

HOUSE BILL 910

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8lr2342

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

Introduced and read first time: February 6, 2008

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: March 15, 2008

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
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.

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

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

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

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

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

- 17 1. Assessment of risk;
- 18 2. Development of a service plan;
- 19 3. Implementation of a safety plan; or
- 20 4. Investigation of the suspected case of abuse or
21 neglect; and

22 (iii) The medical record may be redisclosed as provided in §§
23 1–201, 1–202, 1–204, and 1–205 of the Human Services Article;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 2. This section; and

33 3. A notice in the following form or a substantially
34 similar form:

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1 _____
 2 Plaintiffs
 3 v.
 4 _____
 5 _____
 6 Defendants
 7

In the

 For

 Case No.: _____

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

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

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

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

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

28 _____
 29 Attorney
 30 (Firm Name
 31 Attorney address
 32 Attorney phone number)

33 Attorneys for (Name of Party
 34 Represented)

35 Certificate of Service

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

38 _____
 39 Patient

1 _____
 2 Each Counsel in Case
 3 _____
 4 Attorney

5 (III) FOR DISCLOSURES MADE UNDER ITEM (I)1B OF THIS
 6 PARAGRAPH, COPIES OF THE FOLLOWING ITEMS THAT WERE MAILED BY
 7 CERTIFIED MAIL TO THE PERSON IN INTEREST BY THE PERSON REQUESTING
 8 THE DISCLOSURE AT LEAST 30 DAYS BEFORE THE RECORDS ARE TO BE
 9 DISCLOSED:

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

12 2. THIS SECTION; AND

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

15 _____ 16 PLAINTIFFS 17 v. 18 _____ 19 _____ 20 DEFENDANTS 21 _____	IN THE _____ FOR _____ CASE No.: _____
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22 **NOTICE TO (PATIENT NAME)**
 23 **IN COMPLIANCE WITH § 4-306 OF THE HEALTH - GENERAL**
 24 **ARTICLE,**
 25 **ANNOTATED CODE OF MARYLAND**

26 **TAKE NOTE THAT MEDICAL RECORDS REGARDING (PATIENT**
 27 **NAME), HAVE BEEN SUBPOENAED FROM THE (NAME AND ADDRESS OF**
 28 **HEALTH CARE PROVIDER) PURSUANT TO THE ATTACHED SUBPOENA AND**
 29 **§ 4-306 OF THE HEALTH - GENERAL ARTICLE, ANNOTATED CODE OF**
 30 **MARYLAND. THIS SUBPOENA ___ DOES ___ DOES NOT (MARK ONE)**
 31 **SEEK PRODUCTION OF MENTAL HEALTH RECORDS.**

32 **PLEASE EXAMINE THESE PAPERS CAREFULLY. IF YOU HAVE**
 33 **ANY OBJECTION TO THE PRODUCTION OF THESE**
 34 **DOCUMENTS, YOU MUST FILE A MOTION FOR A PROTECTIVE**
 35 **ORDER OR A MOTION TO QUASH THE SUBPOENA ISSUED FOR**
 36 **THESE DOCUMENTS UNDER MARYLAND RULES 2-403 AND**

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

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

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.