

SENATE BILL 649

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1998 Regular Session
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By: **Senator Hollinger (Chairman, Health Subcommittee), Economic and Environmental Affairs Committee, and Senators Craig, Pinsky, Sfikas, and Conway**

Introduced and read first time: February 6, 1998
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

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

18 BY repealing and reenacting, with amendments,
19 Article - Health - General
20 Section 4-303 and 4-305
21 Annotated Code of Maryland
22 (1994 Replacement Volume and 1997 Supplement)

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

25 **Article - Health - General**

26 4-303.

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

1 (b) Except as otherwise provided in subsection (c) of this section, an
2 authorization shall:

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

4 (2) State the name of the health care provider;

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

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

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

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

13 (5) Apply only to a medical record developed by the health care provider
14 unless in writing:

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

17 (ii) The other provider has not prohibited redisclosure.

18 (c) A health care provider shall disclose a medical record on receipt of a
19 preauthorized form that is part of an application for insurance.

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

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

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

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

28 (1) A written authorization;

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

30 (3) Any revocation of an authorization.

31 (F) A HEALTH CARE PROVIDER SHALL DISCLOSE A MEDICAL RECORD WITH
32 THE AUTHORIZATION OF A PERSON IN INTEREST TO ANY PROVIDER'S INSURER OR
33 LEGAL COUNSEL, OR THE AUTHORIZED EMPLOYEES OR AGENTS OF A PROVIDER'S

1 INSURER OR LEGAL COUNSEL, FOR THE SOLE PURPOSE OF HANDLING A CIVIL OR
2 CRIMINAL ACTION AGAINST ANY PROVIDER IN WHICH THE PATIENT OR RECIPIENT
3 ON WHOM THE MEDICAL RECORD IS KEPT IS NOT A PARTY TO THE ACTION:

4 (1) IF THE REQUEST FOR DISCLOSURE IS ACCOMPANIED BY A COPY OF A
5 CERTIFICATE THAT CONTAINS THE WRITTEN AUTHORIZATION OF THE PATIENT,
6 RECIPIENT, OR PERSON IN INTEREST OF THE DISCLOSURE; OR

7 (2) IN ACCORDANCE WITH AN ORDER OF A COURT OF COMPETENT
8 JURISDICTION.

9 4-305.

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

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

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

18 (ii) To the provider's legal counsel regarding only the information in
19 the medical record that relates to the subject matter of the representation; or

20 (iii) To any provider's insurer or legal counsel, or the authorized
21 employees or agents of a provider's insurer or legal counsel, for the sole purpose of
22 handling a [potential or actual claim] CIVIL OR CRIMINAL ACTION against any
23 provider IF:

24 1. THE PATIENT OR RECIPIENT ON WHOM THE MEDICAL
25 RECORD IS KEPT IS A PARTY TO THE ACTION;

26 2. THE PATIENT OR RECIPIENT HAS PLACED THE PATIENT'S
27 OR RECIPIENT'S PHYSICAL OR MENTAL CONDITION OR FUNCTIONAL STATUS AT
28 ISSUE IN THE CIVIL OR CRIMINAL ACTION; AND

29 3. THE REQUEST FOR DISCLOSURE IS ACCOMPANIED BY A
30 CERTIFICATE STATING THAT:

31 A. THE PATIENT OR RECIPIENT IS A PARTY TO THE CIVIL OR
32 CRIMINAL ACTION; AND

33 B. THE PATIENT OR RECIPIENT HAS PLACED THE PATIENT'S
34 OR RECIPIENT'S PHYSICAL OR MENTAL CONDITION OR FUNCTIONAL STATUS AS A
35 MATERIAL FACT AT ISSUE IN THE CIVIL OR CRIMINAL ACTION;

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

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

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

7 (iii) Accreditation of a facility by professional standard setting
8 entities;

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

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

17 (5) If a claim has been or may be filed by, or with the authorization of a
18 patient or recipient on behalf of the patient or recipient, for covered insureds, covered
19 beneficiaries, or enrolled recipients only, to third party payors and their agents, if the
20 payors or agents have met the applicable provisions of Title 19, Subtitle 13 of the
21 Health - General Article, including nonprofit health service plans, health
22 maintenance organizations, fiscal intermediaries and carriers, the Department of
23 Health and Mental Hygiene and its agents, the United States Department of Health
24 and Human Services and its agents, or any other person obligated by contract or law
25 to pay for the health care rendered for the sole purposes of:

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

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

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

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

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

37 (7) Except if the patient has instructed the health care provider not to
38 make the disclosure, or if the record has been developed primarily in connection with

1 the provision of mental health services, to immediate family members of the patient
2 or any other individual with whom the patient is known to have a close personal
3 relationship, if made in accordance with good medical or other professional practice;

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

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

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

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

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