

SENATE BILL 649

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1998 Regular Session  
(8lr0087)

**ENROLLED BILL**

-- Economic and Environmental Affairs/Economic Matters --

Introduced by **Senator Hollinger (Chairman, Health Subcommittee),  
Economic and Environmental Affairs Committee, and Senators Craig,  
Pinsky, Sfikas, and Conway**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Disclosure of Medical Records - Health Care Provider's Insurer or Legal**  
3 **Counsel**

4 FOR the purpose of ~~requiring a health care provider to disclose a medical record with~~  
5 ~~the authorization of a person in interest to any provider's insurer or legal~~  
6 ~~counsel for the purpose of handling a certain action at law against any provider~~  
7 ~~in which the patient or recipient on whom the medical record is kept is not a~~  
8 ~~party to the action on the written authorization of the patient, recipient, or~~  
9 ~~person in interest or in accordance with a certain court order;~~ authorizing a  
10 health care provider to disclose a medical record without the authorization of a  
11 person in interest to any provider's insurer or legal counsel for the purpose of  
12 handling a certain action at law ~~against any provider in which the patient or~~  
13 ~~recipient on whom the medical record is kept is a party to the action and has~~  
14 ~~placed the patient's or recipient's physical or mental condition or functional~~  
15 ~~status at issue, if the request for disclosure is accompanied by a certain~~

1 ~~certificate~~; and generally relating to the disclosure of medical records to any  
2 health care provider's insurer or legal counsel.

3 BY repealing and reenacting, with amendments,  
4 Article - Health - General  
5 Section ~~4-303 and~~ 4-305  
6 Annotated Code of Maryland  
7 (1994 Replacement Volume and 1997 Supplement)

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

10 **Article - Health - General**

11 ~~4-303.~~

12 (a) ~~A health care provider shall disclose a medical record on the authorization~~  
13 ~~of a person in interest in accordance with this section.~~

14 (b) ~~Except as otherwise provided in subsection (c) of this section, an~~  
15 ~~authorization shall:~~

16 (1) ~~Be in writing, dated, and signed by the person in interest;~~

17 (2) ~~State the name of the health care provider;~~

18 (3) ~~Identify to whom the information is to be disclosed;~~

19 (4) ~~State the period of time that the authorization is valid, which may~~  
20 ~~not exceed 1 year, except:~~

21 (i) ~~In cases of criminal justice referrals, in which case the~~  
22 ~~authorization shall be valid until 30 days following final disposition; or~~

23 (ii) ~~In cases where the patient on whom the medical record is kept~~  
24 ~~is a resident of a nursing home, in which case the authorization shall be valid until~~  
25 ~~revoked, or for any time period specified in the authorization; and~~

26 (5) ~~Apply only to a medical record developed by the health care provider~~  
27 ~~unless in writing:~~

28 (i) ~~The authorization specifies disclosure of a medical record that~~  
29 ~~the health care provider has received from another provider; and~~

30 (ii) ~~The other provider has not prohibited redisclosure.~~

31 (e) ~~A health care provider shall disclose a medical record on receipt of a~~  
32 ~~preauthorized form that is part of an application for insurance.~~

1 (d) (1) Except in cases of criminal justice referrals, a person in interest may  
2 ~~revoke an authorization in writing.~~

3 (2) A revocation of an authorization becomes effective on the date of  
4 receipt by the health care provider.

5 (3) A disclosure made before the effective date of a revocation is not  
6 affected by the revocation.

7 (e) A copy of the following shall be entered in the medical record of a patient or  
8 recipient:

9 (1) A written authorization;

10 (2) Any action taken in response to an authorization; and

11 (3) Any revocation of an authorization.

12 (F) ~~A HEALTH CARE PROVIDER SHALL DISCLOSE A MEDICAL RECORD WITH  
13 THE AUTHORIZATION OF A PERSON IN INTEREST TO ANY PROVIDER'S INSURER OR  
14 LEGAL COUNSEL, OR THE AUTHORIZED EMPLOYEES OR AGENTS OF A PROVIDER'S  
15 INSURER OR LEGAL COUNSEL, FOR THE SOLE PURPOSE OF HANDLING A CIVIL OR  
16 CRIMINAL ACTION AGAINST ANY PROVIDER IN WHICH THE PATIENT OR RECIPIENT  
17 ON WHOM THE MEDICAL RECORD IS KEPT IS NOT A PARTY TO THE ACTION:~~

18 (1) ~~IF THE REQUEST FOR DISCLOSURE IS ACCOMPANIED BY A COPY OF A  
19 CERTIFICATE THAT CONTAINS THE WRITTEN AUTHORIZATION OF THE PATIENT,  
20 RECIPIENT, OR PERSON IN INTEREST OF THE DISCLOSURE; OR~~

21 (2) ~~IN ACCORDANCE WITH AN ORDER OF A COURT OF COMPETENT  
22 JURISDICTION.~~

23 4-305.

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

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

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

32 (ii) To the provider's legal counsel ~~OR INSURER, WHERE THE~~  
33 PROVIDER IS ON NOTICE OR REASONABLY BELIEVES THAT THE PROVIDER MAY BE  
34 THE SUBJECT OF A CLAIM BY THE RECIPIENT regarding only the information in the  
35 medical record that relates to the subject matter of the representation; or

1 (iii) To ~~any~~ THE ANY provider's insurer or legal counsel, or the  
 2 authorized employees or agents of a provider's insurer or legal counsel, for the sole  
 3 purpose of handling a {potential or actual claim} ~~OR CIVIL OR CRIMINAL ACTION~~  
 4 against ~~any~~ THE ANY provider IF THE MEDICAL RECORD IS MAINTAINED ON THE  
 5 CLAIMANT AND RELATES TO THE SUBJECT MATTER OF THE CLAIM ~~IF:~~

6 1. ~~THE PATIENT OR RECIPIENT ON WHOM THE MEDICAL~~  
 7 ~~RECORD IS KEPT IS A PARTY TO THE ACTION;~~

8 2. ~~THE PATIENT OR RECIPIENT HAS PLACED THE PATIENT'S~~  
 9 ~~OR RECIPIENT'S PHYSICAL OR MENTAL CONDITION OR FUNCTIONAL STATUS AT~~  
 10 ~~ISSUE IN THE CIVIL OR CRIMINAL ACTION; AND~~

11 3. ~~THE REQUEST FOR DISCLOSURE IS ACCOMPANIED BY A~~  
 12 ~~CERTIFICATE STATING THAT:~~

13 A. ~~THE PATIENT OR RECIPIENT IS A PARTY TO THE CIVIL OR~~  
 14 ~~CRIMINAL ACTION; AND~~

15 B. ~~THE PATIENT OR RECIPIENT HAS PLACED THE PATIENT'S~~  
 16 ~~OR RECIPIENT'S PHYSICAL OR MENTAL CONDITION OR FUNCTIONAL STATUS AS A~~  
 17 ~~MATERIAL FACT AT ISSUE IN THE CIVIL OR CRIMINAL ACTION;~~

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

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

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

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

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

30 (4) Subject to the additional limitations for a medical record developed  
 31 primarily in connection with the provision of mental health services in § 4-307 of this  
 32 subtitle, to another health care provider for the sole purpose of treating the patient or  
 33 recipient on whom the medical record is kept;

34 (5) If a claim has been or may be filed by, or with the authorization of a  
 35 patient or recipient on behalf of the patient or recipient, for covered insureds, covered  
 36 beneficiaries, or enrolled recipients only, to third party payors and their agents, if the  
 37 payors or agents have met the applicable provisions of Title 19, Subtitle 13 of the  
 38 Health - General Article, including nonprofit health service plans, health

1 maintenance organizations, fiscal intermediaries and carriers, the Department of  
2 Health and Mental Hygiene and its agents, the United States Department of Health  
3 and Human Services and its agents, or any other person obligated by contract or law  
4 to pay for the health care rendered for the sole purposes of:

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

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

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

10 (iv) Coordinating benefit payments in accordance with the  
11 provisions of the Insurance Article under more than 1 sickness and accident, dental,  
12 or hospital and medical insurance policy;

13 (6) If a health care provider makes a professional determination that an  
14 immediate disclosure is necessary, to provide for the emergency health care needs of a  
15 patient or recipient;

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

21 (8) To organ and tissue procurement personnel under the restrictions of §  
22 5-408 of this article at the request of a physician for a patient whose organs and  
23 tissues may be donated for the purpose of evaluating the patient for possible organ  
24 and tissue donation; or

25 (9) Subject to subsection (c) of this section, if the purpose of the medical  
26 record disclosure is for the coordination of services and record retention within the  
27 Montgomery County Department of Health and Human Services.

28 (c) (1) The disclosure of medical records under subsection (b)(9) of this  
29 section to a person that is not employed by or under contract with the Montgomery  
30 County Department of Health and Human Services shall be conducted in accordance  
31 with this subtitle.

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

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

