
By: **Senator Giannetti**
Introduced and read first time: January 31, 2003
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of prohibiting a health care provider, subject to certain exceptions,
5 from communicating directly with a person or a person's insurer or legal counsel
6 regarding a patient or a recipient in connection with certain claims or
7 proceedings; authorizing a health care provider to communicate certain
8 information to a person, person's insurer, or legal counsel if a certain affidavit
9 and certain notice have been provided; providing that certain provisions of this
10 Act do not authorize disclosure of certain information otherwise prohibited
11 under law; and generally relating to the confidentiality of medical records.

12 BY repealing and reenacting, with amendments,
13 Article - Health - General
14 Section 4-305 and 4-306
15 Annotated Code of Maryland
16 (2000 Replacement Volume and 2002 Supplement)

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

19 **Article - Health - General**

20 4-305.

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

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

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

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

3 (iii) To any provider's insurer or legal counsel, or the authorized
4 employees or agents of a provider's insurer or legal counsel, for the sole purpose of
5 handling a potential or actual claim against any provider if the medical record is
6 maintained on the claimant and relates to the subject matter of the claim;

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

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

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

13 (iii) Accreditation of a facility by professional standard setting
14 entities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
30 HEALTH CARE PROVIDER MAY NOT COMMUNICATE DIRECTLY WITH ANY PERSON OR
31 THAT PERSON'S INSURER OR LEGAL COUNSEL REGARDING A PATIENT OR A
32 RECIPIENT'S HEALTH, HEALTH CARE, OR TREATMENT IN CONNECTION WITH AN
33 ACTUAL OR POTENTIAL PERSONAL INJURY CLAIM OR FAMILY LAW PROCEEDING.

34 (2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS
35 SUBSECTION, A HEALTH CARE PROVIDER MAY COMMUNICATE INFORMATION
36 REGARDING A PATIENT OR A RECIPIENT TO A PERSON OR A PERSON'S INSURER OR
37 LEGAL COUNSEL IF:

38 (I) THE PERSON OR THE PERSON'S INSURER OR LEGAL COUNSEL
39 HAS PROVIDED THE HEALTH CARE PROVIDER WITH AN AFFIDAVIT ATTESTING TO
40 THE FACT THAT THE PATIENT, RECIPIENT, OR PERSON IN INTEREST HAS BEEN

1 NOTIFIED THAT DIRECT COMMUNICATION IS BEING SOUGHT WITH THAT HEALTH
2 CARE PROVIDER; AND

3 (II) NOTICE WAS MAILED TO THE PATIENT, THE PERSON IN
4 INTEREST, OR LEGAL COUNSEL TO THE PATIENT BY CERTIFIED MAIL, RETURN
5 RECEIPT REQUESTED, AT LEAST 14 DAYS BEFORE THE REQUEST FOR DIRECT
6 COMMUNICATION.

7 (3) THIS SUBSECTION DOES NOT APPLY TO:

8 (I) THE PROVISION OF MEDICAL RECORDS UNDER THIS SUBTITLE;
9 OR

10 (II) A HEALTH CARE PROVIDER'S COMMUNICATION WITH THE
11 HEALTH CARE PROVIDER'S INSURER OR LEGAL COUNSEL IN CONNECTION WITH AN
12 ACTUAL OR POTENTIAL CLAIM DIRECTLY INVOLVING THE HEALTH CARE PROVIDER.

13 (4) NOTHING IN THIS SUBSECTION AUTHORIZES DISCLOSURE OF A
14 MEDICAL RECORD OR INFORMATION OTHERWISE PROHIBITED UNDER LAW.

15 4-306.

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

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

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

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

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

- 32 1. Assessment of risk;
- 33 2. Development of a service plan;
- 34 3. Implementation of a safety plan; or
- 35 4. Investigation of the suspected case of abuse or neglect; and

1 (iii) The medical record may be redisclosed as provided in Article
2 88A, § 6 of the Code;

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

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

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

9 (3) To a health care provider or the provider's insurer or legal counsel, all
10 information in a medical record relating to a patient or recipient's health, health care,
11 or treatment which forms the basis for the issues of a claim in a civil action initiated
12 by the patient, recipient, or person in interest;

13 (4) Notwithstanding any privilege in law, as needed, to a medical review
14 committee as defined in § 1-401 of the Health Occupations Article or a dental review
15 committee as defined in § 4-501 of the Health Occupations Article;

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

18 (6) (i) Subject to the additional limitations for a medical record
19 developed primarily in connection with the provision of mental health services in §
20 4-307 of this subtitle and except as otherwise provided in items (2), (7), and (8) of this
21 subsection, in accordance with compulsory process, if the subpoena, summons,
22 warrant, or court order contains a certification that:

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

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

28 (ii) In accordance with a stipulation by a patient or person in
29 interest; or

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

33 (7) Subject to the additional limitations for a medical record developed
34 primarily in connection with the provision of mental health services in § 4-307 of this
35 subtitle, to grand juries, prosecution agencies, law enforcement agencies or their
36 agents or employees to further an investigation or prosecution, pursuant to a
37 subpoena, warrant, or court order for the sole purposes of investigating and
38 prosecuting criminal activity, provided that the prosecution agencies and law

1 enforcement agencies have written procedures to protect the confidentiality of the
2 records;

3 (8) To the Maryland Insurance Administration when conducting an
4 investigation or examination pursuant to Title 2, Subtitle 2 of the Insurance Article,
5 provided that the Insurance Administration has written procedures to maintain the
6 confidentiality of the records; or

7 (9) To a State or local child fatality review team established under Title
8 5, Subtitle 7 of this article as necessary to carry out its official functions.

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

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

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

15 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
16 HEALTH CARE PROVIDER MAY NOT COMMUNICATE DIRECTLY WITH ANY PERSON OR
17 THAT PERSON'S INSURER OR LEGAL COUNSEL REGARDING A PATIENT OR A
18 RECIPIENT'S HEALTH, HEALTH CARE, OR TREATMENT IN CONNECTION WITH AN
19 ACTUAL OR POTENTIAL PERSONAL INJURY CLAIM OR FAMILY LAW PROCEEDING.

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26 THE FACT THAT THE PATIENT, RECIPIENT, OR PERSON IN INTEREST HAS BEEN
27 NOTIFIED THAT DIRECT COMMUNICATION IS BEING SOUGHT WITH THAT HEALTH
28 CARE PROVIDER; AND

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30 INTEREST, OR LEGAL COUNSEL TO THE PATIENT BY CERTIFIED MAIL, RETURN
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32 COMMUNICATION.

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37 HEALTH CARE PROVIDER'S INSURER OR LEGAL COUNSEL IN CONNECTION WITH AN
38 ACTUAL OR POTENTIAL CLAIM DIRECTLY INVOLVING THE HEALTH CARE PROVIDER.

1 (4) NOTHING IN THIS SUBSECTION AUTHORIZES DISCLOSURE OF A
2 MEDICAL RECORD OR INFORMATION OTHERWISE PROHIBITED UNDER LAW.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
4 effect October 1, 2003.