

# HOUSE BILL 438

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By: **Delegate Hubbard**

Introduced and read first time: January 29, 2008

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Department of Health and Mental Hygiene – Birth Defects**  
3 **Research – Medical Information**

4 FOR the purpose of requiring the Secretary of Health and Mental Hygiene to appoint  
5 epidemiologists and parents or guardians of children with birth defects to a  
6 certain committee that makes certain reports to the Department of Health and  
7 Mental Hygiene concerning certain children born with birth defects; requiring  
8 hospitals to submit certain reports to the Department within a certain number  
9 of days from a certain date; requiring certain health care providers to allow the  
10 Department to inspect and obtain certain medical information regarding certain  
11 children with birth defects; requiring a hospital to obtain the consent of certain  
12 parents or guardians if the Department shows a need for certain information in  
13 the course of an investigation that aids in the protection of the public's health;  
14 requiring the Secretary to assure that the identity of certain children is not  
15 released outside the Department; requiring the Department to keep certain  
16 medical information confidential; requiring certain medical information  
17 requested by the Department to be used for certain purposes; providing that the  
18 release of certain medical information to the Department is not a violation of a  
19 certain confidential relationship; providing that certain health care providers  
20 are immune from civil and criminal liability and certain disciplinary action;  
21 providing that certain medical information is not subject to certain discovery or  
22 use as evidence in certain proceedings; requiring the Department to comply  
23 with certain State and federal laws regarding human subject research; defining  
24 certain terms; making certain technical changes; and generally relating to the  
25 Department of Health and Mental Hygiene and medical information regarding  
26 birth defects.

27 BY repealing and reenacting, with amendments,  
28 Article – Health – General  
29 Section 18–206  
30 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2005 Replacement Volume and 2007 Supplement)

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

4 **Article – Health – General**

5 18–206.

6 (a) (1) In this section[,] **THE FOLLOWING WORDS HAVE THE MEANINGS**  
7 **INDICATED.**

8 (2) [“sentinel birth] **“BIRTH defect”** [includes:

9 (1) Anencephaly;

10 (2) Spina bifida;

11 (3) Hydrocephaly;

12 (4) Cleft palate;

13 (5) Cleft lip;

14 (6) Esophageal atresia and stenosis;

15 (7) Rectal and anal atresia;

16 (8) Hypospadias;

17 (9) Reduction deformity – upper limb;

18 (10) Reduction deformity – lower limb;

19 (11) Congenital dislocation of the hip; and

20 (12) Down syndrome] **MEANS AN ABNORMALITY OF THE STRUCTURE**  
21 **OR A FUNCTION OF THE HUMAN BODY PRESENT AT BIRTH THAT MAY RESULT IN:**

22 (I) **A PHYSICAL OR MENTAL DISABILITY; OR**

23 (II) **DEATH.**

24 (3) **“HEALTH CARE PROVIDER” HAS THE MEANING STATED IN §**  
25 **4–301 OF THIS ARTICLE.**

1 (b) (1) A hospital shall make a report on each child who is [born live]  
2 **LIVE-BORN** or stillborn in the hospital and has a [sentinel] birth defect. If a child is  
3 born outside the hospital, the person filling out the birth certificate shall make a  
4 report under this section.

5 (2) The Secretary shall appoint a committee of physicians, hospital  
6 representatives, **EPIDEMIOLOGISTS, PARENTS OR GUARDIANS OF CHILDREN**  
7 **WITH BIRTH DEFECTS**, and officials from the Department to determine the  
8 information required under paragraph (1) of this subsection.

9 (3) [Each month the] **THE** hospital shall submit the reports [for that  
10 month to the Department] **REQUIRED UNDER PARAGRAPH (1) OF THIS**  
11 **SUBSECTION TO THE DEPARTMENT WITHIN 10 DAYS OF THE DATE OF RELEASE**  
12 **OF THE CHILD'S MOTHER FROM THE HOSPITAL.**

13 (c) **A HEALTH CARE PROVIDER SHALL ALLOW THE DEPARTMENT TO**  
14 **INSPECT AND OBTAIN THE FOLLOWING MEDICAL INFORMATION REGARDING A**  
15 **CHILD WITH A BIRTH DEFECT:**

16 (1) **THE MEDICAL RECORDS OF:**

17 (i) **A CHILD THROUGH THE CHILD'S SECOND YEAR OF LIFE;**  
18 **AND**

19 (ii) **A CHILD'S MOTHER REGARDING THE MOTHER'S**  
20 **PREGNANCY WITH THE CHILD;**

21 (2) **RECORDS OF ANY LABORATORY TESTS RELATING TO A**  
22 **CHILD'S BIRTH DEFECT; AND**

23 (3) **ANY OTHER MEDICAL INFORMATION RELATING TO A CHILD'S**  
24 **BIRTH DEFECT.**

25 [(c)] (d) (1) The hospital shall disclose the identity of the child with a birth  
26 defect to the Secretary so that the Secretary may:

27 (i) Use the information to protect the public health; or

28 (ii) Provide the parents **OR GUARDIANS OF THE CHILD** with  
29 information on [sentinel] birth defects and public and private services available in  
30 accordance with [paragraphs (1) and (4) of] subsection [(d)] (G)(1) **AND (4)** of this  
31 section.

32 (2) If the Department shows a need for the individual identity of  
33 children without [sentinel] birth defects to conduct [a case-control] **AN** investigation

1 **THAT AIDS IN THE PROTECTION OF THE PUBLIC HEALTH**, the hospital shall obtain  
2 the written consent of the parent or guardian of the child to disclose the child's name  
3 to the Secretary.

4 (3) The Secretary shall assure that the identity of a child under this  
5 section may not be released **OUTSIDE THE DEPARTMENT** without the written  
6 consent of the parent or guardian of the child.

7 **(E) (1) THE DEPARTMENT SHALL KEEP ANY MEDICAL INFORMATION**  
8 **OBTAINED UNDER THIS SECTION CONFIDENTIAL.**

9 **(2) MEDICAL INFORMATION REQUESTED UNDER THIS SECTION**  
10 **SHALL BE ONLY AS INTRUSIVE AS NECESSARY AND USED FOR THE PURPOSE OF:**

11 **(I) ASSURING THE QUALITY OF THE DATA REPORTED;**

12 **(II) PROVIDING INFORMATION OR SERVICES TO A CHILD'S**  
13 **FAMILY;**

14 **(III) CONDUCTING AN EPIDEMIOLOGICAL INVESTIGATION**  
15 **RELATED TO A BIRTH DEFECT; OR**

16 **(IV) CONDUCTING THE DEPARTMENT'S RESEARCH INTO THE**  
17 **CAUSES OF BIRTH DEFECTS.**

18 **(3) (I) THE RELEASE OF MEDICAL INFORMATION OBTAINED IN**  
19 **ACCORDANCE WITH THIS SECTION TO THE DEPARTMENT IS NOT A VIOLATION**  
20 **OF THE CONFIDENTIAL RELATIONSHIP BETWEEN A HEALTH CARE PROVIDER**  
21 **AND A PATIENT.**

22 **(II) A HEALTH CARE PROVIDER WHO DISCLOSES MEDICAL**  
23 **RECORDS TO THE DEPARTMENT UNDER THIS SECTION:**

24 **1. IS NOT LIABLE IN ANY SUIT FOR CIVIL DAMAGES**  
25 **FOR THE DISCLOSURE OF THE MEDICAL RECORDS;**

26 **2. IS NOT SUBJECT TO DISCIPLINARY ACTION BY ANY**  
27 **LICENSING OR DISCIPLINING AUTHORITY FOR DISCLOSURE OF CONFIDENTIAL**  
28 **INFORMATION; AND**

29 **3. MAY NOT BE SUBJECT TO ANY CRIMINAL**  
30 **PENALTIES.**

1           (4) THE MEDICAL INFORMATION OBTAINED BY THE  
2 DEPARTMENT UNDER THIS SECTION IS NOT SUBJECT TO SUBPOENA,  
3 DISCOVERY, OR INTRODUCTION INTO EVIDENCE IN ANY ADMINISTRATIVE, CIVIL,  
4 OR CRIMINAL PROCEEDING.

5           (F) WHILE CONDUCTING RESEARCH USING HUMAN SUBJECTS UNDER  
6 THIS SECTION, THE DEPARTMENT SHALL COMPLY WITH THE REQUIREMENTS  
7 FOR THE PROTECTION OF HUMAN SUBJECTS UNDER:

8           (1) TITLE 13, SUBTITLE 20 OF THIS ARTICLE; AND

9           (2) 42 U.S.C. § 289.

10          [(d)] (G) (1) The Department shall assure that information is prepared  
11 and periodically updated on:

12                   (i) [Sentinel birth] **BIRTH** defects; and

13                   (ii) Public and private services for [the disabled with sentinel]  
14 **CHILDREN WITH** birth defects.

15           (2) (i) The Secretary shall appoint a committee to determine the  
16 information required under paragraph (1) of this subsection.

17                   (ii) The committee shall consist of:

18                           1. Physicians;

19                           2. Educators;

20                           3. Social service specialists;

21                           4. Representatives of the Department;

22                           5. Representatives of the Department of Human  
23 Resources;

24                           6. Representatives of the Department of Education; and

25                           7. Parents of children with [sentinel] birth defects.

26           (3) The information provided under this subsection shall be  
27 distributed to each hospital and made available to parents or guardians of children  
28 with [sentinel] birth defects by the [infant's] **CHILD'S** physician before the [infant]  
29 **CHILD** is discharged from the hospital and with an explanation, to the extent possible,  
30 of the birth defect to the parents or guardians.

1                   (4)   (i)    The Secretary shall send a letter to the parent or guardian  
2 of each child reported under this section with a [sentinel] birth defect before the child  
3 is 6 months old.

4                               (ii)   The letter shall offer information about the birth defect and  
5 available services with emphasis on needs identified after discharge from the hospital.

6                               (iii)   Before sending a letter to a parent or guardian, the  
7 Secretary shall implement appropriate procedures to assure that a letter is not sent to  
8 a parent or guardian of a child who has died.

9                   [(e)] (H)    The Department and the Department of the Environment shall  
10 jointly develop procedures to monitor the data on [sentinel] birth defect trends which  
11 may be caused by environmental hazards.

12                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2008.