

Chapter 700

(House Bill 1468)

AN ACT concerning

**Medical Records – Disclosure of Directory Information and Medical Records –
~~Mental Health Services~~**

FOR the purpose of altering the circumstances under which a health care provider may disclose a medical record developed primarily in connection with mental health services ~~to certain family members of a patient or other individuals without the authorization of a person in interest~~; authorizing a health care provider to disclose directory information about a patient to a certain individual except under certain circumstances; requiring a health care provider to inform a patient of health care information that the health care provider may include in a certain directory and the persons to whom the information may be disclosed; requiring a health care provider to provide a patient, at a certain time, with an opportunity to restrict or prohibit the disclosure of directory information; authorizing a health care provider to disclose a patient's directory information under certain circumstances if providing an opportunity for a patient to restrict or prohibit the disclosure is not practicable for certain reasons; altering the circumstances under which a health care provider may disclose a medical record and the types of records that may be disclosed to certain family members of a patient or other individuals without the authorization of a person in interest; altering the definition of "directory information" as it relates to confidentiality of medical records to include health care information developed primarily in connection with mental health services; stating the intent of the General Assembly; and generally relating to confidentiality of directory information and medical records ~~relating to mental health services~~.

BY repealing and reenacting, without amendments,
 Article – Health – General
 Section 4-301(a) ~~and 4-302(c)~~
 Annotated Code of Maryland
 (2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
 Article – Health – General
 Section 4-301(b), ~~4-302(c)~~, and 4-305(b)(7)
 Annotated Code of Maryland
 (2015 Replacement Volume and 2016 Supplement)

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

Article – Health – General

4-301.

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

(b) [(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.]

4-302.

(c) **(1) ~~A UNLESS THE PATIENT HAS RESTRICTED OR PROHIBITED THE DISCLOSURE OF 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~~ TO AN INDIVIDUAL WHO HAS ASKED FOR THE PATIENT BY NAME.**

(2) A HEALTH CARE PROVIDER SHALL:

(i) INFORM A PATIENT OF THE HEALTH CARE INFORMATION THAT THE HEALTH CARE PROVIDER MAY INCLUDE IN A DIRECTORY AND THE PERSONS TO WHOM THE HEALTH CARE PROVIDER MAY DISCLOSE THE INFORMATION; AND

(ii) AS SOON AS PRACTICABLE, PROVIDE THE PATIENT WITH THE OPPORTUNITY TO RESTRICT OR PROHIBIT DISCLOSURE OF DIRECTORY INFORMATION.

(3) IF PROVIDING AN OPPORTUNITY UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION TO RESTRICT OR PROHIBIT THE DISCLOSURE OF DIRECTORY INFORMATION IS NOT PRACTICABLE BECAUSE OF THE PATIENT’S INCAPACITY OR NEED FOR EMERGENCY CARE OR TREATMENT, A HEALTH CARE PROVIDER MAY DISCLOSE THE PATIENT’S DIRECTORY INFORMATION IF THE DISCLOSURE IS:

(i) CONSISTENT WITH A PRIOR EXPRESSED PREFERENCE OF THE PATIENT THAT IS KNOWN TO THE HEALTH CARE PROVIDER; AND

(ii) DETERMINED TO BE, BASED ON THE HEALTH CARE PROVIDER’S PROFESSIONAL JUDGMENT, IN THE PATIENT’S BEST INTEREST.

4-305.

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

~~(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~~ **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;~~ **PROVIDED THAT:**

(I) THE DISCLOSURE IS LIMITED TO INFORMATION THAT IS DIRECTLY RELEVANT TO THE INDIVIDUAL’S INVOLVEMENT IN THE PATIENT’S HEALTH CARE; AND

(II) 1. IF THE PATIENT IS PRESENT OR OTHERWISE AVAILABLE BEFORE THE DISCLOSURE AND HAS THE CAPACITY TO MAKE HEALTH CARE DECISIONS:

A. THE PATIENT HAS BEEN PROVIDED WITH AN OPPORTUNITY TO OBJECT TO THE DISCLOSURE AND THE PATIENT HAS NOT OBJECTED; OR

B. THE HEALTH CARE PROVIDER REASONABLY INFERS FROM THE CIRCUMSTANCES THAT, BASED ON THE HEALTH CARE PROVIDER’S PROFESSIONAL JUDGMENT, THE PATIENT DOES NOT OBJECT TO THE DISCLOSURE; OR

2. IF THE PATIENT IS NOT PRESENT OR OTHERWISE AVAILABLE BEFORE THE DISCLOSURE IS MADE, OR PROVIDING THE PATIENT WITH AN OPPORTUNITY TO OBJECT TO THE DISCLOSURE IS NOT PRACTICABLE BECAUSE OF THE PATIENT’S INCAPACITY OR NEED FOR EMERGENCY CARE OR TREATMENT, THE HEALTH CARE PROVIDER DETERMINES, BASED ON THE HEALTH CARE PROVIDER’S PROFESSIONAL JUDGMENT, THAT THE DISCLOSURE IS IN THE BEST INTERESTS OF THE PATIENT;

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that Title 4, Subtitle 3 of the Health – General Article:

(1) may not be interpreted to be more restrictive than the federal privacy regulations adopted under the federal Health Insurance Portability and Accountability Act;

(2) is not intended to be in conflict with the federal Health Insurance Portability and Accountability Act; and

(3) is to be interpreted in a way that is consistent with any federal regulations adopted under the federal Health Insurance Portability and Accountability Act.

federal policy guidance on the federal Health Insurance Portability and Accountability Act, and any judicial decisions relating to the federal Health Insurance Portability and Accountability Act.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, May 25, 2017.