

# HOUSE BILL 910

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By: **Delegates Reznik, Barkley, Burns, Dumais, Frick, Ivey, Kaiser, Robinson, and Sossi**

Introduced and read first time: February 6, 2008

Assigned to: Judiciary

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## A BILL ENTITLED

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  
14 (2005 Replacement Volume and 2007 Supplement)

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

17 **Article – Health – General**

18 4–306.

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

- 12                           1. Assessment of risk;
- 13                           2. Development of a service plan;
- 14                           3. Implementation of a safety plan; or
- 15                           4. Investigation of the suspected case of abuse or  
16 neglect; and

17           (iii) The medical record may be redisclosed as provided in §§  
18 1–201, 1–202, 1–204, and 1–205 of the Human Services Article;

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

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

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

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

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

33           (5) To another health care provider as provided in § 19–308.2 or §  
34 10–807 of this article;

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

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

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

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

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

21 (ii) For disclosures made under [item (i)1] ITEM (I)1A of this  
22 paragraph, copies of the following items that were mailed by certified mail to the  
23 person in interest by the person requesting the disclosure at least [30] 10 days before  
24 the records are to be disclosed:

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

27 2. This section; and

28 3. A notice in the following form or a substantially  
29 similar form:

30	_____	In the
31	Plaintiffs	_____
32	v.	For
33		_____
34	_____	
35	Defendants	
36		Case No.: _____

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

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

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

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

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

21 \_\_\_\_\_  
22 Attorney  
23 (Firm Name  
24 Attorney address  
25 Attorney phone number)

26 Attorneys for (Name of Party  
27 Represented)

28 Certificate of Service

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

31 \_\_\_\_\_  
32 Patient

33 \_\_\_\_\_  
34 Each Counsel in Case

35 \_\_\_\_\_  
36 Attorney

37 (iii) FOR DISCLOSURES MADE UNDER ITEM (I)1B OF THIS  
38 PARAGRAPH, COPIES OF THE FOLLOWING ITEMS THAT WERE MAILED BY

1 CERTIFIED MAIL TO THE PERSON IN INTEREST BY THE PERSON REQUESTING  
2 THE DISCLOSURE AT LEAST 30 DAYS BEFORE THE RECORDS ARE TO BE  
3 DISCLOSED:

4 1. THE SUBPOENA, SUMMONS, WARRANT, OR COURT  
5 ORDER SEEKING THE DISCLOSURE OR PRODUCTION OF THE RECORDS;

6 2. THIS SECTION; AND

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

9	_____	IN THE
10	PLAINTIFFS	_____
11	v.	FOR
12		_____
13	_____	
14	DEFENDANTS	
15		CASE No.: _____

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

20 **TAKE NOTE THAT MEDICAL RECORDS REGARDING (PATIENT**  
 21 **NAME), HAVE BEEN SUBPOENAED FROM THE (NAME AND ADDRESS OF**  
 22 **HEALTH CARE PROVIDER) PURSUANT TO THE ATTACHED SUBPOENA AND**  
 23 **§ 4-306 OF THE HEALTH - GENERAL ARTICLE, ANNOTATED CODE OF**  
 24 **MARYLAND. THIS SUBPOENA \_\_\_ DOES \_\_\_ DOES NOT (MARK ONE)**  
 25 **SEEK PRODUCTION OF MENTAL HEALTH RECORDS.**

26 **PLEASE EXAMINE THESE PAPERS CAREFULLY. IF YOU HAVE**  
 27 **ANY OBJECTION TO THE PRODUCTION OF THESE**  
 28 **DOCUMENTS, YOU MUST FILE A MOTION FOR A PROTECTIVE**  
 29 **ORDER OR A MOTION TO QUASH THE SUBPOENA ISSUED FOR**  
 30 **THESE DOCUMENTS UNDER MARYLAND RULES 2-403 AND**  
 31 **2-510 NO LATER THAN THIRTY (30) DAYS FROM THE DATE**  
 32 **THIS NOTICE IS MAILED. FOR EXAMPLE, A PROTECTIVE ORDER MAY**  
 33 **BE GRANTED IF THE RECORDS ARE NOT RELEVANT TO THE ISSUES IN**  
 34 **THIS CASE, THE REQUEST UNDULY INVADES YOUR PRIVACY, OR CAUSES**  
 35 **YOU SPECIFIC HARM.**

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

1 **DUCES TECUM ISSUED FOR THESE RECORDS.**

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

4  
5 \_\_\_\_\_  
6 **ATTORNEY**  
7 **(FIRM NAME**  
8 **ATTORNEY ADDRESS**  
9 **ATTORNEY PHONE NUMBER)**  
10 **ATTORNEYS FOR (NAME OF**  
**PARTY REPRESENTED)**

11 **CERTIFICATE OF SERVICE**

12 **I HEREBY CERTIFY THAT A COPY OF THE FOREGOING NOTICE WAS**  
13 **MAILED, FIRST-CLASS POSTAGE PREPAID, THIS \_\_\_ DAY OF \_\_\_\_\_,**  
14 **200\_ TO**

15 \_\_\_\_\_  
16 **PATIENT**

17 \_\_\_\_\_  
18 **EACH COUNSEL IN CASE**

19 \_\_\_\_\_  
20 **ATTORNEY**

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

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

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

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

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

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

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

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