
By: **Chairman, Environmental Matters Committee (Departmental - Aging,
Office on)**

Introduced and read first time: January 19, 1998

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Records - Mandatory Disclosure - State Long-Term Care**
3 **Ombudsman Program**

4 FOR the purpose of requiring a health care provider to disclose a medical record to a
5 representative of the Long-Term Care Ombudsman Program without the
6 authorization of a person in interest under certain circumstances; and generally
7 relating to access to medical records and to the Long-Term Care Ombudsman
8 Program.

9 BY repealing and reenacting, with amendments,
10 Article 70B - Office on Aging
11 Section 5
12 Annotated Code of Maryland
13 (1995 Replacement Volume and 1997 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Health - General
16 Section 4-306
17 Annotated Code of Maryland
18 (1994 Replacement Volume and 1997 Supplement)

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

21 **Article 70B - Office on Aging**

22 5.

23 (a) The Director on Aging shall receive, investigate, and seek to resolve
24 complaints concerning the operations of related institutions, as defined in § 19-301 of
25 the Health - General Article, and the Director may, on the Director's own motion,
26 make on-site visits to determine if these institutions are in compliance with
27 applicable laws, rules, and regulations.

1 (b) If the Director on Aging finds that any such related institution is in
2 violation of any statute, rule, or regulation of any State agency which is directly and
3 specifically charged with the regulation of any aspect of the institution, the Director
4 shall immediately notify that agency in writing of the findings of fact. If the violation
5 or condition is not corrected within a reasonable time, the Director shall request the
6 State agency to take the steps necessary to bring the institution into compliance, and
7 the agency shall take appropriate action.

8 (c) There is established in the Office on Aging a Maryland Long-Term Care
9 Ombudsman Program. The Director on Aging shall designate a Maryland Long-Term
10 Care Ombudsman.

11 (d) (1) The Director on Aging may delegate the Director's authority under
12 subsection (a) of this section to the Maryland Long-Term Care Ombudsman and to
13 the director of a local office on aging in accordance with a local long-term care
14 ombudsman program established pursuant to regulations promulgated by the State
15 Director on Aging.

16 (2) The regulations shall provide for:

17 (i) Minimum training requirements for all program staff and
18 volunteers;

19 (ii) Cooperation with the Departments of Health and Mental
20 Hygiene and Human Resources;

21 (iii) Annual review of all ombudsman activities by the State Office
22 on Aging;

23 (iv) Complaint review, investigation, and resolution procedures
24 including provisions which assure the confidentiality of complaints and the right of
25 privacy of any complainant or resident of a related institution;

26 (v) Maintenance by the local ombudsman of a recordkeeping or
27 information system which assures the confidentiality of records or files and the right
28 of privacy of any complainant or resident of a related institution; and

29 (vi) Access, review, and copying of medical records to the extent
30 authorized by [§ 4-305(b)(3)] §§ 4-305(B)(3) AND 4-306 of the Health - General Article
31 [when the local ombudsman is the person in interest] or as otherwise provided by
32 law.

33 (e) (1) Representatives of the Long-Term Care Ombudsman Program may
34 not be held liable for the good faith performance of their official duties.

35 (2) The Director of the Office on Aging shall adopt regulations to
36 establish conflict of interest provisions within the Long-Term Care Ombudsman
37 Program.

1 (f) (1) A person may not willfully interfere with representatives of the
2 Long-Term Care Ombudsman Program in the performance of their official duties.

3 (2) A person may not retaliate or make reprisals with respect to any
4 person who filed a complaint with, or provided information to, a representative of the
5 Long-Term Care Ombudsman Program.

6 (3) A person who violates any provision of this subsection is guilty of a
7 misdemeanor and is subject to a penalty of not more than \$1,500.

8 **Article - Health - General**

9 4-306.

10 (a) In this section, "compulsory process" includes a subpoena, summons,
11 warrant, or court order that appears on its face to have been issued on lawful
12 authority.

13 (b) A health care provider shall disclose a medical record without the
14 authorization of a person in interest:

15 (1) To a unit of State or local government, or to a member of a
16 multidisciplinary team assisting the unit, for purposes of investigation or treatment
17 in a case of suspected abuse or neglect of a child or an adult, subject to the following
18 conditions:

19 (i) The health care provider shall disclose only the medical record
20 of a person who is being assessed in an investigation or to whom services are being
21 provided in accordance with Title 5, Subtitle 7 or Title 14, Subtitle 3 of the Family
22 Law Article;

23 (ii) The health care provider shall disclose only the information in
24 the medical record that will, in the professional judgment of the provider, contribute
25 to the:

- 26 1. Assessment of risk;
- 27 2. Development of a service plan;
- 28 3. Implementation of a safety plan; or
- 29 4. Investigation of the suspected case of abuse or neglect; and

30 (iii) The medical record may be redisclosed as provided in Article
31 88A, § 6 of the Code;

32 (2) Subject to the additional limitations for a medical record developed
33 primarily in connection with the provision of mental health services in § 4-307 of this
34 subtitle, to health professional licensing and disciplinary boards, in accordance with a
35 subpoena for medical records for the sole purpose of an investigation regarding:

1 (i) Licensure, certification, or discipline of a health professional; or

2 (ii) The improper practice of a health profession;

3 (3) To a health care provider or the provider's insurer or legal counsel, all
4 information in a medical record relating to a patient or recipient's health, health care,
5 or treatment which forms the basis for the issues of a claim in a civil action initiated
6 by the patient, recipient, or person in interest;

7 (4) Notwithstanding any privilege in law, as needed, to a medical review
8 committee as defined in § 14-501 of the Health Occupations Article or a dental review
9 committee as defined in § 4-501 of the Health Occupations Article;

10 (5) To another health care provider as provided in § 19-308.2 or § 10-807
11 of this article;

12 (6) (i) Subject to the additional limitations for a medical record
13 developed primarily in connection with the provision of mental health services in §
14 4-307 of this subtitle and except as otherwise provided in items (2), (7), and (8) of this
15 subsection, in accordance with compulsory process, if the subpoena, summons,
16 warrant, or court order contains a certification that:

17 1. A copy of the subpoena, summons, warrant, or court order
18 has been served on the person whose records are sought by the party seeking the
19 disclosure or production of the records; or

20 2. Service of the subpoena, summons, warrant, or court order
21 has been waived by the court for good cause;

22 (ii) A stipulation by a patient or person in interest; or

23 (iii) A discovery request permitted by law to be made to a court, an
24 administrative tribunal, or a party to a civil court, administrative, or health claims
25 arbitration proceeding;

26 (7) To grand juries, prosecution agencies, law enforcement agencies or
27 their agents or employees to further an investigation or prosecution, pursuant to a
28 subpoena, warrant, or court order for the sole purposes of investigating and
29 prosecuting criminal activity, provided that the prosecution agencies and law
30 enforcement agencies have written procedures to protect the confidentiality of the
31 records; [or]

32 (8) To the Maryland Insurance Administration when conducting an
33 investigation or examination pursuant to Title 2, Subtitle 2 of the Insurance Article,
34 provided that the Insurance Administration has written procedures to maintain the
35 confidentiality of the records; OR

36 (9) TO A PATIENT ADVOCATE OF THE MARYLAND LONG-TERM CARE
37 OMBUDSMAN PROGRAM WHO IS INVESTIGATING A COMPLAINT CONCERNING A
38 RESIDENT OF A RELATED INSTITUTION IF THE RESIDENT IS UNABLE TO CONSENT TO

1 THE DISCLOSURE AND HAS NO HEALTH CARE AGENT, ATTORNEY, OR GUARDIAN TO
2 PROVIDE CONSENT.

3 (c) When a disclosure is sought under this section:

4 (1) A written request for disclosure or written confirmation by the health
5 care provider of an oral request that justifies the need for disclosure shall be inserted
6 in the medical record of the patient or recipient; and

7 (2) Documentation of the disclosure shall be inserted in the medical
8 record of the patient or recipient.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
10 effect October 1, 1998.