

SENATE BILL 569

Unofficial Copy
J1

2001 Regular Session
(11r1550)

ENROLLED BILL

-- *Economic and Environmental Affairs/Environmental Matters* --

Introduced by **Senator Hollinger**

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 **Medical Records - Maintenance and Destruction - Confidentiality**

3 FOR the purpose of requiring the Secretary of Health and Mental Hygiene to adopt
4 certain regulations for the destruction of medical records; requiring the
5 Secretary to consult with certain entities before adopting the regulations;
6 specifying what is to be included in the regulations; providing for certain
7 penalties; defining certain terms; and generally relating to the maintenance and
8 destruction of medical records.

9 BY repealing and reenacting, with amendments,
10 Article - Health - General
11 Section 4-403
12 Annotated Code of Maryland
13 (2000 Replacement Volume)

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

1 **Article - Health - General**

2 4-403.

3 (a) (1) In this section, a "health care provider" means:

4 [(1)] (I) An acupuncturist;

5 [(2)] (II) An audiologist;

6 [(3)] (III) A chiropractor;

7 [(4)] (IV) A dietitian;

8 [(5)] (V) A dentist;

9 [(6)] (VI) An electrologist;

10 (VII) A HEALTH CARE FACILITY THAT IS:

11 1. A FREESTANDING AMBULATORY CARE FACILITY AS
12 DEFINED UNDER § 19-3B-01 OF THIS ARTICLE;

13 2. A FREESTANDING MEDICAL FACILITY AS DEFINED UNDER
14 § 19-3A-01 OF THIS ARTICLE;

15 3. A HEALTH CARE FACILITY AS DEFINED UNDER § 10-101 OF
16 THIS ARTICLE;

17 4. A HEALTH MAINTENANCE ORGANIZATION AS DEFINED
18 UNDER § 19-701 OF THIS ARTICLE;

19 5. A HOSPITAL AS DEFINED UNDER § 19-301 OF THIS
20 ARTICLE;

21 ~~6. A LABORATORY AS DEFINED UNDER § 17-201 OF THIS~~
22 ~~ARTICLE;~~

23 ~~7. 6.~~ A LIMITED SERVICE HOSPITAL AS DEFINED UNDER §
24 19-301 OF THIS ARTICLE;

25 ~~8. 7.~~ A RELATED INSTITUTION AS DEFINED IN § 19-301 OF THIS
26 ARTICLE; AND

27 ~~9. 8.~~ A RESIDENTIAL TREATMENT CENTER AS DEFINED UNDER
28 § 19-301 OF THIS ARTICLE;

29 [(7)] (VIII) A massage therapist;

30 [(8)] (IX) A mortician;

- 1 [(9)] (X) A nurse;
- 2 [(10)] (XI) A nutritionist;
- 3 [(11)] (XII) An occupational therapist;
- 4 [(12)] (XIII) An optometrist;
- 5 [(13)] (XIV) A physical therapist;
- 6 [(14)] (XV) A physician;
- 7 [(15)] (XVI) A podiatrist;
- 8 [(16)] (XVII) A professional counselor;
- 9 [(17)] (XVIII) A psychologist;
- 10 [(18)] (XIX) A social worker; and
- 11 [(19)] (XX) A speech-language pathologist.

12 (2) "HEALTH CARE PROVIDER" INCLUDES AN AGENT, EMPLOYEE,
13 OFFICER, OR DIRECTOR OF ANY ENTITY LISTED UNDER PARAGRAPH (1) OF THIS
14 SUBSECTION.

15 (b) Except for a minor patient, unless a patient is notified, a health care
16 provider may not destroy a medical record or laboratory or X-ray report about a
17 patient for 5 years after the record or report is made.

18 (c) In the case of a minor patient, a medical record or laboratory or X-ray
19 report about a minor patient may not be destroyed until the patient attains the age of
20 majority plus 3 years or for 5 years after the record or report is made, whichever is
21 later, unless:

22 (1) The parent or guardian of the minor patient is notified; or

23 (2) If the medical care documented in the record was provided under §
24 20-102(c) or § 20-103(c) of this article, the minor patient is notified.

25 (d) The notice under subsections (b) and (c) of this section shall:

26 (1) Be made by first-class mail to the last known address of the patient;

27 (2) Include the date on which the record of the patient shall be destroyed;
28 and

29 (3) Include a statement that the record or synopsis of the record, if
30 wanted, must be retrieved at a designated location within 30 days of the proposed
31 date of destruction.

1 (e) After the death, retirement, surrender of the license, or discontinuance of
2 the practice or business of a health care provider, the health care provider, the
3 administrator of the estate, or a designee who agrees to provide for the maintenance
4 of the medical records of the practice or business and who states, in writing to the
5 appropriate health occupation board within a reasonable time, that the records will
6 be maintained in compliance with this section, shall:

7 (1) Forward the notice required in this section before the destruction or
8 transfer of medical records; or

9 (2) Publish a notice in a daily newspaper that is circulated locally for 2
10 consecutive weeks:

11 (i) Stating the date that the medical records will be destroyed or
12 transferred; and

13 (ii) Designating a location, date, and time where the medical
14 records may be retrieved, if wanted.

15 (F) (1) AFTER CONSULTING WITH THE ASSOCIATION OF MARYLAND
16 HOSPITALS AND HEALTH SYSTEMS, THE MARYLAND STATE MEDICAL SOCIETY, AND
17 OTHER INTERESTED PARTIES, INCLUDING CONSUMERS AND PAYORS, THE
18 SECRETARY SHALL ADOPT REGULATIONS GOVERNING THE DESTRUCTION OF
19 MEDICAL RECORDS.

20 (2) THE REGULATIONS ADOPTED UNDER THIS SUBSECTION SHALL:

21 (I) SPECIFY THE MANNER IN WHICH A HEALTH CARE PROVIDER
22 SHALL MAINTAIN AND STORE MEDICAL RECORDS TO:

23 1. ENSURE CONFIDENTIALITY; AND

24 2. PROVIDE LIMITED ACCESS TO THE MEDICAL RECORDS
25 UNTIL THE RECORDS ARE DESTROYED; AND

26 (II) ENSURE THAT THE METHOD OF DESTRUCTION RENDERS THE
27 MEDICAL RECORDS UNREADABLE.

28 (3) THE REGULATIONS ADOPTED UNDER THIS SUBSECTION MAY NOT:

29 (I) REQUIRE OR ENCOURAGE THE DESTRUCTION OF MEDICAL
30 RECORDS; OR

31 (II) BE INCONSISTENT WITH ANY PROVISION OF LAW APPLICABLE
32 TO THE MAINTENANCE OR DESTRUCTION OF MEDICAL RECORDS.

33 [(f)] (G) (1) A health care provider or any other person who knowingly
34 violates any provision of this subtitle is liable for actual damages.

35 (2) (I) IN ADDITION TO ANY OTHER PENALTIES PROVIDED FOR
36 UNDER THIS ARTICLE, A ~~PERSON WHO~~ HEALTH CARE FACILITY THAT KNOWINGLY

1 VIOLATES THIS SECTION IS SUBJECT TO AN ADMINISTRATIVE FINE NOT EXCEEDING
2 ~~\$25,000~~ \$10,000 FOR ALL VIOLATIONS CITED IN A SINGLE DAY.

3 (II) 1. IN ADDITION TO ANY OTHER PENALTIES PROVIDED
4 UNDER THIS ARTICLE, AN INDIVIDUAL WHO KNOWINGLY VIOLATES THIS SECTION IS
5 SUBJECT TO THE FINES PROVIDED IN SUB-SUBPARAGRAPH 2 OF THIS
6 SUBPARAGRAPH IF THE INDIVIDUAL IS:

7 A. A HEALTH CARE PROVIDER, AS DEFINED UNDER
8 SUBSECTION (A)(1)(I) THROUGH (VI) OR (VIII) THROUGH (XX) OF THIS SECTION; OR

9 B. AN AGENT, EMPLOYEE, OFFICER, OR DIRECTOR OF A
10 HEALTH CARE PROVIDER.

11 2. THE ADMINISTRATIVE FINES APPLICABLE TO AN
12 INDIVIDUAL COVERED UNDER SUB-SUBPARAGRAPH 1 OF THIS SUBPARAGRAPH
13 SHALL BE ASSESSED AS FOLLOWS:

14 A. THE FIRST FINE ASSESSED OR FIRST SET OF FINES
15 ASSESSED CONCURRENTLY FOR ALL VIOLATIONS CITED IN A SINGLE DAY MAY NOT
16 EXCEED \$1,000;

17 B. THE SECOND FINE ASSESSED OR SECOND SET OF FINES
18 ASSESSED CONCURRENTLY FOR ALL VIOLATIONS CITED IN A SINGLE DAY MAY NOT
19 EXCEED \$2,500; AND

20 C. THE THIRD OR SUBSEQUENT FINE ASSESSED OR THIRD
21 OR SUBSEQUENT SET OF FINES ASSESSED CONCURRENTLY FOR ALL VIOLATIONS
22 CITED IN A SINGLE DAY MAY NOT EXCEED \$5,000.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2001.