

## **CHAPTER 300**

**(House Bill 910)**

AN ACT concerning

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

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

BY repealing and reenacting, with amendments,  
Article – Health – General  
Section 4–306  
Annotated Code of Maryland  
(2005 Replacement Volume and 2007 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:

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

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

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

1. Assessment of risk;
2. Development of a service plan;
3. Implementation of a safety plan; or
4. Investigation of the suspected case of abuse or neglect; and

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

(2) 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, to health professional licensing and disciplinary boards, in accordance with a subpoena for medical records for the sole purpose of an investigation regarding:

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

(ii) The improper practice of a health profession;

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

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

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

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

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

[B.] C. 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] ITEM (I)1A 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] ~~10~~ 15 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:

		In the
Plaintiffs		
v.		For
Defendants		Case No.: _____

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

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

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

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

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

\_\_\_\_\_  
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:**

<b>PLAINTIFFS</b>	<b>IN THE</b>
<b>v.</b>	_____
<b>DEFENDANTS</b>	<b>FOR</b>
	_____
	<b>CASE No.:</b> _____

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

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

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

**ALSO ATTACHED TO THIS FORM IS A COPY OF THE SUBPOENA**

**DUCES TECUM ISSUED FOR THESE RECORDS.**

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

\_\_\_\_\_  
**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**

(7) 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, to grand juries, prosecution agencies, law enforcement agencies or their agents or employees to further an investigation or prosecution, pursuant to a subpoena, warrant, or court order for the sole purposes of investigating and prosecuting criminal activity, provided that the prosecution agencies and law enforcement agencies have written procedures to protect the confidentiality of the records;

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

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

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

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

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

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

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

**Approved by the Governor, April 24, 2008.**