
By: **Delegates Gladden, Grosfeld, Cole, and Montague**
Introduced and read first time: February 8, 2002
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Records - Ex Parte Communications With Health Care**
3 **Providers**

4 FOR the purpose of prohibiting a health care provider, subject to certain exceptions,
5 from communicating information about a patient to anyone for the purpose of
6 assisting in the prosecution or defense of a legal claim without the written
7 consent of the patient or certain other persons; requiring that when a health
8 care provider, the provider's insurer, or the provider's legal counsel requests a
9 patient's medical records, the requesting party provide the patient's health care
10 provider an affidavit that attests that the requesting party has notified certain
11 persons in a certain manner about the request; defining certain terms; and
12 generally relating to the confidentiality of medical records.

13 BY adding to
14 Article - Courts and Judicial Proceedings
15 Section 9-124
16 Annotated Code of Maryland
17 (1998 Replacement Volume and 2001 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Health - General
20 Section 4-305 and 4-306
21 Annotated Code of Maryland
22 (2000 Replacement Volume and 2001 Supplement)

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

25 **Article - Courts and Judicial Proceedings**

26 9-124.

27 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

1 (2) (I) "HEALTH CARE PROVIDER" MEANS:

2 1. A PERSON WHO IS LICENSED, CERTIFIED, OR OTHERWISE
3 AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE OR § 13-516 OF THE
4 EDUCATION ARTICLE TO PROVIDE HEALTH CARE SERVICES IN THE ORDINARY
5 COURSE OF BUSINESS OR PRACTICE OF A PROFESSION, OR IN AN APPROVED
6 EDUCATION OR TRAINING PROGRAM; OR

7 2. A FACILITY WHERE HEALTH CARE SERVICES ARE
8 PROVIDED TO PATIENTS OR RECIPIENTS, INCLUDING:

9 A. A FACILITY AS DEFINED IN § 10-101 OF THE HEALTH -
10 GENERAL ARTICLE;

11 B. A HOSPITAL AS DEFINED IN § 19-301 OF THE HEALTH -
12 GENERAL ARTICLE;

13 C. A RELATED INSTITUTION AS DEFINED IN § 19-301 OF THE
14 HEALTH - GENERAL ARTICLE;

15 D. A HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN
16 § 19-701 OF THE HEALTH - GENERAL ARTICLE; OR

17 E. AN OUTPATIENT CLINIC OR A MEDICAL LABORATORY.

18 (II) "HEALTH CARE PROVIDER" INCLUDES AN AGENT, SERVANT,
19 EMPLOYEE, OFFICER, OR DIRECTOR OF A HEALTH CARE PROVIDER OR A HEALTH
20 CARE FACILITY.

21 (3) "INFORMATION" MEANS ANY INFORMATION, INCLUDING
22 COMMUNICATIONS BETWEEN A PATIENT AND A HEALTH CARE PROVIDER, THAT
23 RELATES TO THE PAST, PRESENT, OR FUTURE:

24 (I) PHYSICAL OR MENTAL HEALTH OR CONDITION OF A PATIENT;

25 (II) PROVISION OF HEALTH CARE TO A PATIENT; OR

26 (III) PAYMENT FOR THE PROVISION OF HEALTH CARE.

27 (4) "PATIENT" MEANS A PERSON WHO RECEIVES HEALTH CARE FROM A
28 HEALTH CARE PROVIDER OR HEALTH CARE FACILITY.

29 (5) "PERSON IN INTEREST" MEANS:

30 (I) AN ADULT ABOUT WHOM A HEALTH CARE PROVIDER HAS
31 INFORMATION;

32 (II) A PERSON AUTHORIZED TO CONSENT TO HEALTH CARE FOR AN
33 ADULT CONSISTENT WITH THE AUTHORITY GRANTED;

1 (III) A DULY AUTHORIZED REPRESENTATIVE OF A DECEASED
2 PERSON;

3 (IV) A MINOR, IF THE INFORMATION CONCERNS TREATMENT TO
4 WHICH THE MINOR HAS THE RIGHT TO CONSENT AND HAS CONSENTED UNDER
5 TITLE 20, SUBTITLE 1 OF THE HEALTH - GENERAL ARTICLE;

6 (V) A PARENT, GUARDIAN, CUSTODIAN, OR A REPRESENTATIVE OF
7 A MINOR APPOINTED BY A COURT, SUBJECT TO THE DISCRETION OF THE ATTENDING
8 HEALTH CARE PROVIDER WHO PROVIDED THE TREATMENT TO THE MINOR, AS
9 PROVIDED IN §§ 20-102 AND 20-104 OF THE HEALTH - GENERAL ARTICLE; OR

10 (VI) IF ITEM (IV) OR (V) OF THIS PARAGRAPH DOES NOT APPLY TO A
11 MINOR:

12 1. A PARENT OF THE MINOR, PROVIDED THE PARENT'S
13 AUTHORITY TO CONSENT TO HEALTH CARE FOR THE MINOR HAS NOT BEEN
14 SPECIFICALLY LIMITED BY A COURT ORDER OR A VALID SEPARATION AGREEMENT
15 ENTERED INTO BY THE PARENTS OF THE MINOR; OR

16 2. A PERSON AUTHORIZED TO CONSENT TO HEALTH CARE
17 FOR THE MINOR CONSISTENT TO THE AUTHORITY GRANTED.

18 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A HEALTH
19 CARE PROVIDER MAY NOT COMMUNICATE IN WRITING, ORALLY, OR IN ANY OTHER
20 MANNER INFORMATION REGARDING A PATIENT TO ANYONE FOR THE PURPOSE OF
21 ASSISTING IN THE PROSECUTION OR DEFENSE OF A POTENTIAL OR ACTUAL LEGAL
22 CLAIM, WITHOUT THE WRITTEN CONSENT OF THE PATIENT, A PERSON IN INTEREST,
23 OR LEGAL COUNSEL FOR THE PATIENT OR PERSON IN INTEREST.

24 (C) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (B) OF THIS
25 SECTION, A HEALTH CARE PROVIDER MAY COMMUNICATE INFORMATION
26 REGARDING THE PATIENT WITHOUT THE AUTHORIZATION OF THE PATIENT, PERSON
27 IN INTEREST, OR LEGAL COUNSEL FOR THE PATIENT OR PERSON IN INTEREST:

28 (1) TO THE HEALTH CARE PROVIDER'S OWN INSURER OR LEGAL
29 COUNSEL TO THE EXTENT SUCH INFORMATION IS RELATED TO THE
30 REPRESENTATION OF THE HEALTH CARE PROVIDER; OR

31 (2) IF COMPELLED BY SUBPOENA, AT A DEPOSITION, EVIDENTIARY
32 HEARING, TRIAL, OR OTHER LEGAL PROCEEDING FOR WHICH PROPER NOTICE HAS
33 BEEN GIVEN TO THE PATIENT, PERSON IN INTEREST, OR LEGAL COUNSEL FOR THE
34 PATIENT OR PERSON IN INTEREST.

35 **Article - Health - General**

36 4-305.

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

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

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

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

9 (iii) To any provider's insurer or legal counsel, or the authorized
10 employees or agents of a provider's insurer or legal counsel, for the sole purpose of
11 handling a potential or actual claim against any provider if the medical record is
12 maintained on the claimant and relates to the subject matter of the claim, PROVIDED
13 THAT THE PARTY REQUESTING THE RELEASE OF A MEDICAL RECORD PROVIDES THE
14 PATIENT'S HEALTH CARE PROVIDER AN AFFIDAVIT ATTESTING THAT:

15 1. THE REQUESTING PARTY HAS NOTIFIED THE PATIENT OR
16 PERSON IN INTEREST THAT DISCLOSURE OF MEDICAL RECORDS IS BEING SOUGHT
17 FROM THE HEALTH CARE PROVIDER; AND

18 2. NOTICE WAS MAILED TO THE PATIENT, THE PERSON IN
19 INTEREST, OR COUNSEL TO THE PATIENT OR PERSON IN INTEREST BY CERTIFIED
20 MAIL, RETURN RECEIPT REQUESTED, AT LEAST 14 DAYS BEFORE THE REQUEST FOR
21 DISCLOSURE;

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

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

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

28 (iii) Accreditation of a facility by professional standard setting
29 entities;

30 (3) 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 a government agency performing its lawful duties as authorized by an act
33 of the Maryland General Assembly or the United States Congress;

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

1 (5) If a claim has been or may be filed by, or with the authorization of a
2 patient or recipient on behalf of the patient or recipient, for covered insureds, covered
3 beneficiaries, or enrolled recipients only, to third party payors and their agents, if the
4 payors or agents have met the applicable provisions of Title 19, Subtitle 13 of this
5 article, including nonprofit health service plans, health maintenance organizations,
6 fiscal intermediaries and carriers, the Department of Health and Mental Hygiene and
7 its agents, the United States Department of Health and Human Services and its
8 agents, or any other person obligated by contract or law to pay for the health care
9 rendered for the sole purposes of:

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

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

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

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

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

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

26 (8) To an appropriate organ, tissue, or eye recovery agency under the
27 restrictions of § 5-408 of this article for a patient whose organs and tissues may be
28 donated for the purpose of evaluating the patient for possible organ and tissue
29 donation;

30 (9) To the Department of Health and Mental Hygiene or an organ, tissue,
31 or eye recovery agency designated by the Department for the purpose of conducting
32 death record reviews under § 19-310 of this article; or

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

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

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

4 4-306.

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

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

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

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

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

- 21 1. Assessment of risk;
- 22 2. Development of a service plan;
- 23 3. Implementation of a safety plan; or
- 24 4. Investigation of the suspected case of abuse or neglect; and

25 (iii) The medical record may be redisclosed as provided in Article
26 88A, § 6 of the Code;

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

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

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

33 (3) To a health care provider or the provider's insurer or legal counsel, all
34 information in a medical record relating to a patient or recipient's health, health care,
35 or treatment which forms the basis for the issues of a claim in a civil action initiated
36 by the patient, recipient, or person in [interest;] INTEREST, PROVIDED THAT THE

1 PARTY REQUESTING THE RELEASE OF A MEDICAL RECORD PROVIDES THE PATIENT'S
2 HEALTH CARE PROVIDER AN AFFIDAVIT ATTESTING THAT:

3 (I) THE REQUESTING PARTY HAS NOTIFIED THE PATIENT OR
4 PERSON IN INTEREST THAT DISCLOSURE OF MEDICAL RECORDS IS BEING SOUGHT
5 FROM THE HEALTH CARE PROVIDER; AND

6 (II) NOTICE WAS MAILED TO THE PATIENT, THE PERSON IN
7 INTEREST, OR COUNSEL TO THE PATIENT OR PERSON IN INTEREST BY CERTIFIED
8 MAIL, RETURN RECEIPT REQUESTED, AT LEAST 14 DAYS BEFORE THE REQUEST FOR
9 DISCLOSURE;

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

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

15 (6) (i) Subject to the additional limitations for a medical record
16 developed primarily in connection with the provision of mental health services in §
17 4-307 of this subtitle and except as otherwise provided in items (2), (7), and (8) of this
18 subsection, in accordance with compulsory process, if the subpoena, summons,
19 warrant, or court order contains a certification that:

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

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

25 (ii) In accordance with a stipulation by a patient or person in
26 interest; or

27 (iii) In accordance with a discovery request permitted by law to be
28 made to a court, an administrative tribunal, or a party to a civil court, administrative,
29 or health claims arbitration proceeding;

30 (7) 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 grand juries, prosecution agencies, law enforcement agencies or their
33 agents or employees to further an investigation or prosecution, pursuant to a
34 subpoena, warrant, or court order for the sole purposes of investigating and
35 prosecuting criminal activity, provided that the prosecution agencies and law
36 enforcement agencies have written procedures to protect the confidentiality of the
37 records;

38 (8) To the Maryland Insurance Administration when conducting an
39 investigation or examination pursuant to Title 2, Subtitle 2 of the Insurance Article,

1 provided that the Insurance Administration has written procedures to maintain the
2 confidentiality of the records; or

3 (9) To a State or local child fatality review team established under Title
4 5, Subtitle 7 of this article as necessary to carry out its official functions.

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

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

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2002.