

# SENATE BILL 557

J1, D3

3lr2768  
CF HB 1481

---

By: **Senator Stone**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

---

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2013

---

## CHAPTER \_\_\_\_\_

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,

---

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

5 BY repealing and reenacting, with amendments,  
 6 Article – Health – General  
 7 Section 4–306(b)(6)(iii)  
 8 Annotated Code of Maryland  
 9 (2009 Replacement Volume and 2012 Supplement)

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

12 ~~Article – Courts and Judicial Proceedings~~

13 ~~9–125.~~

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

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

18 ~~(1) CERTIFY TO THE JUDICIAL OFFICER WHO ISSUED THE~~  
 19 ~~COMPULSORY PROCESS THAT THE DISCLOSURE:~~

20 ~~(i) WAS MADE IN COMPLIANCE WITH THE APPLICABLE~~  
 21 ~~PROVISIONS OF:~~

22 ~~1. THE FEDERAL HEALTH INSURANCE PORTABILITY~~  
 23 ~~AND ACCOUNTABILITY ACT OF 1996 AND ANY REGULATIONS ADOPTED UNDER~~  
 24 ~~THE ACT; AND~~

25 ~~2. TITLE 4, SUBTITLE 3 OF THE HEALTH – GENERAL~~  
 26 ~~ARTICLE; AND~~

27 ~~(ii) DID NOT VIOLATE THE APPLICABLE PROVISIONS OF §~~  
 28 ~~9–109, § 9–109.1, OR § 9–121 OF THIS SUBTITLE;~~

29 ~~(2) IF ANY OTHER PROVISION OF FEDERAL OR STATE LAW~~  
 30 ~~GOVERNS THE DISCLOSURE OF THE MEDICAL RECORD, INCLUDE IN THE~~  
 31 ~~CERTIFICATION MADE UNDER ITEM (1) OF THIS SUBSECTION THE PROVISION OF~~  
 32 ~~LAW THAT AUTHORIZES THE DISCLOSURE OF THE MEDICAL RECORD; AND~~

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

~~(I) THE PERSON IN INTEREST; AND~~

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

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

#### Article – Health – General

4–301.

(l) “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

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

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

5 4-306.

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

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

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

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

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

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

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

28 2. This section; and

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

31 \_\_\_\_\_ In the  
32 Plaintiffs \_\_\_\_\_  
33 v. For \_\_\_\_\_  
34 \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

\_\_\_\_\_  
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, OR 4-266 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\_ ] **20**\_\_\_ to

\_\_\_\_\_  
Patient

\_\_\_\_\_  
Each Counsel in Case

\_\_\_\_\_  
Attorney

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

Approved:

---

Governor.

---

President of the Senate.

---

Speaker of the House of Delegates.