

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Health and Government Operations --

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 - Authorized Disclosures - Compulsory Process**

3 FOR the purpose of ~~authorizing certain health care providers who disclose certain~~
4 ~~medical records to charge certain fees;~~ altering certain requirements for certain
5 disclosures of certain medical records; requiring certain health care providers to
6 disclose certain medical records under certain circumstances if the health care
7 provider receives certain assurances from certain parties or certain counsel,
8 certain proof of a certain waiver, or certain copies of certain orders entered by a
9 court and certain copies of certain subpoenas, summonses, warrants, or court
10 orders, a certain section of a certain article of the Annotated Code, and certain
11 notices to certain individuals in a certain form within a certain time; repealing
12 a certain requirement for a certain disclosure of certain medical records; and
13 generally relating to the compulsory process and authorized disclosures of
14 medical records.

15 BY repealing and reenacting, with amendments,
16 Article - Health - General

1 Section ~~4-304(e)~~, 4-306(b)(6); and 4-307(k)(1)(v) through (vii)
 2 Annotated Code of Maryland
 3 (2000 Replacement Volume and 2004 Supplement)

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

6 **Article - Health - General**

7 ~~4-304.~~

8 ~~(e) (1) (i) In this subsection, "medical record" includes a copy of a medical~~
 9 ~~bill that has been requested by an individual.~~

10 ~~(ii) The provisions of this subsection do not apply to x rays.~~

11 ~~(2) A health care provider may require a person in interest or any other~~
 12 ~~authorized person who requests a copy of a medical record to pay the cost of copying.~~

13 ~~(i) For State facilities regulated by the Department of Health and~~
 14 ~~Mental Hygiene, as provided in § 10-621 of the State Government Article; or~~

15 ~~(ii) For all other health care providers, the reasonable cost of~~
 16 ~~providing the information requested.~~

17 ~~(3) (i) Subject to the provisions of paragraph (4) of this subsection, for~~
 18 ~~a copy of a medical record requested by a person in interest or any other authorized~~
 19 ~~person under paragraph (2)(ii) of this subsection, a health care provider may charge a~~
 20 ~~fee for copying and mailing not exceeding 50 cents for each page of the medical record.~~

21 ~~(ii) In addition to the fee charged under subparagraph (i) of this~~
 22 ~~paragraph, a hospital or a health care provider may charge:~~

23 ~~1. A preparation fee not to exceed \$15 for medical record~~
 24 ~~retrieval and preparation; and~~

25 ~~2. The actual cost for postage and handling of the medical~~
 26 ~~record.~~

27 ~~(4) On or after July 1, 1995, the fees charged under paragraph (3) of this~~
 28 ~~subsection may be adjusted annually for inflation in accordance with the Consumer~~
 29 ~~Price Index.~~

30 ~~(5) A HEALTH CARE PROVIDER WHO DISCLOSES A MEDICAL RECORD~~
 31 ~~UNDER § 4-306 OF THIS SUBTITLE MAY CHARGE FEES FOR THE RETRIEVAL, COPYING,~~
 32 ~~PREPARATION, MAILING, AND ACTUAL COST OF POSTAGE AND HANDLING OF THE~~
 33 ~~MEDICAL RECORD.~~

34 ~~[(5)] (6) Notwithstanding any other provision of law, any person or~~
 35 ~~entity who is not subject to the provisions of this subsection and who obtains a~~

1 ~~medical record from a health care provider or the provider's agent may not charge a~~
2 ~~fee for any subsequent copies of that medical record that exceeds the fee authorized~~
3 ~~under paragraph (3)(i) of this subsection.~~

4 4-306.

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

7 (6) [(i)] Subject to the additional limitations for a medical record
8 developed primarily in connection with the provision of mental health services in §
9 4-307 of this subtitle and except as otherwise provided in items (2), (7), and (8) of this
10 subsection, in accordance with compulsory process, if the [subpoena, summons,
11 warrant, or court order contains a certification that] HEALTH CARE PROVIDER
12 RECEIVES:

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

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

18 (ii) In accordance with a stipulation by a patient or person in
19 interest; or

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

23 (I) 1. ~~AN A WRITTEN ASSURANCE FROM THE PARTY OR THE~~
24 ~~ATTORNEY REPRESENTING THE PARTY SEEKING THE MEDICAL RECORDS THAT:~~

25 A. A PERSON IN INTEREST HAS NOT OBJECTED TO THE
26 DISCLOSURE OF THE DESIGNATED MEDICAL RECORDS AND 30 DAYS HAVE ELAPSED
27 SINCE THE NOTICE WAS SENT; OR

28 B. THE OBJECTIONS OF A PERSON IN INTEREST HAVE BEEN
29 RESOLVED AND THE REQUEST FOR DISCLOSURE IS IN ACCORDANCE WITH THE
30 RESOLUTION;

31 2. PROOF THAT SERVICE OF THE SUBPOENA, SUMMONS,
32 WARRANT, OR COURT ORDER HAS BEEN WAIVED BY THE COURT FOR GOOD CAUSE;
33 OR

34 3. A COPY OF AN ORDER ENTERED BY A COURT ~~ALLOWING~~
35 EXPRESSLY AUTHORIZING DISCLOSURE OF THE DESIGNATED MEDICAL RECORDS;
36 AND

UNOFFICIAL COPY OF SENATE BILL 690

1 (II) FOR DISCLOSURES MADE UNDER ITEM (I) OF THIS PARAGRAPH,
2 COPIES OF THE FOLLOWING ITEMS THAT WERE MAILED BY CERTIFIED MAIL TO THE
3 PERSON IN INTEREST BY THE PERSON REQUESTING THE DISCLOSURE AT LEAST 30
4 DAYS BEFORE THE RECORDS ARE TO BE DISCLOSED:

5 1. THE SUBPOENA, SUMMONS, WARRANT, OR COURT ORDER
6 SEEKING THE DISCLOSURE OR PRODUCTION OF THE RECORDS;

7 2. THIS SECTION; AND

8 3. A NOTICE IN THE FOLLOWING FORM OR A
9 SUBSTANTIALLY SIMILAR FORM:

10 _____ IN THE
11 PLAINTIFFS _____

12 V. FOR

13 _____
14 DEFENDANTS

15 CASE NO.: _____

16 NOTICE TO (PATIENT NAME)
17 IN COMPLIANCE WITH § 4-306 OF THE HEALTH - GENERAL ARTICLE,
18 ANNOTATED CODE OF MARYLAND

19 TAKE NOTE THAT MEDICAL RECORDS REGARDING (PATIENT NAME), HAVE BEEN
20 SUBPOENAED FROM THE (NAME AND ADDRESS OF HEALTH CARE PROVIDER)
21 PURSUANT TO THE ATTACHED SUBPOENA AND § 4-306 OF THE HEALTH - GENERAL
22 ARTICLE, ANNOTATED CODE OF MARYLAND. THIS SUBPOENA ___ DOES ___ DOES
23 NOT (MARK ONE) SEEK PRODUCTION OF MENTAL HEALTH RECORDS.

24 PLEASE EXAMINE THESE PAPERS CAREFULLY. IF YOU HAVE ANY OBJECTION TO
25 THE PRODUCTION OF THESE DOCUMENTS, YOU MUST FILE A MOTION FOR A
26 PROTECTIVE ORDER OR A MOTION TO QUASH THE SUBPOENA ISSUED FOR THESE
27 DOCUMENTS UNDER MARYLAND RULES 2-403 AND 2-510 NO LATER THAN THIRTY(30)
28 DAYS FROM THE DATE THIS NOTICE IS MAILED. FOR EXAMPLE, A PROTECTIVE ORDER
29 MAY BE GRANTED IF THE RECORDS ARE NOT RELEVANT TO THE ISSUES IN THIS
30 CASE, THE REQUEST UNDULY INVADES YOUR PRIVACY, OR CAUSES YOU SPECIFIC
31 HARM.

32 ALSO ATTACHED TO THIS FORM IS A COPY OF THE ~~WRIT OF SUMMONS~~
33 SUBPOENA DUCES TECUM ISSUED FOR THESE RECORDS.

1 IF YOU BELIEVE YOU NEED FURTHER LEGAL ADVICE ABOUT THIS MATTER, YOU
2 SHOULD CONSULT YOUR ATTORNEY.

3 ATTORNEY _____
4 (FIRM NAME
5 ATTORNEY ADDRESS
6 ATTORNEY PHONE NUMBER)

7 ATTORNEYS FOR (NAME OF PARTY
8 REPRESENTED)

9 CERTIFICATE OF SERVICE

10 I HEREBY CERTIFY THAT A COPY OF THE FOREGOING NOTICE WAS MAILED,
11 FIRST-CLASS POSTAGE PREPAID, THIS ___ DAY OF _____, 200_ TO

12 _____
13 PATIENT

14 _____
15 EACH COUNSEL IN CASE

16 _____
17 ATTORNEY

18 4-307.

19 (k) (1) A health care provider shall disclose a medical record without the
20 authorization of a person in interest:

21 (v) [In accordance with service of compulsory process or a discovery
22 request, as permitted under § 9-109(d), § 9-109.1(d), or § 9-121(d) of the Courts and
23 Judicial Proceedings Article, or as otherwise provided by law, to a court, an
24 administrative tribunal, or a party to a civil court, administrative, or health claims
25 arbitration proceeding, if:

26 1. The request for issuance of compulsory process or the
27 request for discovery filed with the court or administrative tribunal and served on the
28 health care provider is accompanied by a copy of a certificate directed to the recipient,
29 the person in interest, or counsel for the recipient or the person in interest; and

30 2. The certificate:

31 A. Notifies the recipient or the person in interest that
32 disclosure of the recipient's medical record is sought;

33 B. Notifies the recipient or the person in interest of the
34 provisions of this subsection or any other provision of law on which the requesting
35 party relies in seeking disclosure of the information;

1 C. Notifies the recipient or the person in interest of the
2 procedure for filing a motion to quash or a motion for a protective order;

3 D. Is attached to a copy of the request for issuance of a
4 compulsory process or request for discovery; and

5 E. Is mailed to the recipient, the person in interest, or
6 counsel for the recipient or person in interest by certified mail, return receipt
7 requested, on or before the date of filing the request for issuance of compulsory
8 process or the request for discovery;

9 (vi)] In accordance with a subpoena for medical records on specific
10 recipients:

11 1. To health professional licensing and disciplinary boards
12 for the sole purpose of an investigation regarding licensure, certification, or discipline
13 of a health professional or the improper practice of a health profession; and

14 2. To grand juries, prosecution agencies, and law
15 enforcement agencies under the supervision of prosecution agencies for the sole
16 purposes of investigation and prosecution of a provider for theft and fraud, related
17 offenses, obstruction of justice, perjury, unlawful distribution of controlled
18 substances, and of any criminal assault, neglect, patient abuse or sexual offense
19 committed by the provider against a recipient, provided that the prosecution or law
20 enforcement agency shall:

21 A. Have written procedures which shall be developed in
22 consultation with the Director to maintain the medical records in a secure manner so
23 as to protect the confidentiality of the records; and

24 B. In a criminal proceeding against a provider, to the
25 maximum extent possible, remove and protect recipient identifying information from
26 the medical records used in the proceeding; or

27 [(vii)] (VI) In the event of the death of a recipient, to the office of
28 the medical examiner as authorized under § 5-309 or § 10-714 of this article.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 July 1, 2005.