

HOUSE BILL 1481

J1, D3

3lr1325
CF SB 557

By: **Delegate Waldstreicher**

Introduced and read first time: February 26, 2013

Assigned to: Rules and Executive Nominations

Re-referred to: Health and Government Operations, March 17, 2013

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 2, 2013

CHAPTER _____

1 AN ACT concerning

2 **Medical Records – Disclosure in Response to Compulsory Process**

3 FOR the purpose of altering the circumstances under which a health care provider is
4 required to disclose a medical record without the authorization of a person in
5 interest; altering a certain notice that must be sent to certain parties in order to
6 require a health care provider to disclose a medical record under certain
7 circumstances; ~~requiring, on or before a certain date, the Office of the Attorney~~
8 ~~General to develop a certain advisory protocol and voluntary training program;~~
9 ~~requiring the Office to consult certain entities in developing the advisory~~
10 ~~protocol and voluntary training program;~~ making a technical change; and
11 generally relating to the disclosure of medical records in response to compulsory
12 process.

13 BY repealing and reenacting, without amendments,
14 Article – Health – General
15 Section 4–301(l) and 4–306(a) and (b)(6)(i)1.B.
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2012 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Health – General
20 Section 4–306(b)(6)(iii)
21 Annotated Code of Maryland
22 (2009 Replacement Volume and 2012 Supplement)

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.



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

3 **Article – Health – General**

4 4–301.

5 (l) “Person in interest” means:

6 (1) An adult on whom a health care provider maintains a medical
7 record;

8 (2) A person authorized to consent to health care for an adult
9 consistent with the authority granted;

10 (3) A duly appointed personal representative of a deceased person;

11 (4) (i) A minor, if the medical record concerns treatment to which
12 the minor has the right to consent and has consented under Title 20, Subtitle 1 of this
13 article; or

14 (ii) A parent, guardian, custodian, or a representative of the
15 minor designated by a court, in the discretion of the attending physician who provided
16 the treatment to the minor, as provided in § 20–102 or § 20–104 of this article;

17 (5) If item (4) of this subsection does not apply to a minor:

18 (i) A parent of the minor, except if the parent’s authority to
19 consent to health care for the minor has been specifically limited by a court order or a
20 valid separation agreement entered into by the parents of the minor; or

21 (ii) A person authorized to consent to health care for the minor
22 consistent with the authority granted; or

23 (6) An attorney appointed in writing by a person listed in item (1), (2),
24 (3), (4), or (5) of this subsection.

25 4–306.

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

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

1 (6) 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 and except as otherwise provided in items (2), (7), and (8) of this subsection, in
4 accordance with compulsory process, if the health care provider receives:

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

7 B. In all other proceedings, a person in interest has not
8 objected to the disclosure of the designated medical records within 30 days after the
9 notice was sent; or

10 (iii) For disclosures made under item (i)1B of this paragraph,
11 copies of the following items that were mailed by certified mail **AND BY MAIL SENT**
12 **FIRST-CLASS POSTAGE PREPAID** to the person in interest **AND, IF APPLICABLE, BY**
13 **MAIL SENT FIRST-CLASS POSTAGE PREPAID TO THE COURT AND PARTIES IN A**
14 **CRIMINAL OR JUVENILE DELINQUENCY CASE** by the person requesting the
15 disclosure at least 30 days before the records are to be disclosed:

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

18 2. This section; and

19 3. A notice in the following form or a substantially
20 similar form:

| | | |
|----|------------|-----------------|
| 21 | _____ | In the |
| 22 | Plaintiffs | _____ |
| 23 | v. | For |
| 24 | | _____ |
| 25 | _____ | |
| 26 | Defendants | |
| 27 | | Case No.: _____ |

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

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

36 Please examine these papers carefully. IF YOU HAVE ANY OBJECTION TO
37 THE PRODUCTION OF THESE DOCUMENTS, YOU MUST FILE A MOTION FOR

1 A PROTECTIVE ORDER OR A MOTION TO QUASH THE SUBPOENA ISSUED
2 FOR THESE DOCUMENTS UNDER MARYLAND RULES 2-403 [AND], 2-510, OR
3 4-266 NO LATER THAN THIRTY (30) DAYS FROM THE DATE THIS NOTICE IS
4 MAILED. For example, a protective order may be granted if the records are not
5 relevant to the issues in this case, the request unduly invades your privacy, or causes
6 you specific harm.

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

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

11 _____
12 Attorney
13 (Firm Name
14 Attorney address
15 Attorney phone number)

16 Attorneys for (Name
17 of Party Represented)

18 Certificate of Service

19 I hereby certify that a copy of the foregoing notice was mailed, first-class
20 postage prepaid, this ___ day of _____, [200_] 20__ to

21 _____
22 Patient

23 _____
24 Each Counsel in Case

25 _____
26 Attorney

27 ~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

28 ~~(a) On or before September 30, 2014, the Office of the Attorney General shall~~
29 ~~develop an advisory protocol and voluntary training program for health care providers~~
30 ~~regarding how to respond to compulsory process requests for medical records that~~
31 ~~includes information regarding the requirements of:~~

32 ~~(1) the federal Health Insurance Portability and Accountability Act of~~
33 ~~1996 and any regulations adopted under the Act;~~

34 ~~(2) Title 4, Subtitle 3 of the Health General Article; and~~

1 ~~(3) §§ 9-109, 9-109.1, and 9-121 of the Courts Article.~~

2 ~~(b) In developing the advisory protocol and voluntary training program~~
3 ~~under subsection (a) of this section, the Office of the Attorney General shall consult:~~

4 ~~(1) the Department of Health and Mental Hygiene;~~

5 ~~(2) the Medical and Chirurgical Faculty of Maryland;~~

6 ~~(3) the Maryland Nurses Association;~~

7 ~~(4) the Maryland State Dental Association;~~

8 ~~(5) the National Association of Social Workers — Maryland Chapter;~~

9 ~~(6) the Maryland Clinical Social Work Coalition;~~

10 ~~(7) the Maryland Psychological Association;~~

11 ~~(8) the Maryland Pharmacists Association; and~~

12 ~~(9) any other health professional association or public health entity in~~
13 ~~the State that elects to participate.~~

14 SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
15 effect October 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.