

22. Medical Records Act--Duty to Hold Confidential and Duty to Disclose a Medical Record

HEALTH-GENERAL ARTICLE § § 4-301--4-309, 8-601

§ 4-301. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Directory information. --

(1) "Directory information" means information concerning the presence and general health condition of a patient who has been admitted to a health care facility or who is currently receiving emergency health care in a health care facility.

(2) "Directory information" does not include health care information developed primarily in connection with mental health services.

(c) Disclose or disclosure. -- "Disclose" or "disclosure" means the transmission or communication of information in a medical record, including an acknowledgment that a medical record on a particular patient or recipient exists.

(d) Emergency. -- "Emergency" means a situation when, in the professional opinion of the health care provider, a clear and significant risk of death or imminent serious injury or harm to a patient or recipient exists.

(e) General health condition. -- "General health condition" means the health status of a patient described in terms of "critical", "poor", "fair", "good", "excellent", or terms denoting similar conditions.

(f) Health care. -- "Health care" means any care, treatment, or procedure by a health care provider:

(1) To diagnose, evaluate, rehabilitate, manage, treat, or maintain the physical or mental condition of a patient or recipient; or

(2) That affects the structure or any function of the human body.

(g) Health care provider. --

(1) "Health care provider" means:

(i) A person who is licensed, certified, or otherwise authorized under the Health Occupations Article or § 13-516 of the Education Article to provide health care in the ordinary course of business or practice of a profession or in an approved education or training program; or

(ii) A facility where health care is provided to patients or recipients, including a facility as defined in § 10-101(e) of this article, a hospital as defined in § 19-301 of this article, a related institution as defined in § 19-301 of this article, a health maintenance organization as defined in § 19-701(g) of this article, an outpatient clinic, and a medical laboratory.

(2) "Health care provider" includes the agents, employees, officers, and directors of a facility and the agents and employees of a health care provider.

(h) Medical record. --

(1) "Medical record" means any oral, written, or other transmission in any form or medium of information that:

(i) Is entered in the record of a patient or recipient;

(ii) Identifies or can readily be associated with the identity of a patient or recipient; and

(iii) Relates to the health care of the patient or recipient.

(2) "Medical record" includes any:

(i) Documentation of disclosures of a medical record to any person who is not an employee, agent, or consultant of the health care provider;

(ii) File or record maintained under § 12-403(b)(13) of the Health Occupations Article by a pharmacy of a prescription order for drugs, medicines, or devices that identifies or may be readily associated with the identity of a patient;

(iii) Documentation of an examination of a patient regardless of who:

1. Requested the examination; or

2. Is making payment for the examination; and

(iv) File or record received from another health care provider that:

1. Relates to the health care of a patient or recipient received from that health care provider; and

2. Identifies or can readily be associated with the identity of the patient or recipient.

(i) Mental health services. --

(1) "Mental health services" means health care rendered to a recipient primarily in connection with the diagnosis, evaluation, treatment, case management, or rehabilitation of any mental disorder.

(2) For acute general hospital services, mental health services are considered to be the primarily rendered service only if service is provided pursuant to Title 10, Subtitle 6 or Title 12 of this article.

(j) Patient. -- "Patient" means a person who receives health care and on whom a medical record is maintained.

(k) Person in interest. -- "Person in interest" means:

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

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

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

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

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

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

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

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

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

(l) Primary provider of mental health services. -- "Primary provider of mental health services" means the designated mental health services provider who:

(1) Has primary responsibility for the development of the mental health treatment plan for the recipient; and

(2) Is actively involved in providing that treatment.

(m) Recipient. -- "Recipient" means a person who has applied for, for whom an application has been submitted, or who has received mental health services.

§ 4-302. Confidentiality and disclosure generally

(a) In general. -- A health care provider shall:

(1) Keep the medical record of a patient or recipient confidential; and

(2) Disclose the medical record only:

(i) As provided by this subtitle; or

(ii) As otherwise provided by law.

(b) Applicability of subtitle. -- The provisions of this subtitle do not apply to information:

(1) Not kept in the medical record of a patient or recipient that is related to the administration of a health care facility, including:

(i) Risk management;

(ii) Quality assurance; and

(iii) Any activities of a medical or dental review committee that are confidential under the provisions of Title 4, Subtitle 5 and Title 14, Subtitle 5 of the Health Occupations Article and any activities of a pharmacy review committee;

(2) Governed by the federal confidentiality of alcohol and drug abuse patient records regulations, 42 C.F.R. Part 2 and the provisions of § 8-601(c) of this article; or

(3) Governed by the developmental disability confidentiality provisions in §§ 7-1008 through 7-1011 of this article.

(c) Directory information. -- A health care provider may disclose directory information about a patient without the authorization of a person in interest, except if the patient has instructed the health care provider in writing not to disclose directory information.

(d) Redisclosure. -- A person to whom a medical record is disclosed may not redisclose the medical record to any other person unless the redisclosure is:

(1) Authorized by the person in interest;

(2) Otherwise permitted by this subtitle;

(3) Permitted under § 1-202(b) or (c) of the Human Services Article; or

(4) Directory information.

(e) Transfer of records relating to transfer of ownership of health care practice or facility. --

(1) Except as provided in paragraph (2) of this subsection, a person may not disclose by sale, rental, or barter any medical record.

(2) This subsection shall not prohibit the transfers of medical records relating to the transfer of ownership of a health care practice or facility if the transfer is in accord with the ethical guidelines of the applicable health care profession or professions.

(f) Construction of subtitle. -- The provisions of this subtitle may not be construed to constitute an exception to the reporting requirements of Title 5, Subtitle 7 and Title 14, Subtitle 3 of the Family Law Article.

§ 4-302.1. Medical care electronic claims clearinghouses

(a) Limitations on payors' acceptance of claims. -- Payors that accept claims originating in this State from medical care electronic claims clearinghouses shall accept claims only from medical care electronic claims clearinghouses that are:

- (1) Accredited by the Electronic Healthcare Network Accreditation Commission; or
- (2) Certified by the Maryland Health Care Commission.

(b) Regulations. -- The Maryland Health Care Commission shall adopt regulations to carry out this section.

§ 4-303. Disclosure upon authorization of a person in interest

(a) In general. -- A health care provider shall disclose a medical record on the authorization of a person in interest in accordance with this section.

(b) Form, terms and conditions of authorization. -- Except as otherwise provided in subsections (c) and (d) of this section, an authorization shall:

- (1) Be in writing, dated, and signed by the person in interest;
- (2) State the name of the health care provider;
- (3) Identify to whom the information is to be disclosed;
- (4) State the period of time that the authorization is valid, which may not exceed 1 year, except:

(i) In cases of criminal justice referrals, in which case the authorization shall be valid until 30 days following final disposition; or

(ii) In cases where the patient on whom the medical record is kept is a resident of a nursing home, in which case the authorization shall be valid until revoked, or for any time period specified in the authorization; and

(5) Apply only to a medical record developed by the health care provider unless in writing:

(i) The authorization specifies disclosure of a medical record that the health care provider has received from another provider; and

(ii) The other provider has not prohibited redisclosure.

(c) Preauthorized insurance forms. -- A health care provider shall disclose a medical record on receipt of a preauthorized form that is part of an application for insurance.

(d) Authorization for release related to workers' compensation claims. -- A health care provider shall disclose a medical record on receipt of an authorization for the release of relevant medical information that is included with the claim application form filed with the Workers' Compensation Commission in accordance with § 9-709(a), § 9-710(b), or § 9-711(a) of the Labor and Employment Article.

(e) Revocation of authorization. --

(1) Except in cases of criminal justice referrals, a person in interest may revoke an authorization in writing.

(2) A revocation of an authorization becomes effective on the date of receipt by the health care provider.

(3) A disclosure made before the effective date of a revocation is not affected by the revocation.

(f) Entries in records. -- A copy of the following shall be entered in the medical record of a patient or recipient:

(1) A written authorization;

(2) Any action taken in response to an authorization; and

(3) Any revocation of an authorization.

§ 4-304. Copies of records; changes in records

(a) Requests for copies. --

(1) Except as otherwise provided in this subtitle, a health care provider shall comply within a reasonable time after a person in interest requests in writing:

(i) To receive a copy of a medical record; or

(ii) To see and copy the medical record.

(2) If a medical record relates to a psychiatric or psychological problem and the attending health care provider, with any available and feasible input from a primary provider of mental health services, believes disclosure of any portion of the medical record to be injurious to the health of a patient or recipient, the health care provider may refuse to disclose that portion of the medical record to the patient, recipient, or person in interest but, on written request, shall:

(i) Make a summary of the undisclosed portion of the medical record available to the patient, recipient, or person in interest;

(ii) Insert a copy of the summary in the medical record of the patient or recipient;

(iii) Permit examination and copying of the medical record by another health care provider who is authorized to treat the patient or recipient for the same condition as the health care provider denying the request; and

(iv) Inform the patient or recipient of the patient's or recipient's right to select another health care provider under this subsection.

(b) Changes in records. --

(1) A health care provider shall establish procedures for a person in interest to request an addition to or correction of a medical record.

(2) A person in interest may not have any information deleted from a medical record.

(3) Within a reasonable time after a person in interest requests a change in a medical record, the health care provider shall:

(i) Make the requested change; or

(ii) Provide written notice of a refusal to make the change to the person in interest.

(4) A notice of refusal shall contain:

(i) Each reason for the refusal; and

(ii) The procedures, if any, that the health care provider has established for review of the refusal.

(5) If the final determination of the health care provider is a refusal to change the medical record, the provider:

(i) Shall permit a person in interest to insert in the medical record a concise statement of the reason that the person in interest disagrees with the record; and

(ii) May insert in the medical record a statement of the reasons for the refusal.

(6) A health care provider shall give a notice of a change in a medical record or a copy of a statement of disagreement:

(i) To any individual the person in interest has designated to receive the notice or statement; and

(ii) To whom the health care provider has disclosed an inaccurate, an incomplete, or a disputed medical record within the previous 6 months.

(7) If a health care provider discloses a medical record after an addition, correction, or statement of disagreement has been made, the provider shall include with the medical record a copy of each addition, correction, or statement of disagreement.

(c) Payment of copying costs. --

(1) (i) In this subsection, "medical record" includes a copy of a medical bill that has been requested by an individual.

(ii) The provisions of this subsection do not apply to x-rays.

(2) A health care provider may require a person in interest or any other authorized person who requests a copy of a medical record to pay the cost of copying:

(i) For State facilities regulated by the Department of Health and Mental Hygiene, as provided in § 10-621 of the State Government Article; or

(ii) For all other health care providers, the reasonable cost of providing the information requested.

(3) (i) Subject to the provisions of paragraph (4) of this subsection, for a copy of a medical record requested by a person in interest or any other authorized person under paragraph (2)(ii) of this subsection, a health care provider may charge a fee for copying and mailing not exceeding 50 cents for each page of the medical record.

(ii) In addition to the fee charged under subparagraph (i) of this paragraph, a hospital or a health care provider may charge:

1. A preparation fee not to exceed \$ 15 for medical record retrieval and preparation; and
2. The actual cost for postage and handling of the medical record.

(4) On or after July 1, 1995, the fees charged under paragraph (3) of this subsection may be adjusted annually for inflation in accordance with the Consumer Price Index.

(5) (i) Except as provided in subparagraph (ii) of this paragraph, a health care provider may charge a fee, as authorized under paragraphs (3) and (4) of this subsection, for the retrieval, copying, preparation, mailing, and actual cost of postage and handling of a medical record disclosed under § 4-306 of this subtitle.

(ii) If a government unit or agency makes a request for the disclosure of a medical record under § 4-306 of this subtitle, a health care provider may not charge the government unit or agency a fee for the retrieval, copying, preparation, mailing, and actual cost of postage and handling of the medical record.

(6) Notwithstanding any other provision of law, any person or entity who is not subject to the provisions of this subsection and who obtains a medical record from a health care provider or the provider's agent may not charge a fee for any subsequent copies of that medical record that exceeds the fee authorized under paragraph (3)(i) of this subsection.

(d) Nonpayment of copying costs. -- Except for an emergency request from a unit of State or local government concerning a child protective services case or adult protective services case, a health care provider may withhold copying until the fee for copying is paid.

§ 4-305. Disclosures without authorization of person in interest -- In general

(a) Construction of section. -- This section may not be construed to impose an obligation on a health care provider to disclose a medical record.

(b) Permitted disclosure. -- A health care provider may disclose a medical record without the authorization of a person in interest:

(1) (i) To the provider's authorized employees, agents, medical staff, medical students, or consultants for the sole purpose of offering, providing, evaluating, or seeking payment for health care to patients or recipients by the provider;

(ii) To the provider's legal counsel regarding only the information in the medical record that relates to the subject matter of the representation; or

(iii) To any provider's insurer or legal counsel, or the authorized employees or agents of a provider's insurer or legal counsel, for the sole purpose of handling a potential or actual claim against any provider if the medical record is maintained on the claimant and relates to the subject matter of the claim;

(2) If the person given access to the medical record signs an acknowledgment of the duty under this Act not to redisclose any patient identifying information, to a person for:

(i) Educational or research purposes, subject to the applicable requirements of an institutional review board;

(ii) Evaluation and management of health care delivery systems; or

(iii) Accreditation of a facility by professional standard setting entities;

(3) Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307 of this subtitle, to a government agency performing its lawful duties as authorized by an act of the Maryland General Assembly or the United States Congress;

(4) Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307 of this subtitle, to another health care provider for the sole purpose of treating the patient or recipient on whom the medical record is kept;

(5) If a claim has been or may be filed by, or with the authorization of a patient or recipient on behalf of the patient or recipient, for covered insureds, covered beneficiaries, or enrolled recipients only, to third party payors and their agents, if the payors or agents have met the applicable provisions of §§ 15-10B-01 to 15-10B-18 of the Insurance Article, including nonprofit health service plans, health maintenance organizations, fiscal intermediaries and carriers, the Department of Health and Mental Hygiene and its agents, the United States Department of Health and Human Services and its agents, or any other person obligated by contract or law to pay for the health care rendered for the sole purposes of:

(i) Submitting a bill to the third party payor;

(ii) Reasonable prospective, concurrent, or retrospective utilization review or predetermination of benefit coverage;

(iii) Review, audit, and investigation of a specific claim for payment of benefits; or

(iv) Coordinating benefit payments in accordance with the provisions of the Insurance Article under more than 1 sickness and accident, dental, or hospital and medical insurance policy;

(6) If a health care provider makes a professional determination that an immediate disclosure is necessary, to provide for the emergency health care needs of a patient or recipient;

(7) Except if the patient has instructed the health care provider not to make the disclosure, or if the record has been developed primarily in connection with the provision of mental health services, to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice;

(8) To an appropriate organ, tissue, or eye recovery agency under the restrictions of § 5-408 of this article for a patient whose organs and tissues may be donated for the purpose of evaluating the patient for possible organ and tissue donation;

(9) To the Department of Health and Mental Hygiene or an organ, tissue, or eye recovery agency designated by the Department for the purpose of conducting death record reviews under § 19-310 of this article; or

(10) Subject to subsection (c) of this section, if the purpose of the medical record disclosure is for the coordination of services and record retention within the Montgomery County Department of Health and Human Services.

(c) Disclosure for coordination of services and record retention within Montgomery County Department of Health and Human Services. --

(1) The disclosure of medical records under subsection (b)(10) of this section to a person that is not employed by or under contract with the Montgomery County Department of Health and Human Services shall be conducted in accordance with this subtitle.

(2) Under provisions of State law regarding confidentiality, the Montgomery County Department of Health and Human Services shall be considered to be one agency.

§ 4-306. Disclosures without authorization of person in interest -- Investigations

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

(b) Permitted disclosures. -- A health care provider shall disclose a medical record without the authorization of a person in interest:

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

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

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

1. Assessment of risk;
2. Development of a service plan;
3. Implementation of a safety plan; or
4. Investigation of the suspected case of abuse or neglect; and

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

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

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

(ii) The improper practice of a health profession;

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

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

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

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

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

A. In a Child in Need of Assistance proceeding pursuant to Title 3, Subtitle 8 of the Courts and Judicial Proceedings Article, a person in interest has not objected to the disclosure of the designated medical records and 15 days have elapsed since the notice was sent;

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

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

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

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

(ii) For disclosures made under item (i)1A of this paragraph, copies of the following items that were mailed by certified mail to the person in interest by the person requesting the disclosure at least 15 days before the records are to be disclosed:

1. The subpoena, summons, warrant, or court order seeking the disclosure or production of the records;
2. This section; and
3. A notice in the following form or a substantially similar form:

| | |
|------------|-----------------|
| _____ | In the |
| Plaintiffs | _____ |
| v. | For |
| | _____ |
| Defendants | |
| _____ | Case No.: _____ |

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

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

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

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

If you believe you need further legal advice about this matter, you should

consult your attorney.

Attorney

(Firm Name

Attorney address

Attorney phone number)

Attorneys for (Name of Party

Represented)

Certificate of Service

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

Patient

Each Counsel in Case

Attorney

(iii) For disclosures made under item (i)1B of this paragraph, copies of the following items that were mailed by certified mail to the person in interest by the person requesting the disclosure at least 30 days before the records are to be disclosed:

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

2. This section; and

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

Plaintiffs

In the

For

v.

Defendants

Case No.: _____

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

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

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

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

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

Attorney

(Firm Name

Attorney address

Attorney phone number)

Attorneys for (Name of Party

Represented)

Certificate of Service

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

Patient

Each Counsel in Case

Attorney

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

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

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

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

(c) Requests; documentation. -- When a disclosure is sought under this section:

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

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

§ 4-307. Disclosure of mental health records

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Case management" means an individualized recipient centered service designed to assist a recipient in obtaining effective mental health services through the assessing, planning, coordinating, and monitoring of services on behalf of the recipient.

(3) "Core service agency" means an organization approved by the Mental Hygiene Administration to manage mental health resources and services in a designated area or to a designated target population.

(4) "Director" means the Director of the Mental Hygiene Administration or the designee of the Director.

(5) "Mental health director" means the health care professional who performs the functions of a clinical director or the designee of that person in a health care, detention, or correctional facility.

(6) (i) "Personal note" means information that is:

1. The work product and personal property of a mental health provider; and
2. Except as provided in subsection (d)(3) of this section, not discoverable or admissible as evidence in any criminal, civil, or administrative action.

(ii) Except as provided in subsection (d)(2) of this section, a medical record does not include a personal note of a mental health care provider, if the mental health care provider:

1. Keeps the personal note in the mental health care provider's sole possession for the provider's own personal use;
2. Maintains the personal note separate from the recipient's medical records; and
3. Does not disclose the personal note to any other person except:
 - A. The mental health provider's supervising health care provider that maintains the confidentiality of the personal note;
 - B. A consulting health care provider that maintains the confidentiality of the personal note; or
 - C. An attorney of the health care provider that maintains the confidentiality of the personal note.

(iii) "Personal note" does not include information concerning the patient's diagnosis, treatment plan, symptoms, prognosis, or progress notes.

(b) Governing provisions. -- The disclosure of a medical record developed in connection with the provision of mental health services shall be governed by the provisions of this section in addition to the other provisions of this subtitle.

(c) Permitted disclosures generally. -- When a medical record developed in connection with the provision of mental health services is disclosed without the authorization of a person in interest, only the information in the record relevant to the purpose for which disclosure is sought may be released.

(d) Personal notes. --

(1) To the extent a mental health care provider determines it necessary and appropriate, the mental health care provider may maintain a personal note regarding a recipient.

(2) A personal note shall be considered part of a recipient's medical records if, at any time, a mental health care provider discloses a personal note to a person other than:

(i) The provider's supervising health care provider;

(ii) A consulting health care provider;

(iii) An attorney of the health care provider; or

(iv) A recipient under paragraph (3) of this subsection.

(3) The provisions of this subsection do not prohibit the disclosure, discovery, or admissibility of a personal note regarding a recipient who has initiated an action for malpractice, an intentional tort, or professional negligence against the health care provider.

(e) Disclosure relating to psychological tests. --

(1) Except as otherwise provided in paragraphs (3), (4), and (5) of this subsection, if the disclosure of a portion of a medical record relating to a psychological test would compromise the objectivity or fairness of the test or the testing process, a mental health care provider may not disclose that portion of the medical record to any person, including a subject of the test.

(2) The raw test data relating to a psychological test is only discoverable or admissible as evidence in a criminal, civil, or administrative action on the determination by the court or administrative hearing officer that the expert witness for the party seeking the raw test data is qualified by the appropriate training, education, or experience to interpret the results of that portion of the raw test data relating to the psychological test.

(3) (i) A recipient who has been the subject of a psychological test may designate a psychologist licensed under Title 18 of the Health Occupations Article or a psychiatrist licensed under Title 14 of the Health Occupations Article to whom a health care provider may disclose the medical record.

(ii) The recipient shall:

1. Request the disclosure authorized under this paragraph in writing; and

2. Comply with the provisions of § 4-304 of this subtitle.

(4) A health care provider may disclose a medical record relating to a psychological test as provided under § 4-305(b)(2)(i) of this subtitle.

(5) The provisions of this subsection may not restrict access to or affect the disclosure of a medical record which is also an education record under the federal Individuals with Disabilities Education Act, the federal Family Educational Rights and Privacy Act, or any federal and State regulations that have been adopted to implement those laws.

(f) Disclosure relating to obtaining or continuing employment. -- Notwithstanding any other provision of this subtitle, a person in interest shall have the right to obtain a medical record of a recipient that is developed in conjunction with a mental health evaluation relating to obtaining or continuing employment, if the evaluation has been performed at the request of or on behalf of an employer or prospective employer:

(1) In connection with a civil action or U.S. Equal Employment Opportunity Commission complaint initiated by the person in interest; or

(2) On a written authorization of the employer or prospective employer.

(g) Records relating to groups or families. -- A health care provider may disclose a medical record that relates to and identifies more than one recipient in group or family therapy only:

(1) On the authorization of a person in interest for each recipient;

(2) As provided in this subtitle; or

(3) As otherwise provided by law.

(h) Participants in plans of care service agencies. -- This section may not be construed to prevent the disclosure of a medical record that relates to the provision of mental health services between or among the health care providers that participate in the approved plan of a core service agency for the delivery of mental health services, if a recipient:

(1) Has received a current list of the participating providers; and

(2) Has signed a written agreement with the core service agency to participate in the client information system developed by the agency.

(i) Rate reviews, audits, health planning, licensures, approvals or accreditations of facilities. -- If an individual given access to a medical record that relates to the provision of mental health services signs an acknowledgment of the duty under this Act not to redisclose personal identifying information about a recipient, this section may not be construed to prevent the disclosure of the medical record for rate review, auditing, health planning, licensure, approval, or accreditation of a facility by governmental or professional standard setting entities.

(j) Health, safety, and protection of recipient or others. --

(1) A health care provider may disclose a medical record without the authorization of a person in interest:

(i) To the medical or mental health director of a juvenile or adult detention or correctional facility if:

1. The recipient has been involuntarily committed under State law or a court order to the detention or correctional facility requesting the medical record; and

2. After a review of the medical record, the health care provider who is the custodian of the record is satisfied that disclosure is necessary for the proper care and treatment of the recipient;

(ii) As provided in § 5-609 of the Courts and Judicial Proceedings Article;

(iii) 1. If a health care provider is a facility as defined in § 10-101 of this article, to a law enforcement agency concerning a recipient who:

A. Has been admitted involuntarily or by court order to the facility; and

B. Is on an unauthorized absence or has otherwise left the facility without being discharged or released;

2. The facility director may disclose to the law enforcement agency identifying information and only such further information that the director believes is necessary to aid the law enforcement agency in locating and apprehending the recipient for the purpose of:

A. Safely returning the recipient to custody; or

B. Fulfilling the provisions of subparagraph (ii) of this paragraph;

(iv) If a health care provider is a facility as defined in § 10-101 of this article, the facility director may confirm or deny the presence in the facility of a recipient to a parent, guardian, next of kin, or any individual who has a significant interest in the status of the recipient if that individual has filed a missing persons report regarding the recipient; and

(v) To allow for the service of process or a court order in a facility when appropriate arrangements have been made with the facility director so as to minimize loss of confidentiality.

(2) When a disclosure is made under this subsection, documentation of the disclosure shall be inserted in the medical record of the recipient.

(k) Transfer of recipient; protection and advocacy system; commitment proceedings; court orders, subpoenas, etc.; death of recipient. --

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

(i) To the medical or mental health director of a juvenile or adult detention or correctional facility or to another inpatient provider of mental health services in connection with the transfer of a recipient from an inpatient provider, if:

1. The health care provider with the records has determined that disclosure is necessary for the continuing provision of mental health services; and

2. The recipient is transferred:

A. As an involuntary commitment or by court order to the provider;

B. Under State law to a juvenile or adult detention or correctional facility; or

C. To a provider that is required by law or regulation to admit the recipient;

(ii) To the State designated protection and advocacy system for mentally ill individuals under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended, if:

1. The State designated protection and advocacy system has received a complaint regarding the recipient or the director of the system has certified in writing to the chief administrative officer of the health care provider that there is probable cause to believe that the recipient has been subject to abuse or neglect;

2. The recipient by reason of mental or physical condition is unable to authorize disclosure; and

3. A. The recipient does not have a legal guardian or other legal representative who has the authority to consent to the release of health care information; or

B. The legal guardian of the recipient is a representative of a State agency;

(iii) To another health care provider or legal counsel to the other health care provider prior to and in connection with or for use in a commitment proceeding in accordance with Title 10, Subtitle 6 or Title 12 of this article;

(iv) In accordance with a court order, other than compulsory process compelling disclosure, as permitted under § 9-109(d), § 9-109.1(d), or § 9-121(d) of the Courts and Judicial Proceedings Article, or as otherwise provided by law, to:

1. A court;

2. An administrative law judge;

3. A health claims arbitrator; or

4. A party to a court, administrative, or arbitration proceeding;

(v) In accordance with a subpoena for medical records on specific recipients:

1. To health professional licensing and disciplinary boards for the sole purpose of an investigation regarding licensure, certification, or discipline of a health professional or the improper practice of a health profession; and

2. To grand juries, prosecution agencies, and law enforcement agencies under the supervision of prosecution agencies for the sole purposes of investigation and prosecution of a provider for theft and fraud, related offenses, obstruction of justice, perjury, unlawful distribution of controlled substances, and of any criminal assault, neglect, patient abuse or sexual offense committed by the provider against a recipient, provided that the prosecution or law enforcement agency shall:

A. Have written procedures which shall be developed in consultation with the Director to maintain the medical records in a secure manner so as to protect the confidentiality of the records; and

B. In a criminal proceeding against a provider, to the maximum extent possible, remove and protect recipient identifying information from the medical records used in the proceeding; or

(vi) In the event of the death of a recipient, to the office of the medical examiner as authorized under § 5-309 or § 10-713 of this article.

(2) If a recipient believes that a medical record has been inappropriately obtained, maintained, or disclosed under paragraph (1)(vi) of this subsection, the recipient may petition the State prosecutor for an investigation of the allegation.

(3) Except in a proceeding relating to payment for the health care of a recipient, the medical record of a recipient and any information obtained as a result of disclosure under paragraph (1)(vi) of this subsection is disclosable, notwithstanding any privilege in law, but may not be used in any proceeding against the recipient.

(4) A written request for disclosure or written confirmation of an oral request in an emergency that justifies the need for disclosure shall be inserted in the medical record of the recipient.

(5) Documentation of the disclosure shall be inserted in the medical record of the recipient.

(6) This subsection may not preclude a health care provider, a recipient, or person in interest from asserting in a motion to quash or a motion for a protective order any constitutional right or other legal authority in opposition to disclosure.

§ 4-308. Liability for good faith actions

A health care provider, who in good faith discloses or does not disclose a medical record, is not liable in any cause of action arising from the disclosure or nondisclosure of the medical record.

§ 4-309. Refusal to disclose records; violations of subtitle; penalties

(a) Refusal to disclose records. -- If a health care provider knowingly refuses to disclose a medical record within a reasonable time but no more than 21 working days after the date a person in interest requests the disclosure, the health care provider is liable for actual damages.

(b) Refusal to disclose because payment is owed. -- A health care provider may not refuse to disclose a medical record on the request of a person in interest because of the failure of the person in interest to pay for health care rendered by the health care provider.

(c) Violations of subtitle. -- A health care provider or any other person is in violation of this subtitle if the health care provider or any other person:

(1) Requests or obtains a medical record under false pretenses or through deception; or

(2) Discloses a medical record in violation of this subtitle.

(d) Criminal penalties. -- Except as otherwise provided in subsection (e) of this section, a health care provider or any other person, including an officer or employee of a governmental unit, who knowingly and willfully violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$ 1,000 for the first offense and not exceeding \$ 5,000 for each subsequent conviction for a violation of any provision of this subtitle.

(e) Fraudulent obtaining of records; wrongful disclosure of records. --

(1) A health care provider or any other person, including an officer or employee of a governmental unit, who knowingly and willfully requests or obtains a medical record under false pretenses or through deception or knowingly and willfully discloses a medical record in violation of this subtitle is guilty of a misdemeanor and on conviction is subject to the following penalties:

(i) A fine not exceeding \$ 50,000, imprisonment for not more than 1 year, or both;

(ii) If the offense is committed under false pretenses, a fine not exceeding \$ 100,000, imprisonment for not more than 5 years, or both; and

(iii) If the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine not exceeding \$ 250,000, imprisonment for not more than 10 years, or both.

(2) This subsection does not apply to an officer or employee of a governmental unit that is conducting a criminal investigation.

(f) Civil penalties. -- A health care provider or any other person who knowingly violates any provision of this subtitle is liable for actual damages.

§ 8-601. Privileged information

(a) Statements of abuser; observations and conclusions of counselor; results of examination. -- If any individual seeks counseling, treatment, or therapy, for any form of drug or alcohol abuse, from a health professional licensed under the Health Occupations Article treating patients within the scope of the professional's practice, or hospital, or a person who is certified by the Administration for counseling or treating drug or alcohol abuse, the oral or written statements that the individual makes and the observations and conclusions that the health professional, hospital, or other person derives or the results of an examination to determine the existence of an illegal or prohibited drug in the body of an individual are not admissible in any proceeding against the individual, other than and subject to the federal regulations concerning the confidentiality of alcohol and drug abuse patient records:

(1) A proceeding that relates to parole or probation or conditional release from a not criminally responsible finding, if the examination had been ordered as a condition of parole or probation or the conditional release from a not criminally responsible finding; or

(2) A proceeding under Subtitle 5 of this title, if the examination had been ordered for that proceeding.

(b) Evidence and results of proceeding. -- The results of a proceeding under Subtitle 5 of this title and evidence in the proceeding may not be used against that individual in any other proceeding.

(c) Disclosure and use of records. -- The disclosure and use of the records of individuals served by alcohol abuse and drug abuse treatment programs shall be governed by the federal regulations on the confidentiality of alcohol and drug abuse patient records, 42 C.F.R. Part 2.