

SENATE BILL 557

J1, D3

3lr2768
CF 3lr1325

By: **Senator Stone**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of requiring a person who discloses a medical record in response to
5 compulsory process to make a certain certification within a certain time period
6 to the judicial officer who issued the compulsory process; requiring the person,
7 under certain circumstances, to include certain information in the certification;
8 requiring, except under certain circumstances, the person to mail a copy of the
9 certification to certain persons; requiring a judicial officer, under certain
10 circumstances, to issue an order prohibiting the person from mailing a copy of
11 the certification to a certain person; altering the circumstances under which a
12 health care provider is required to disclose a medical record without the
13 authorization of a person in interest; altering a certain notice that must be sent
14 to certain parties in order to require a health care provider to disclose a medical
15 record under certain circumstances; defining a certain term; making a technical
16 change; and generally relating to the disclosure of medical records in response
17 to compulsory process.

18 BY adding to

19 Article – Courts and Judicial Proceedings
20 Section 9–125
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2012 Supplement)

23 BY repealing and reenacting, without amendments,

24 Article – Health – General
25 Section 4–301(l) and 4–306(a) and (b)(6)(i)1.B.
26 Annotated Code of Maryland
27 (2009 Replacement Volume and 2012 Supplement)

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Health – General
2 Section 4–306(b)(6)(iii)
3 Annotated Code of Maryland
4 (2009 Replacement Volume and 2012 Supplement)

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

7 **Article – Courts and Judicial Proceedings**

8 **9–125.**

9 (A) IN THIS SECTION, “PERSON IN INTEREST” HAS THE MEANING
10 STATED IN § 4–301 OF THE HEALTH – GENERAL ARTICLE.

11 (B) WITHIN 5 BUSINESS DAYS AFTER A PERSON DISCLOSES A MEDICAL
12 RECORD IN RESPONSE TO COMPULSORY PROCESS, THE PERSON SHALL:

13 (1) CERTIFY TO THE JUDICIAL OFFICER WHO ISSUED THE
14 COMPULSORY PROCESS THAT THE DISCLOSURE:

15 (i) WAS MADE IN COMPLIANCE WITH THE APPLICABLE
16 PROVISIONS OF:

17 1. THE FEDERAL HEALTH INSURANCE PORTABILITY
18 AND ACCOUNTABILITY ACT OF 1996 AND ANY REGULATIONS ADOPTED UNDER
19 THE ACT; AND

20 2. TITLE 4, SUBTITLE 3 OF THE HEALTH – GENERAL
21 ARTICLE; AND

22 (ii) DID NOT VIOLATE THE APPLICABLE PROVISIONS OF §
23 9–109, § 9–109.1, OR § 9–121 OF THIS SUBTITLE;

24 (2) IF ANY OTHER PROVISION OF FEDERAL OR STATE LAW
25 GOVERNS THE DISCLOSURE OF THE MEDICAL RECORD, INCLUDE IN THE
26 CERTIFICATION MADE UNDER ITEM (1) OF THIS SUBSECTION THE PROVISION OF
27 LAW THAT AUTHORIZES THE DISCLOSURE OF THE MEDICAL RECORD; AND

28 (3) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,
29 MAIL A COPY OF THE CERTIFICATION MADE UNDER ITEM (1) OF THIS
30 SUBSECTION TO:

31 (i) THE PERSON IN INTEREST; AND

1 **(II) IF APPLICABLE, THE PARTIES TO A CRIMINAL OR**
 2 **JUVENILE DELINQUENCY CASE IN WHICH THE COMPULSORY PROCESS WAS**
 3 **ISSUED TO DISCLOSE A MEDICAL RECORD.**

4 **(C) IF A STATE'S ATTORNEY OR A DESIGNATED ASSISTANT STATE'S**
 5 **ATTORNEY FILES A DECLARATION TO THE COURT THAT MAILING OF A COPY OF**
 6 **THE CERTIFICATION MADE UNDER SUBSECTION (B)(1) OF THIS SECTION TO THE**
 7 **PERSON IN INTEREST WOULD MATERIALLY IMPAIR THE INVESTIGATION OF A**
 8 **CRIMINAL MATTER, THE JUDICIAL OFFICER ISSUING THE COMPULSORY**
 9 **PROCESS SHALL ISSUE, AS PART OF THE COMPULSORY PROCESS, AN ORDER**
 10 **THAT THE PERSON DISCLOSING THE MEDICAL RECORD MAY NOT SEND A COPY**
 11 **OF THE CERTIFICATION TO THE PERSON IN INTEREST.**

12 **Article – Health – General**

13 4–301.

14 (l) “Person in interest” means:

15 (1) An adult on whom a health care provider maintains a medical
 16 record;

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

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

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

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

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

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

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

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

3 4–306.

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

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

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

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

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

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

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

26 2. This section; and

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

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

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 OBJECTION
10 TO THE PRODUCTION OF THESE DOCUMENTS, YOU MUST FILE A
11 MOTION FOR A PROTECTIVE ORDER OR A MOTION TO QUASH THE
12 SUBPOENA ISSUED FOR THESE DOCUMENTS UNDER MARYLAND
13 RULES 2-403 [AND], 2-510, OR 4-266 NO LATER THAN THIRTY (30) 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
27 of Party 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_] 20__ to

31 _____
32 Patient

33 _____
34 Each Counsel in Case

35 _____
36 Attorney

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 2013.