

Chapter 326

(Senate Bill 954)

AN ACT concerning

Medical Records – ~~HIPAA Consistency Act of 2012~~ Enhancement or Coordination of Patient Care

FOR the purpose of authorizing, ~~subject to certain provisions of law relating to mental health services, a covered entity to disclose protected health information, as allowed under certain federal privacy laws; providing that certain provisions of this Act only authorize disclosure of protected health information in accordance with the federal privacy laws; authorizing a medical laboratory to disclose the results of a laboratory examination under certain circumstances; establishing a certain exception to the prohibition on the disclosure of certain medical records by an insurer, an insurance service organization, a nonprofit health service plan, or a Blue Cross or Blue Shield plan; defining certain terms; certain health care providers to share medical records and certain information with certain insurance carriers and accountable care organizations for the purposes of enhancing or coordinating patient care and for certain other purposes under certain circumstances and subject to certain limitations; requiring certain notices when certain information is shared between health care providers and carriers or accountable care organizations under certain circumstances; establishing certain limits on the use of certain information shared by health care providers with carriers; clarifying that medical data and claims data is medical information; and generally relating to the disclosure of protected health information by a covered entity.~~

~~BY adding to~~

~~Article – Health – General~~

~~Section 4-310~~

~~Annotated Code of Maryland~~

~~(2009 Replacement Volume and 2011 Supplement)~~

BY repealing and reenacting, with amendments,

Article – Health – General

Section ~~17-202.1~~ 4-305

Annotated Code of Maryland

(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,

Article – Insurance

Section 4-403 and 14-138

Annotated Code of Maryland

(2011 Replacement Volume)

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

Article – Health – General

~~4-310.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) “COVERED ENTITY” HAS THE MEANING STATED IN 45 C.F.R. PART 160.~~

~~(3) “HIPAA” MEANS THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND ANY REGULATIONS ADOPTED UNDER THE ACT.~~

~~(4) “PROTECTED HEALTH INFORMATION” HAS THE MEANING STATED IN 45 C.F.R. PART 160.~~

~~(B) SUBJECT TO THE LIMITATIONS ON DISCLOSURE OF A MEDICAL RECORD DEVELOPED IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH SERVICES UNDER § 4-307 OF THIS SUBTITLE, A COVERED ENTITY MAY DISCLOSE PROTECTED HEALTH INFORMATION, INCLUDING PROTECTED HEALTH INFORMATION IN A MEDICAL RECORD, AS ALLOWED UNDER HIPAA AND OTHER APPLICABLE FEDERAL PRIVACY LAWS.~~

~~(C) THIS SECTION ONLY AUTHORIZES DISCLOSURE OF PROTECTED HEALTH INFORMATION IN ACCORDANCE WITH HIPAA AND OTHER APPLICABLE FEDERAL PRIVACY LAWS.~~

~~17-202.1.~~

~~(a) On written request of an individual to a medical laboratory for a copy of the results of a laboratory examination of that individual, the medical laboratory shall send a copy of those results that are sought to that individual.~~

~~(b) (1) If the results of a laboratory examination are contained in or will be filed in a medical record, as defined in § 4-301 of this article, the request for a copy of the results shall be made to the facility pursuant to the provisions of § 4-302 of this article.~~

~~(2) In all other cases, the medical laboratory may require the individual requesting a copy of the results to pay the prevailing cost of copying and transmitting the copy.~~

~~(e) The medical laboratory shall notify the individual's physician before sending the results to the individual.~~

~~(D) A MEDICAL LABORATORY MAY DISCLOSE THE RESULTS OF A LABORATORY EXAMINATION, AS AUTHORIZED UNDER § 4-310 OF THIS ARTICLE.~~

4-305.

(a) This section may not be construed to impose an obligation on a health care provider to disclose a medical record.

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

(1) (i) To the provider's authorized employees, agents, medical staff, medical students, or consultants for the sole purpose of offering, providing, evaluating, or seeking payment for health care to patients or recipients by the provider;

(ii) To the provider's legal counsel regarding only the information in the medical record that relates to the subject matter of the representation; or

(iii) To any provider's insurer or legal counsel, or the authorized employees or agents of a provider's insurer or legal counsel, for the sole purpose of handling a potential or actual claim against any provider if the medical record is maintained on the claimant and relates to the subject matter of the claim;

(2) If the person given access to the medical record signs an acknowledgment of the duty under this Act not to redisclose any patient identifying information, to a person for:

(i) Educational or research purposes, subject to the applicable requirements of an institutional review board;

(ii) Evaluation and management of health care delivery systems; or

(iii) Accreditation of a facility by professional standard setting entities;

(3) 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 a government agency performing its lawful duties as authorized by an act of the Maryland General Assembly or the United States Congress;

(4) 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 another health care provider for the sole purpose of treating the patient or recipient on whom the medical record is kept;

(5) If a claim has been or may be filed by, or with the authorization of a patient or recipient on behalf of the patient or recipient, for covered insureds, covered beneficiaries, or enrolled recipients only, to third party payors and their agents, if the payors or agents have met the applicable provisions of §§ 15–10B–01 to 15–10B–18 of the Insurance Article, including nonprofit health service plans, health maintenance organizations, fiscal intermediaries and carriers, the Department of Health and Mental Hygiene and its agents, the United States Department of Health and Human Services and its agents, or any other person obligated by contract or law to pay for the health care rendered for the sole purposes of:

(i) Submitting a bill to the third party payor;

(ii) Reasonable prospective, concurrent, or retrospective utilization review or predetermination of benefit coverage;

(iii) Review, audit, and investigation of a specific claim for payment of benefits; or

(iv) Coordinating benefit payments in accordance with the provisions of the Insurance Article under more than 1 sickness and accident, dental, or hospital and medical insurance policy;

(6) If a health care provider makes a professional determination that an immediate disclosure is necessary, to provide for the emergency health care needs of a patient or recipient;

(7) Except if the patient has instructed the health care provider not to make the disclosure, or if the record has been developed primarily in connection with the provision of mental health services, to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice;

(8) To an appropriate organ, tissue, or eye recovery agency under the restrictions of § 5–408 of this article for a patient whose organs and tissues may be donated for the purpose of evaluating the patient for possible organ and tissue donation;

(9) To the Department of Health and Mental Hygiene or an organ, tissue, or eye recovery agency designated by the Department for the purpose of conducting death record reviews under § 19–310 of this article;[or]

(10) Subject to subsection (c) of this section, if the purpose of the medical record disclosure is for the coordination of services and record retention within the Montgomery County Department of Health and Human Services; OR

(11) TO A CARRIER, AS DEFINED IN § 15–1301 OF THE INSURANCE ARTICLE, OR AN ACCOUNTABLE CARE ORGANIZATION, AS DEFINED IN § 3022 OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT, FOR THE SOLE PURPOSES OF ENHANCING OR COORDINATING PATIENT CARE, PROVIDED THAT:

(I) A DISCLOSURE UNDER THIS ITEM IS SUBJECT TO THE ADDITIONAL LIMITATIONS IN § 4–307 OF THIS SUBTITLE ON DISCLOSURE OF A MEDICAL RECORD DEVELOPED PRIMARILY IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH SERVICES;

(II) A MEDICAL RECORD MAY BE DISCLOSED ONLY IN ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, ANY REGULATIONS ADOPTED UNDER THE ACT, AND ANY OTHER APPLICABLE FEDERAL PRIVACY LAWS, AND DISCLOSURES UNDER THIS ITEM MAY NOT BE MADE IN VIOLATION OF THE PROHIBITED USES OR DISCLOSURES UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996;

(III) A DISCLOSURE UNDER THIS ITEM MAY NOT BE USED FOR UNDERWRITING OR UTILIZATION REVIEW PURPOSES;

(IV) A HEALTH CARE PROVIDER THAT DISCLOSES A MEDICAL RECORD IN ACCORDANCE WITH THIS ITEM SHALL PROVIDE A NOTICE CONSISTENT WITH THE REQUIREMENTS OF 45 C.F.R. § 164.520 SPECIFYING THE INFORMATION TO BE SHARED, WITH WHOM IT WILL BE SHARED, AND THE SPECIFIC TYPES OF USES AND DISCLOSURES THAT THE HEALTH CARE PROVIDER MAY MAKE IN ACCORDANCE WITH THIS ITEM;

(V) THE NOTICE REQUIRED BY ITEM (IV) OF THIS ITEM SHALL INCLUDE AN OPPORTUNITY FOR THE INDIVIDUAL TO OPT-OUT OF THE SHARING OF THE INDIVIDUAL'S MEDICAL RECORD WITH A CARRIER OR AN ACCOUNTABLE CARE ORGANIZATION FOR THE PURPOSES IDENTIFIED IN THIS ITEM; AND

(VI) IF A HEALTH CARE PROVIDER DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA TO A CARRIER OR ACCOUNTABLE CARE ORGANIZATION THROUGH AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH INFORMATION AMONG ENTITIES NOT UNDER COMMON OWNERSHIP, THE HEALTH CARE PROVIDERS ARE SUBJECT TO THE REQUIREMENTS OF §§ 4-302.2 AND 4-302.3 OF THIS SUBTITLE.

(c) (1) The disclosure of medical records under subsection (b)(10) of this section to a person that is not employed by or under contract with the Montgomery County Department of Health and Human Services shall be conducted in accordance with this subtitle.

(2) Under provisions of State law regarding confidentiality, the Montgomery County Department of Health and Human Services shall be considered to be one agency.

Article – Insurance

4-403.

(a) Except as provided in subsection (b), (c), or (d) of this section ~~OR IN § 4-310 OF THE HEALTH GENERAL ARTICLE~~, an insurer, or an insurance service organization whose functions include the collection of medical data, may not disclose the contents of an insured's medical OR CLAIMS records.

(b) (1) An insurer may disclose specific medical information OR MEDICAL DATA contained in an insured's medical OR CLAIMS records to:

- (i) the insured;
- (ii) the insured's agent or representative; or
- (iii) on request of the insured, a physician of the insured's choice.

(2) An insurer, or an insurance service organization whose functions include the collection of medical data, may disclose specific medical information OR MEDICAL DATA contained in an insured's medical OR CLAIMS records if the insured authorizes the disclosure.

(c) An insurer, or an insurance service organization whose functions include the collection of medical data, may disclose ~~the contents of~~ SPECIFIC MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN an insured's medical OR CLAIMS records without the authorization of the insured:

(1) to a medical review committee, accreditation board, or commission, if the information is requested by or is in furtherance of the purpose of the committee, board, or commission;

(2) in response to legal process;

(3) to a nonprofit health service plan or Blue Cross or Blue Shield plan to coordinate benefit payments under multiple sickness and accident, dental, or hospital medical contracts;

(4) to investigate possible insurance fraud;

(5) for reinsurance purposes;

(6) in the normal course of underwriting, to an insurer information exchange that may not redisclose the information unless expressly authorized by the person to whom the information pertains;

(7) to evaluate an application for or renewal of insurance;

(8) to evaluate and adjust a claim for benefits under a policy **OR TO EVALUATE AND CALCULATE PROVIDER FISCAL INCENTIVES OR OTHER TYPES OF PROVIDER PAYMENTS;**

(9) to evaluate, settle, or defend a claim or suit for personal injury;

(10) in accordance with a cost containment contractual obligation to verify that benefits paid by the insurer were proper contractually; ~~or~~

(11) to a policyholder if:

(i) the policyholder does not further disclose the specific medical information; and

(ii) the information is required for an audit of the billing made by the insurer to the policyholder; **OR**

(12) TO THE INSURED'S TREATING PROVIDERS FOR THE SOLE PURPOSES OF ENHANCING OR COORDINATING PATIENT CARE OR ASSISTING THE TREATING PROVIDERS' CLINICAL DECISION MAKING, PROVIDED THAT:

(I) A DISCLOSURE UNDER THIS ITEM IS SUBJECT TO THE ADDITIONAL LIMITATIONS IN § 4-307 OF THE HEALTH – GENERAL ARTICLE ON DISCLOSURE OF A MEDICAL RECORD DEVELOPED PRIMARILY IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH SERVICES;

(II) MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INSURED'S MEDICAL OR CLAIMS RECORDS MAY BE DISCLOSED ONLY IN ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, ANY REGULATIONS ADOPTED UNDER THE ACT, AND ANY OTHER APPLICABLE FEDERAL PRIVACY LAWS, AND DISCLOSURES UNDER THIS ITEM MAY NOT BE MADE IN VIOLATION OF THE PROHIBITED USES OR DISCLOSURES UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996;

(III) AN INSURER OR AN INSURANCE SERVICE ORGANIZATION THAT DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INSURED'S MEDICAL OR CLAIMS RECORDS IN ACCORDANCE WITH THIS ITEM SHALL PROVIDE A NOTICE CONSISTENT WITH THE REQUIREMENTS OF 45 C.F.R. § 164.520 SPECIFYING THE INFORMATION TO BE SHARED, WITH WHOM IT WILL BE SHARED, AND THE SPECIFIC TYPES OF USES AND DISCLOSURES THAT THE INSURER OR INSURANCE SERVICE ORGANIZATION MAY MAKE IN ACCORDANCE WITH THIS ITEM;

(IV) THE NOTICE REQUIRED BY ITEM (III) OF THIS ITEM SHALL INCLUDE AN OPPORTUNITY FOR THE INSURED TO OPT-OUT OF THE SHARING OF THE INSURED'S MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN THE INSURED'S MEDICAL OR CLAIMS RECORDS WITH THE INSURED'S TREATING PROVIDERS FOR THE PURPOSES IDENTIFIED IN THIS ITEM; AND

(V) IF AN INSURER OR AN INSURANCE SERVICE ORGANIZATION DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA THROUGH AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH INFORMATION, AS DEFINED IN § 4-301 OF THE HEALTH – GENERAL ARTICLE, AMONG ENTITIES NOT UNDER COMMON OWNERSHIP, THE INSURER IS SUBJECT TO THE REQUIREMENTS OF §§ 4-302.2 AND 4-302.3 OF THE HEALTH – GENERAL ARTICLE.

(d) This section does not prohibit the use of medical records, data, or statistics if the use does not disclose the identity of a particular insured or covered person.

(e) An insurer that knowingly violates this section is liable to a plaintiff for any damages recoverable in a civil action, including reasonable attorney's fees.

(a) Except as provided in subsection (b), (c), or (d) of this section ~~OR IN § 4-310 OF THE HEALTH GENERAL ARTICLE~~, a nonprofit health service plan or Blue Cross or Blue Shield plan may not disclose specific medical information contained in a subscriber's or certificate holder's medical OR CLAIMS records.

(b) A nonprofit health service plan or Blue Cross or Blue Shield plan may disclose specific medical information OR MEDICAL DATA contained in a subscriber's or certificate holder's medical OR CLAIMS records:

(1) to the individual or individual's agent or representative; or

(2) if the individual authorizes the disclosure.

(c) A nonprofit health service plan or Blue Cross or Blue Shield plan may disclose specific medical information contained in a subscriber's or certificate holder's medical records without the authorization of the subscriber or certificate holder:

(1) to a medical review committee, accreditation board, or commission, if the information is requested by or is in furtherance of the purpose of the committee, board, or commission;

(2) in response to legal process;

(3) to another nonprofit health service plan, Blue Cross or Blue Shield plan, or insurer to coordinate benefit payments under multiple sickness and accident, dental, or hospital medical contracts;

(4) to a government agency performing its lawful duties as authorized by an act of the General Assembly or United States Congress;

(5) to a researcher, on request, for medical and health care research in accordance with a protocol approved by an institutional review board;

(6) in accordance with a cost containment contractual obligation to verify that benefits paid by the nonprofit health service plan were proper contractually; ~~or~~

(7) to a third party payor if:

(i) the third party payor does not further disclose the specific medical OR CLAIMS information; and

(ii) the information is required for an audit of the billing made by the plan to the payor;

(8) TO EVALUATE AND ADJUST A CLAIM FOR BENEFITS UNDER A POLICY OR TO EVALUATE AND CALCULATE PROVIDER FISCAL INCENTIVES OR OTHER TYPES OF PROVIDER PAYMENTS; OR

(9) TO THE INDIVIDUAL'S TREATING PROVIDERS FOR THE SOLE PURPOSES OF ENHANCING OR COORDINATING PATIENT CARE OR ASSISTING THE TREATING PROVIDERS' CLINICAL DECISION MAKING, PROVIDED THAT:

(I) A DISCLOSURE UNDER THIS ITEM IS SUBJECT TO THE ADDITIONAL LIMITATIONS IN § 4-307 OF THE HEALTH – GENERAL ARTICLE ON DISCLOSURE OF A MEDICAL RECORD DEVELOPED PRIMARILY IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH SERVICES;

(II) MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INSURED'S MEDICAL OR CLAIMS RECORDS MAY BE DISCLOSED ONLY IN ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, ANY REGULATIONS ADOPTED UNDER THE ACT, AND ANY OTHER APPLICABLE FEDERAL PRIVACY LAWS, AND DISCLOSURES UNDER THIS ITEM MAY NOT BE MADE IN VIOLATION OF THE PROHIBITED USES OR DISCLOSURES UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996;

(III) A NONPROFIT HEALTH SERVICE PLAN OR BLUE CROSS OR BLUE SHIELD PLAN THAT DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INSURED'S MEDICAL OR CLAIMS RECORDS IN ACCORDANCE WITH THIS ITEM SHALL PROVIDE A NOTICE CONSISTENT WITH THE REQUIREMENTS OF 45 C.F.R. § 164.520 SPECIFYING THE INFORMATION TO BE SHARED, WITH WHOM IT WILL BE SHARED, AND THE SPECIFIC TYPES OF USES AND DISCLOSURES THAT THE NONPROFIT HEALTH SERVICE PLAN OR BLUE CROSS OR BLUE SHIELD PLAN MAY MAKE IN ACCORDANCE WITH THIS ITEM;

(IV) THE NOTICE REQUIRED BY ITEM (III) OF THIS ITEM SHALL INCLUDE AN OPPORTUNITY FOR THE INDIVIDUAL TO OPT-OUT OF THE SHARING OF THE INDIVIDUAL'S MEDICAL INFORMATION OR MEDICAL DATA CONTAINED IN AN INDIVIDUAL'S MEDICAL OR CLAIMS RECORDS WITH THE INDIVIDUAL'S TREATING PROVIDERS FOR THE PURPOSES IDENTIFIED IN THIS ITEM; AND

(V) IF A NONPROFIT HEALTH SERVICE PLAN OR BLUE CROSS OR BLUE SHIELD PLAN DISCLOSES MEDICAL INFORMATION OR MEDICAL DATA THROUGH AN INFRASTRUCTURE THAT PROVIDES ORGANIZATIONAL AND TECHNICAL CAPABILITIES FOR THE EXCHANGE OF PROTECTED HEALTH

INFORMATION, AS DEFINED IN § 4-301 OF THE HEALTH – GENERAL ARTICLE, AMONG ENTITIES NOT UNDER COMMON OWNERSHIP, THE NONPROFIT HEALTH SERVICE PLAN OR BLUE CROSS OR BLUE SHIELD PLAN IS SUBJECT TO THE REQUIREMENTS OF §§ 4-302.2 AND 4-302.3 OF THE HEALTH – GENERAL ARTICLE.

(d) This section does not prohibit the use of medical records, data, or statistics if the use does not disclose the identity of a particular subscriber or certificate holder.

(e) A nonprofit health service plan that knowingly violates this section is liable to a plaintiff for any damages recoverable in a civil action, including reasonable attorney's fees.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.