

# HOUSE BILL 1481

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CF SB 557

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By: **Delegate Waldstreicher**

Introduced and read first time: February 26, 2013

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

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)

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

25 **Article – Health – General**

26 4–301.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (l) "Person in interest" means:

2 (1) An adult on whom a health care provider maintains a medical  
3 record;

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

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

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

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

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

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

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

19 (6) An attorney appointed in writing by a person listed in item (1), (2),  
20 (3), (4), or (5) of this subsection.

21 4–306.

22 (a) In this section, "compulsory process" includes a subpoena, summons,  
23 warrant, or court order that appears on its face to have been issued on lawful  
24 authority.

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

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

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

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

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

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

12 2. This section; and

13 3. A notice in the following form or a substantially  
14 similar form:

15 _____	In the
16 Plaintiffs	_____
17 v.	For
18 _____	_____
19 Defendants	
20 _____	Case No.: _____
21 _____	

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

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

30 Please examine these papers carefully. **IF YOU HAVE ANY OBJECTION TO**  
31 **THE PRODUCTION OF THESE DOCUMENTS, YOU MUST FILE A MOTION FOR**  
32 **A PROTECTIVE ORDER OR A MOTION TO QUASH THE SUBPOENA ISSUED**  
33 **FOR THESE DOCUMENTS UNDER MARYLAND RULES 2-403 [AND], 2-510, OR**  
34 **4-266 NO LATER THAN THIRTY (30) DAYS FROM THE DATE THIS NOTICE IS**  
35 **MAILED.** For example, a protective order may be granted if the records are not  
36 relevant to the issues in this case, the request unduly invades your privacy, or causes  
37 you specific harm.

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

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

5 \_\_\_\_\_  
6 Attorney  
7 (Firm Name  
8 Attorney address  
9 Attorney phone number)

10 \_\_\_\_\_  
11 Attorneys for (Name  
of Party Represented)

12 Certificate of Service

13 I hereby certify that a copy of the foregoing notice was mailed, first-class  
14 postage prepaid, this \_\_\_ day of \_\_\_\_\_, [200\_] 20\_\_ to

15 \_\_\_\_\_  
16 Patient

17 \_\_\_\_\_  
18 Each Counsel in Case

19 \_\_\_\_\_  
20 Attorney

21 SECTION 2. AND BE IT FURTHER ENACTED, That:

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

26 (1) the federal Health Insurance Portability and Accountability Act of  
27 1996 and any regulations adopted under the Act;

28 (2) Title 4, Subtitle 3 of the Health – General Article; and

29 (3) §§ 9–109, 9–109.1, and 9–121 of the Courts Article.

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

- 1           (1)    the Department of Health and Mental Hygiene;
- 2           (2)    the Medical and Chirurgical Faculty of Maryland;
- 3           (3)    the Maryland Nurses Association;
- 4           (4)    the Maryland State Dental Association;
- 5           (5)    the National Association of Social Workers – Maryland Chapter;
- 6           (6)    the Maryland Clinical Social Work Coalition;
- 7           (7)    the Maryland Psychological Association;
- 8           (8)    the Maryland Pharmacists Association; and
- 9           (9)    any other health professional association or public health entity in  
10 the State that elects to participate.

11           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2013.