

# HOUSE BILL 1231

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By: **Delegate Krysiak**

Introduced and read first time: February 21, 2007

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Medical Records – Authorized Disclosures**

3 FOR the purpose of authorizing certain health care providers to disclose certain  
4 medical records without the authorization of a person in interest in connection  
5 with a workers' compensation claim under certain circumstances; providing that  
6 disclosure of certain mental health records filed under the workers'  
7 compensation law is subject to certain limitations; and generally relating to the  
8 authorized disclosure of medical records for claims filed under the workers'  
9 compensation law.

10 BY repealing and reenacting, without amendments,  
11 Article – Health – General  
12 Section 4–306(a) and (b)(7) and (8) and 4–307(b), (c), (d), and (k)  
13 Annotated Code of Maryland  
14 (2005 Replacement Volume and 2006 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Health – General  
17 Section 4–306(b)(6), (9), and (10)  
18 Annotated Code of Maryland  
19 (2005 Replacement Volume and 2006 Supplement)

20 BY adding to  
21 Article – Health – General  
22 Section 4–306(b)(11)  
23 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2005 Replacement Volume and 2006 Supplement)

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

**Article – Health – General**

4–306.

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

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

(6) Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4–307 of this subtitle and except as otherwise provided in items (2), (7), [and] (8), **AND (11)** of this subsection, in accordance with compulsory process, if the health care provider receives:

(i) 1. A written assurance from the party or the attorney representing the party seeking the medical records that:

A. A person in interest has not objected to the disclosure of the designated medical records and 30 days have elapsed since the notice was sent; or

B. The objections of a person in interest have been resolved and the request for disclosure is in accordance with the resolution;

2. Proof that service of the subpoena, summons, warrant, or court order has been waived by the court for good cause; or

3. A copy of an order entered by a court expressly authorizing disclosure of the designated medical records; and

(ii) For disclosures made under item (i)1 of this paragraph, copies of the following items that were mailed by certified mail to the person in interest by the person requesting the disclosure at least 30 days before the records are to be disclosed:

1. The subpoena, summons, warrant, or court order seeking the disclosure or production of the records;

Case No.: \_\_\_\_\_

Also attached to this form is a copy of the subpoena duces tecum issued for

If you believe you need further legal advice about this matter, you should consult your attorney.

Attorneys for (Name of Party  
Represented)

I hereby certify that a copy of the foregoing notice was mailed, first-class postage prepaid, this \_\_\_\_ day of \_\_\_\_\_, 200\_ to

Attorney

(8) To the Maryland Insurance Administration when conducting an 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;

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

5 (10) To a local domestic violence fatality review team established under  
6 Title 4, Subtitle 7 of the Family Law Article as necessary to carry out its official  
7 functions; **OR**

8 **(11) SUBJECT TO THE ADDITIONAL LIMITATIONS FOR A MEDICAL**  
9 **RECORD DEVELOPED PRIMARILY IN CONNECTION WITH THE PROVISION OF**  
10 **MENTAL HEALTH SERVICES IN § 4-307 OF THIS SUBTITLE, TO A PARTY SEEKING**  
11 **THE DISCLOSURE OR PRODUCTION OF A MEDICAL RECORD FOR THE SOLE**  
12 **PURPOSE OF INVESTIGATING A CLAIM FILED FOR A WORK-RELATED INJURY OR**  
13 **OCCUPATIONAL DISEASE THAT IS THE SUBJECT OF A PROCEEDING**  
14 **ESTABLISHED UNDER SUBTITLE 7 OF THE LABOR AND EMPLOYMENT ARTICLE,**  
15 **UPON RECEIPT OF:**

16 **(I) A SUBPOENA ISSUED BY THE WORKERS'**  
17 **COMPENSATION COMMISSION; OR**

18 **(II) AN AUTHORIZATION FOR THE RELEASE OF MEDICAL**  
19 **RECORDS FILED WITH THE COMMISSION.**

20 4-307.

21 (b) The disclosure of a medical record developed in connection with the  
22 provision of mental health services shall be governed by the provisions of this section  
23 in addition to the other provisions of this subtitle.

24 (c) When a medical record developed in connection with the provision of  
25 mental health services is disclosed without the authorization of a person in interest,  
26 only the information in the record relevant to the purpose for which disclosure is  
27 sought may be released.

28 (d) (1) To the extent a mental health care provider determines it  
29 necessary and appropriate, the mental health care provider may maintain a personal  
30 note regarding a recipient.

1                   (2)    A personal note shall be considered part of a recipient's medical  
2 records if, at any time, a mental health care provider discloses a personal note to a  
3 person other than:

4                   (i)     The provider's supervising health care provider;

5                   (ii)    A consulting health care provider;

6                   (iii)   An attorney of the health care provider; or

7                   (iv)    A recipient under paragraph (3) of this subsection.

8                   (3)    The provisions of this subsection do not prohibit the disclosure,  
9 discovery, or admissibility of a personal note regarding a recipient who has initiated  
10 an action for malpractice, an intentional tort, or professional negligence against the  
11 health care provider.

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

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

18                               1.    The health care provider with the records has  
19 determined that disclosure is necessary for the continuing provision of mental health  
20 services; and

21                               2.    The recipient is transferred:

22                                   A.    As an involuntary commitment or by court order to  
23 the provider;

24                                   B.    Under State law to a juvenile or adult detention or  
25 correctional facility; or

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

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

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

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

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

11                   B.     The legal guardian of the recipient is a representative  
12 of a State agency;

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

16                   (iv)   In accordance with a court order, other than compulsory  
17 process compelling disclosure, as permitted under § 9–109(d), § 9–109.1(d), or §  
18 9–121(d) of the Courts and Judicial Proceedings Article, or as otherwise provided by  
19 law, to:

20                   1.     A court;

21                   2.     An administrative law judge;

22                   3.     A health claims arbitrator; or

23                   4.     A party to a court, administrative, or arbitration  
24 proceeding;

25                   (v)   In accordance with a subpoena for medical records on  
26 specific recipients:

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

1                   2. To grand juries, prosecution agencies, and law  
2 enforcement agencies under the supervision of prosecution agencies for the sole  
3 purposes of investigation and prosecution of a provider for theft and fraud, related  
4 offenses, obstruction of justice, perjury, unlawful distribution of controlled substances,  
5 and of any criminal assault, neglect, patient abuse or sexual offense committed by the  
6 provider against a recipient, provided that the prosecution or law enforcement agency  
7 shall:

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

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

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

16                  (2) If a recipient believes that a medical record has been  
17 inappropriately obtained, maintained, or disclosed under paragraph (1)(vi) of this  
18 subsection, the recipient may petition the State prosecutor for an investigation of the  
19 allegation.

20                  (3) Except in a proceeding relating to payment for the health care of a  
21 recipient, the medical record of a recipient and any information obtained as a result of  
22 disclosure under paragraph (1)(vi) of this subsection is disclosable, notwithstanding  
23 any privilege in law, but may not be used in any proceeding against the recipient.

24                  (4) A written request for disclosure or written confirmation of an oral  
25 request in an emergency that justifies the need for disclosure shall be inserted in the  
26 medical record of the recipient.

27                  (5) Documentation of the disclosure shall be inserted in the medical  
28 record of the recipient.

29                  (6) This subsection may not preclude a health care provider, a  
30 recipient, or person in interest from asserting in a motion to quash or a motion for a  
31 protective order any constitutional right or other legal authority in opposition to  
32 disclosure.

33                  SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 October 1, 2007.