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**By: Senator Hollinger**

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Assigned to: Economic and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 1997

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## CHAPTER \_\_\_\_

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~~ exceptions; specifying that  
 9 certain provisions of law do not prohibit the disclosure of personal notes to certain  
 10 recipients; prohibiting the disclosure of certain portions of medical records relating  
 11 to psychological tests under specified circumstances; making certain exceptions;  
 12 providing that certain medical records are not discoverable or admissible in  
 13 evidence in certain proceedings; defining a certain term; and generally relating to  
 14 the disclosure of medical records by providers of mental health services.

15 BY repealing and reenacting, with amendments,  
 16 Article - Health - General  
 17 Section 4-307  
 18 Annotated Code of Maryland  
 19 (1994 Replacement Volume and 1996 Supplement)

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

22 **Article - Health - General**

23 4-307.

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

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

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

7 (3) "Director" means the Director of the Mental Hygiene Administration or  
8 the designee of the Director.

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

12 (5) "PERSONAL NOTE" MEANS:

13 (I) INFORMATION DISCLOSED TO A HEALTH CARE PROVIDER IN  
14 CONFIDENCE BY A PERSON OTHER THAN A RECIPIENT RELATING TO THE  
15 RECIPIENT ON CONDITION THAT THE INFORMATION MAY NOT BE DISCLOSED TO  
16 THE RECIPIENT OR ANY OTHER PERSON;

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

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

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

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

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

32 (2) A PERSONAL NOTE IS:

33 (I) THE WORK PRODUCT AND PERSONAL PROPERTY OF A HEALTH  
34 CARE PROVIDER; AND

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

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

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

3 (II) MAINTAINS THE PERSONAL NOTE SEPARATE FROM THE  
4 MEDICAL RECORDS; AND

5 ~~(H)~~ (III) DOES NOT DISCLOSE THE PERSONAL NOTE TO ANY  
6 OTHER PERSON EXCEPT THE HEALTH CARE PROVIDER'S SUPERVISING HEALTH  
7 CARE PROVIDER, A CONSULTING HEALTH CARE PROVIDER, OR AN ATTORNEY OF  
8 THE HEALTH CARE PROVIDER.

9 (4) IF AT ANY TIME A HEALTH CARE PROVIDER DISCLOSES A PERSONAL  
10 NOTE TO A PERSON OTHER THAN THE PROVIDER'S SUPERVISING HEALTH CARE  
11 PROVIDER, A CONSULTING HEALTH CARE PROVIDER, ~~OR~~ AN ATTORNEY OF THE  
12 HEALTH CARE PROVIDER, OR A RECIPIENT UNDER PARAGRAPH (5) OF THIS  
13 SUBSECTION, THE PERSONAL NOTE SHALL BE CONSIDERED PART OF THE  
14 RECIPIENT'S MEDICAL RECORD.

15 (5) THE PROVISIONS OF THIS SUBSECTION DO NOT PROHIBIT THE  
16 DISCLOSURE OF A PERSONAL NOTE TO A RECIPIENT WHO MAY HAVE A CLAIM FOR  
17 MALPRACTICE OR PROFESSIONAL NEGLIGENCE AGAINST THE HEALTH CARE  
18 PROVIDER.

19 (E) (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (3) ~~AND~~ (4),  
20 AND (5) OF THIS SUBSECTION, IF THE DISCLOSURE OF A PORTION OF A MEDICAL  
21 RECORD RELATING TO A PSYCHOLOGICAL TEST WOULD COMPROMISE THE  
22 OBJECTIVITY OR FAIRNESS OF THE TEST OR THE TESTING PROCESS, A HEALTH  
23 CARE PROVIDER MAY NOT DISCLOSE THAT PORTION OF THE MEDICAL RECORD TO  
24 ANY PERSON, INCLUDING A SUBJECT OF THE TEST.

25 (2) THE PORTION OF THE MEDICAL RECORD RELATING TO A  
26 PSYCHOLOGICAL TEST IS NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY  
27 CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION.

28 (3) (I) A RECIPIENT WHO HAS BEEN THE SUBJECT OF A  
29 PSYCHOLOGICAL TEST MAY DESIGNATE A PSYCHOLOGIST LICENSED UNDER TITLE  
30 18 OF THE HEALTH OCCUPATIONS ARTICLE OR A PSYCHIATRIST LICENSED UNDER  
31 TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE TO WHOM A HEALTH CARE  
32 PROVIDER MAY DISCLOSE THE MEDICAL RECORD.

33 (II) THE RECIPIENT SHALL:

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

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

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

1                   (5) THE PROVISIONS OF THIS SUBSECTION MAY NOT RESTRICT ACCESS  
2 TO OR AFFECT THE DISCLOSURE OF A MEDICAL RECORD WHICH IS ALSO AN  
3 EDUCATION RECORD UNDER THE FEDERAL INDIVIDUALS WITH DISABILITIES  
4 EDUCATION ACT, THE FEDERAL FAMILY EDUCATION RIGHTS AND PRIVACY ACT, OR  
5 ANY FEDERAL AND STATE REGULATIONS THAT HAVE BEEN ADOPTED TO  
6 IMPLEMENT THOSE LAWS.

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

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

10                  (2) As provided in this subtitle; or

11                  (3) As otherwise provided by law.

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

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

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

19                  [(f)] (H) If an individual given access to a medical record that relates to the  
20 provision of mental health services signs an acknowledgment of the duty under this Act  
21 not to redisclose personal identifying information about a recipient, this section may not  
22 be construed to prevent the disclosure of the medical record for rate review, auditing,  
23 health planning, licensure, approval, or accreditation of a facility by governmental or  
24 professional standard setting entities.

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

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

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

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

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

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

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1                                   A. Has been admitted involuntarily or by court order to the  
2 facility; and

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

5                                   2. The facility director may disclose to the law enforcement  
6 agency identifying information and only such further information that the director  
7 believes is necessary to aid the law enforcement agency in locating and apprehending the  
8 recipient for the purpose of:

9                                   A. Safely returning the recipient to custody; or

10                                  B. Fulfilling the provisions of subparagraph (ii) of this  
11 paragraph;

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

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

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

22                                  [(h)] (J) (1) A health care provider shall disclose a medical record without the  
23 authorization of a person in interest:

24                                  (i) To the medical or mental health director of a juvenile or adult  
25 detention or correctional facility or to another inpatient provider of mental health  
26 services in connection with the transfer of a recipient from an inpatient provider, if:

27   1. The health care provider with the records has determined  
28 that disclosure is necessary for the continuing provision of mental health services; and

29   2. The recipient is transferred:

30   A. As an involuntary commitment or by court order to the  
31 provider;

32   B. Under State law to a juvenile or adult detention or  
33 correctional facility; or

34   C. To a provider that is required by law or regulation to admit  
35 the recipient;

36   (ii) To the State designated protection and advocacy system for  
37 mentally ill individuals under the Federal Protection and Advocacy for Mentally Ill  
38 Individuals Act of 1986, as amended, if:

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1                                   1. The State designated protection and advocacy system has  
 2 received a complaint regarding the recipient or the director of the system has certified in  
 3 writing to the chief administrative officer of the health care provider that there is  
 4 probable cause to believe that the recipient has been subject to abuse or neglect;

5                                   2. The recipient by reason of mental or physical condition is  
 6 unable to authorize disclosure; and

7                                   3. A. The recipient does not have a legal guardian or other  
 8 legal representative who has the authority to consent to the release of health care  
 9 information; or

10                                  B. The legal guardian of the recipient is a representative of a  
 11 State agency;

12                                  (iii) To another health care provider or legal counsel to the other  
 13 health care provider prior to and in connection with or for use in a commitment  
 14 proceeding in accordance with Title 10, Subtitle 6 or Title 12 of this article;

15                                  (iv) In accordance with a court order, other than compulsory process  
 16 compelling disclosure, as permitted under § 9-109(d), § 9-109.1(d), or § 9-121(d) of the  
 17 Courts and Judicial Proceedings Article, or as otherwise provided by law, to:

18                                   1. A court;

19                                   2. An administrative law judge;

20                                   3. A health claims arbitrator; or

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

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

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

31                                   2. The certificate:

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

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

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

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

3                                   E. Is mailed to the recipient, the person in interest, or counsel  
4 for the recipient or person in interest by certified mail, return receipt requested, on or  
5 before the date of filing the request for issuance of compulsory process or the request for  
6 discovery;

7                                   (vi) In accordance with a subpoena for medical records on specific  
8 recipients:

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

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

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

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

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

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

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

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

38                                  (5) Documentation of the disclosure shall be inserted in the medical record  
39 of the recipient.

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

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