
By: ~~Senators Hollinger and Frosh, Frosh, and Grosfeld~~
 Introduced and read first time: February 4, 2005
 Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
 Senate action: Adopted
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CHAPTER _____

1 AN ACT concerning

2 ~~State Board of Physicians – Subpoenas – Mental Health Records~~
 3 ~~Health Care Providers - Disclosure of Mental Health Records - Subpoenas~~

4 FOR the purpose of ~~requiring the State Board of Physicians to notify a certain patient~~
 5 ~~whose medical records in connection with mental health services are being~~
 6 ~~subpoenaed as a result of a complaint received by the Board from a person other~~
 7 ~~than the patient; requiring the Board to inform a certain patient of a certain~~
 8 ~~time period in which the patient may assert in a motion to quash or a motion for~~
 9 ~~a protective order any constitutional right or other legal authority in opposition~~
 10 ~~to disclosure of certain medical records and the right to a hearing; providing~~
 11 ~~that, if a certain patient fails to assert in a motion to quash or a motion for a~~
 12 ~~protective order any constitutional right or other legal authority in opposition to~~
 13 ~~disclosure within a certain time period, the Board may require the disclosure of~~
 14 ~~certain medical records; and generally relating to subpoenas for mental health~~
 15 ~~records issued by the State Board of Physicians requiring a health care provider~~
 16 ~~to disclose a certain medical record without certain authorization to certain~~
 17 ~~boards if a certain certificate is attached to a certain subpoena; and generally~~
 18 ~~relating to the disclosure of medical records to health professional licensing and~~
 19 ~~disciplinary boards.~~

20 BY repealing and reenacting, with amendments,
 21 Article - ~~Health Occupations~~ Health - General
 22 Section ~~14-401(h)~~ 4-307(k)(1)
 23 Annotated Code of Maryland
 24 (2000 Replacement Volume and 2004 Supplement)

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

1

Article—Health Occupations

2 14-401.

3 (h) (1) The Board may issue subpoenas and administer oaths in connection
4 with any investigation under this section and any hearing or proceeding before it.

5 (2) (1) ~~A SUBPOENA ISSUED BY THE BOARD FOR A PATIENT'S MEDICAL
6 RECORDS IN CONNECTION WITH MENTAL HEALTH SERVICES, AS A RESULT OF A
7 COMPLAINT RECEIVED BY THE BOARD FROM A PERSON OTHER THAN THE PATIENT,
8 IS SUBJECT TO THE REQUIREMENTS DESCRIBED IN THIS SUBPARAGRAPH.~~

9 (H) THE BOARD SHALL:

10 1. NOTIFY A PATIENT WHOSE MEDICAL RECORDS IN
11 CONNECTION WITH MENTAL HEALTH SERVICES ARE BEING SUBPOENAED BY THE
12 BOARD OF THE SUBPOENA FOR THE MEDICAL RECORDS; AND

13 2. INFORM THE PATIENT OF:

14 A. THE RIGHT TO ASSERT IN A MOTION TO QUASH OR A
15 MOTION FOR A PROTECTIVE ORDER ANY CONSTITUTIONAL RIGHT OR OTHER LEGAL
16 AUTHORITY IN OPPOSITION TO DISCLOSURE WITHIN 30 DAYS; AND

17 B. THE RIGHT TO A HEARING ON THE MOTION IN THE
18 CIRCUIT COURT FOR THE JURISDICTION IN WHICH THE PATIENT RESIDES.

19 (III) IF THE PATIENT FAILS TO ASSERT IN A MOTION TO QUASH OR A
20 MOTION FOR A PROTECTIVE ORDER ANY CONSTITUTIONAL RIGHT OR OTHER LEGAL
21 AUTHORITY IN OPPOSITION TO DISCLOSURE WITHIN THE 30 DAY TIME PERIOD, THE
22 BOARD MAY REQUIRE THE DISCLOSURE OF THE PATIENT'S MEDICAL RECORDS.

23

Article - Health - General

24 4-307.

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

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

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

33 2. The recipient is transferred:

1 A. As an involuntary commitment or by court order to the
2 provider;

3 B. Under State law to a juvenile or adult detention or
4 correctional facility; or

5 C. To a provider that is required by law or regulation to
6 admit the recipient;

7 (ii) To the State designated protection and advocacy system for
8 mentally ill individuals under the federal Protection and Advocacy for Mentally Ill
9 Individuals Act of 1986, as amended, if:

10 1. The State designated protection and advocacy system has
11 received a complaint regarding the recipient or the director of the system has certified
12 in writing to the chief administrative officer of the health care provider that there is
13 probable cause to believe that the recipient has been subject to abuse or neglect;

14 2. The recipient by reason of mental or physical condition is
15 unable to authorize disclosure; and

16 3. A. The recipient does not have a legal guardian or other
17 legal representative who has the authority to consent to the release of health care
18 information; or

19 B. The legal guardian of the recipient is a representative of a
20 State agency;

21 (iii) To another health care provider or legal counsel to the other
22 health care provider prior to and in connection with or for use in a commitment
23 proceeding in accordance with Title 10, Subtitle 6 or Title 12 of this article;

24 (iv) In accordance with a court order, other than compulsory process
25 compelling disclosure, as permitted under § 9-109(d), § 9-109.1(d), or § 9-121(d) of
26 the Courts and Judicial Proceedings Article, or as otherwise provided by law, to:

27 1. A court;

28 2. An administrative law judge;

29 3. A health claims arbitrator; or

30 4. A party to a court, administrative, or arbitration
31 proceeding;

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

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

5 2. The certificate:

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

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

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

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

15 E. Is mailed to the recipient, the person in interest, or
16 counsel for the recipient or person in interest by certified mail, return receipt
17 requested, on or before the date of filing the request for issuance of compulsory
18 process or the request for discovery;

19 (vi) In accordance with a subpoena for medical records on specific
20 recipients:

21 1. To health professional licensing and disciplinary boards
22 for the sole purpose of an investigation regarding licensure, certification, or discipline
23 of a health professional or the improper practice of a health profession IF THE
24 CERTIFICATE DESCRIBED UNDER ITEM (V)2 OF THIS PARAGRAPH IS ATTACHED TO
25 THE SUBPOENA; and

26 2. To grand juries, prosecution agencies, and law
27 enforcement agencies under the supervision of prosecution agencies for the sole
28 purposes of investigation and prosecution of a provider for theft and fraud, related
29 offenses, obstruction of justice, perjury, unlawful distribution of controlled
30 substances, and of any criminal assault, neglect, patient abuse or sexual offense
31 committed by the provider against a recipient, provided that the prosecution or law
32 enforcement agency shall:

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

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

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

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2005.