

HOUSE BILL 910

J1

(8lr2342)

ENROLLED BILL

—Judiciary/Judicial Proceedings—

Introduced by **Delegates Reznik, Barkley, Burns, Dumais, Frick, Ivey, Kaiser, Robinson, and Sossi**

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.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Health Care Providers – Disclosure of Medical Records – Children in Need of**
3 **Assistance Proceedings**

4 FOR the purpose of authorizing health care providers to disclose certain medical
5 records without the authorization of persons in interest in accordance with a
6 certain compulsory process in Children in Need of Assistance proceedings under
7 certain circumstances; altering the content of a certain notice; and generally
8 relating to the disclosure of medical records by health care providers in
9 Children in Need of Assistance Proceedings.

10 BY repealing and reenacting, with amendments,
11 Article – Health – General
12 Section 4–306
13 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



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 4-306.

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

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

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

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

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

- 22 1. Assessment of risk;
- 23 2. Development of a service plan;
- 24 3. Implementation of a safety plan; or
- 25 4. Investigation of the suspected case of abuse or
26 neglect; and

27 (iii) The medical record may be redisclosed as provided in §§
28 1-201, 1-202, 1-204, and 1-205 of the Human Services Article;

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

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

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

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

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

11 (5) To another health care provider as provided in § 19-308.2 or §
12 10-807 of this article;

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

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

19 **A. [A] IN A CHILD IN NEED OF ASSISTANCE**
20 **PROCEEDING PURSUANT TO TITLE 3, SUBTITLE 8 OF THE COURTS AND**
21 **JUDICIAL PROCEEDINGS ARTICLE, A person in interest has not objected to the**
22 **disclosure of the designated medical records and [30] ~~10~~ 15 days have elapsed since**
23 **the notice was sent; [or]**

24 **B. IN ALL OTHER PROCEEDINGS, A PERSON IN**
25 **INTEREST HAS NOT OBJECTED TO THE DISCLOSURE OF THE DESIGNATED**
26 **MEDICAL RECORDS WITHIN 30 DAYS AFTER THE NOTICE WAS SENT; OR**

27 **[B.] C.** The objections of a person in interest have been
28 resolved and the request for disclosure is in accordance with the resolution;

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

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

33 (ii) For disclosures made under [item (i)1] **ITEM (I)1A** of this
34 paragraph, copies of the following items that were mailed by certified mail to the

1 person in interest by the person requesting the disclosure at least [30] ~~10~~ 15 days
2 before the records are to be disclosed:

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

5 2. This section; and

6 3. A notice in the following form or a substantially
7 similar form:

8	_____	In the
9	Plaintiffs	_____
10	v.	For
11		_____
12	_____	
13	Defendants	
14		Case No.: _____

15 NOTICE TO (Patient Name)
16 IN COMPLIANCE WITH § 4-306 OF THE HEALTH – GENERAL ARTICLE,
17 ANNOTATED CODE OF MARYLAND

18 TAKE NOTE that medical records regarding (Patient Name), have been
19 subpoenaed from the (Name and address of Health Care Provider) pursuant to
20 the attached subpoena and § 4-306 of the Health – General Article, Annotated
21 Code of Maryland. This subpoena ____ does ____ does not (mark one) seek
22 production of mental health records.

23 Please examine these papers carefully. IF YOU HAVE ANY
24 OBJECTION TO THE PRODUCTION OF THESE DOCUMENTS, YOU MUST
25 FILE A MOTION FOR A PROTECTIVE ORDER OR A MOTION TO QUASH
26 THE SUBPOENA ISSUED FOR THESE DOCUMENTS UNDER MARYLAND
27 RULES 2-403 AND 2-510 NO LATER THAN [THIRTY (30)] ~~TEN (10)~~
28 **FIFTEEN (15)** DAYS FROM THE DATE THIS NOTICE IS MAILED. For
29 example, a protective order may be granted if the records are not relevant to
30 the issues in this case, the request unduly invades your privacy, or causes you
31 specific harm.

32 Also attached to this form is a copy of the subpoena duces tecum issued
33 for these records.

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

36 _____
37 Attorney

(Firm Name
Attorney address
Attorney phone number)

Attorneys for (Name of
Party Represented)

Certificate of Service

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

Patient

Each Counsel in Case

Attorney

(III) FOR DISCLOSURES MADE UNDER ITEM (I)1B 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;

2. THIS SECTION; AND

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

PLAINTIFFS

v.

DEFENDANTS

IN THE

FOR

CASE No.: _____

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

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

7 **PLEASE EXAMINE THESE PAPERS CAREFULLY. IF YOU HAVE**
 8 **ANY OBJECTION TO THE PRODUCTION OF THESE**
 9 **DOCUMENTS, YOU MUST FILE A MOTION FOR A PROTECTIVE**
 10 **ORDER OR A MOTION TO QUASH THE SUBPOENA ISSUED FOR**
 11 **THESE DOCUMENTS UNDER MARYLAND RULES 2-403 AND**
 12 **2-510 NO LATER THAN THIRTY (30) DAYS FROM THE DATE**
 13 **THIS NOTICE IS MAILED. FOR EXAMPLE, A PROTECTIVE ORDER MAY**
 14 **BE GRANTED IF THE RECORDS ARE NOT RELEVANT TO THE ISSUES IN**
 15 **THIS CASE, THE REQUEST UNDULY INVADES YOUR PRIVACY, OR CAUSES**
 16 **YOU SPECIFIC HARM.**

17 **ALSO ATTACHED TO THIS FORM IS A COPY OF THE SUBPOENA**
 18 **DUCES TECUM ISSUED FOR THESE RECORDS.**

19 **IF YOU BELIEVE YOU NEED FURTHER LEGAL ADVICE ABOUT THIS**
 20 **MATTER, YOU SHOULD CONSULT YOUR ATTORNEY.**

21 _____
 22 **ATTORNEY**
 23 **(FIRM NAME**
 24 **ATTORNEY ADDRESS**
 25 **ATTORNEY PHONE NUMBER)**
 26 **ATTORNEYS FOR (NAME**
 27 **OF PARTY REPRESENTED)**

28 **CERTIFICATE OF SERVICE**

29 **I HEREBY CERTIFY THAT A COPY OF THE FOREGOING NOTICE WAS**
 30 **MAILED, FIRST-CLASS POSTAGE PREPAID, THIS ___ DAY OF _____,**
 31 **200_ TO**

32 _____
 33 **PATIENT**

34 _____
 35 **EACH COUNSEL IN CASE**

36 _____
 37 **ATTORNEY**

1 (7) Subject to the additional limitations for a medical record developed
2 primarily in connection with the provision of mental health services in § 4-307 of this
3 subtitle, to grand juries, prosecution agencies, law enforcement agencies or their
4 agents or employees to further an investigation or prosecution, pursuant to a
5 subpoena, warrant, or court order for the sole purposes of investigating and
6 prosecuting criminal activity, provided that the prosecution agencies and law
7 enforcement agencies have written procedures to protect the confidentiality of the
8 records;

9 (8) To the Maryland Insurance Administration when conducting an
10 investigation or examination pursuant to Title 2, Subtitle 2 of the Insurance Article,
11 provided that the Insurance Administration has written procedures to maintain the
12 confidentiality of the records;

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

15 (10) To a local domestic violence fatality review team established under
16 Title 4, Subtitle 7 of the Family Law Article as necessary to carry out its official
17 functions.

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.