

SENATE BILL 659

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SB 483/97 - EEA

1998 Regular Session  
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By: **Senators Hollinger and Dorman**

Introduced and read first time: February 6, 1998

Assigned to: Economic and Environmental Affairs

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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  
6 are not discoverable or admissible in evidence in certain proceedings;  
7 establishing that medical records do not include personal notes of health care  
8 providers under specified circumstances; making certain exceptions; specifying  
9 that certain provisions of law do not prohibit the disclosure of personal notes to  
10 certain recipients; prohibiting the disclosure of certain portions of medical  
11 records relating to psychological tests under specified circumstances; providing  
12 that certain medical records are not discoverable or admissible in evidence in  
13 certain proceedings; defining a certain term; and generally relating to the  
14 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 1997 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.

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

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

4 (3) "Director" means the Director of the Mental Hygiene Administration  
5 or the designee of the Director.

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

9 (5) "PERSONAL NOTE" MEANS:

10 (I) INFORMATION DISCLOSED TO A MENTAL HEALTH CARE  
11 PROVIDER IN CONFIDENCE, BY A PERSON OTHER THAN A RECIPIENT, RELATING TO  
12 THE RECIPIENT ON CONDITION THAT THE INFORMATION MAY NOT BE DISCLOSED TO  
13 THE RECIPIENT OR ANY OTHER PERSON;

14 (II) INFORMATION DISCLOSED TO A MENTAL HEALTH CARE  
15 PROVIDER BY A RECIPIENT THAT WOULD BE INJURIOUS TO THE RECIPIENT'S  
16 RELATIONSHIP WITH ANOTHER PERSON; AND

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

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

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

26 (D) (1) A MENTAL HEALTH CARE PROVIDER MAY, TO THE EXTENT THE  
27 PROVIDER DETERMINES IT NECESSARY AND APPROPRIATE, MAINTAIN A PERSONAL  
28 NOTE REGARDING A RECIPIENT.

29 (2) A PERSONAL NOTE:

30 (I) IS THE WORK PRODUCT AND PERSONAL PROPERTY OF A  
31 MENTAL HEALTH CARE PROVIDER; AND

32 (II) IS NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY  
33 CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION, EXCEPT AS PROVIDED IN  
34 PARAGRAPH (5) OF THIS SUBSECTION.

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

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

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

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

9 (4) IF AT ANY TIME A MENTAL HEALTH CARE PROVIDER DISCLOSES A  
10 PERSONAL NOTE TO A PERSON OTHER THAN THE PROVIDER'S SUPERVISING HEALTH  
11 CARE PROVIDER, A CONSULTING HEALTH CARE PROVIDER, 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, DISCOVERY, OR ADMISSIBILITY OF A PERSONAL NOTE TO A RECIPIENT  
17 WHO MAY HAVE A CLAIM FOR MALPRACTICE OR PROFESSIONAL NEGLIGENCE  
18 AGAINST THE HEALTH CARE PROVIDER.

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

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

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

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

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

13 (2) As provided in this subtitle; or

14 (3) As otherwise provided by law.

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

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

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

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

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

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

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

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

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

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

5 A. Has been admitted involuntarily or by court order to the  
6 facility; and

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

9 2. The facility director may disclose to the law enforcement  
10 agency identifying information and only such further information that the director  
11 believes is necessary to aid the law enforcement agency in locating and apprehending  
12 the recipient for the purpose of:

13 A. Safely returning the recipient to custody; or

14 B. Fulfilling the provisions of subparagraph (ii) of this  
15 paragraph;

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

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

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

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

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

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

34 2. The recipient is transferred:

35 A. As an involuntary commitment or by court order to the  
36 provider;





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

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

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

13          (5)     Documentation of the disclosure shall be inserted in the medical  
14 record of the recipient.

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

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