not be used in any proceeding against the
14 recipient.

15 (4) A written request for disclosure or written confirmation of an oral
16 request in an emergency that justifies the need for disclosure shall be inserted in the
17 medical record of the recipient.

18 (5) Documentation of the disclosure shall be inserted in the medical record
19 of the recipient.

20 (6) This subsection may not preclude a health care provider, a recipient, or
21 person in interest from asserting in a motion to quash or a motion for a protective order
22 any constitutional right or other legal authority in opposition to disclosure.

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