

SENATE BILL 864

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8lr3207
CF HB 1392

By: **Senators Kelley, Conway, Currie, Ferguson, Guzzone, Madaleno, McFadden, Middleton, Muse, Nathan-Pulliam, Oaks, Robinson, Rosapepe, Smith, and Young**

Introduced and read first time: February 5, 2018
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 24, 2018

CHAPTER _____

1 AN ACT concerning

2 **Health – Emergency Evaluatees and Involuntarily Admitted or Committed**
3 **Individuals – Procedures**

4 FOR the purpose of ~~requiring a health care provider to disclose certain directory~~
5 ~~information about a patient to a certain division in the Office of the Public Defender~~
6 ~~under certain circumstances; requiring a health care provider to disclose certain~~
7 ~~directory information under a certain provision of this Act regardless of whether the~~
8 ~~request refers to the patient by name; requiring a health care provider to disclose a~~
9 ~~certain medical record and legal records without the authorization of a person in~~
10 ~~interest an individual to legal counsel for the patient a public defender who states in~~
11 ~~writing that the Office of the Public Defender represents the individual or recipient~~
12 ~~in connection with or for use in certain proceedings; requiring that certain records~~
13 ~~be provided within a certain time period and only under certain circumstances;~~
14 ~~requiring a certain emergency facility to notify a certain division in the Office in a~~
15 ~~certain manner and within a certain time period of after the acceptance completion~~
16 ~~of an application for the involuntary admission of an emergency evaluatee into the~~
17 ~~facility; providing that a certain notice requirement does not apply to a certain~~
18 ~~patient; prohibiting a hearing officer from ordering the release of a certain individual~~
19 ~~on the grounds that the emergency facility did not provide certain notice; requiring~~
20 ~~that notice be given to a certain division in the Office of a certain admission of an~~
21 ~~individual into a certain facility or certain hospital within a certain period of time~~
22 ~~after the admission of the individual into the facility or hospital; requiring a certain~~
23 ~~individual who has been involuntarily admitted to a certain facility or a certain~~

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.



~~hospital to be evaluated by certain staff within a certain time period before a certain hearing; requiring a certain facility to notify a certain division in the Office in a certain manner of a certain admission of an individual into the facility within a certain period of time after a certain change in the admission status of the individual; defining certain terms; making conforming and stylistic changes; and generally relating to the procedures related to emergency evaluatees and involuntarily admitted or committed individuals.~~

BY repealing and reenacting, with amendments,

Article – Health – General

Section ~~4-302(e), 4-306(b)(11) and (12), 4-307(k)(1)(v) and (vi), 10-624, 4-306(c), 10-625, 10-631(b), and 10-803~~

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

BY adding to

Article – Health – General

Section ~~4-306(b)(13), 4-307(k)(1)(vii), and 10-632(h)~~ 4-306(c) and 4-307(l)

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, without amendments,

Article – Health – General

Section 10-631(a)

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Health – General

~~4-302.~~

~~(e) (1) (I) Unless the patient has restricted or prohibited the disclosure of directory information, AND SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, a health care provider may disclose directory information about a patient to an individual who has asked for the patient by name.~~

~~(2) (II) A health care provider shall:~~

~~(i) 1. 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) 2. As soon as practicable, provide the patient with the opportunity to restrict or prohibit disclosure of directory information.~~

1 ~~[(3)] (HH) If providing an opportunity under [paragraph (2)(ii) of this~~
2 ~~subsection] SUBPARAGRAPH (H)2 OF THIS PARAGRAPH to restrict or prohibit the~~
3 ~~disclosure of directory information is not practicable because of the patient's incapacity or~~
4 ~~need for emergency care or treatment, a health care provider may disclose the patient's~~
5 ~~directory information if the disclosure is:~~

6 ~~[(i)] 1. Consistent with a prior expressed preference of the patient~~
7 ~~that is known to the health care provider; and~~

8 ~~[(ii)] 2. Determined to be, based on the health care provider's~~
9 ~~professional judgment, in the patient's best interest.~~

10 ~~(2) (I) A HEALTH CARE PROVIDER SHALL DISCLOSE DIRECTORY~~
11 ~~INFORMATION ABOUT A PATIENT TO THE MENTAL HEALTH DIVISION IN THE OFFICE~~
12 ~~OF THE PUBLIC DEFENDER IF THE PATIENT IS:~~

13 ~~1. INVOLUNTARILY ADMITTED TO THE HEALTH CARE~~
14 ~~FACILITY UNDER TITLE 10, SUBTITLE 6 OF THIS ARTICLE; OR~~

15 ~~2. ADMITTED TO THE HEALTH CARE FACILITY AS A~~
16 ~~COMMITTED PERSON UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE.~~

17 ~~(II) A HEALTH CARE PROVIDER SHALL DISCLOSE DIRECTORY~~
18 ~~INFORMATION ABOUT A PATIENT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH~~
19 ~~REGARDLESS OF WHETHER THE REQUEST REFERS TO THE PATIENT BY NAME.~~

20 4-306.

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

23 ~~(11) To a local drug overdose fatality review team established under Title 5,~~
24 ~~Subtitle 9 of this article as necessary to carry out its official functions, subject to:~~

25 ~~(i) The additional limitations under § 4-307 of this subtitle for~~
26 ~~disclosure of a medical record developed primarily in connection with the provision of~~
27 ~~mental health services; and~~

28 ~~(ii) Any additional limitations for disclosure or redisclosure of a~~
29 ~~medical record developed in connection with the provision of substance abuse treatment~~
30 ~~services under State law or 42 U.S.C. § 290DD-2 and 42 C.F.R. Part 2; [or]~~

31 ~~(12) To a guardian ad litem appointed by a court to protect the best interests~~
32 ~~of a minor or a disabled or elderly individual who is a victim of a crime or a delinquent act,~~
33 ~~for the sole purpose and use of the guardian ad litem in carrying out the guardian ad litem's~~

~~official function to protect the best interests of the minor or the disabled or elderly individual in a criminal or juvenile delinquency court proceeding as permitted under 42 C.F.R. § 164.512(e); OR~~

~~(13) TO LEGAL COUNSEL FOR THE PATIENT OR RECIPIENT IN CONNECTION WITH OR FOR USE IN:~~

(C) (1) SUBJECT TO PARAGRAPHS (2) THROUGH (4) OF THIS SUBSECTION, A HEALTH CARE PROVIDER SHALL DISCLOSE MEDICAL AND LEGAL RECORDS WITHOUT THE AUTHORIZATION OF AN INDIVIDUAL TO A PUBLIC DEFENDER WHO STATES IN WRITING THAT THE OFFICE OF THE PUBLIC DEFENDER REPRESENTS THE INDIVIDUAL IN:

(I) AN INVOLUNTARY ADMISSION PROCEEDING UNDER TITLE 10, SUBTITLE 6 OF THIS ARTICLE;

(II) A RELEASE PROCEEDING UNDER TITLE 10, SUBTITLE 8 OF THIS ARTICLE; OR

(III) A COMMITMENT OR RELEASE PROCEEDING UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE.

(2) LEGAL RECORDS REQUIRED TO BE DISCLOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDE:

(I) AN EMERGENCY PETITION;

(II) AN APPLICATION FOR INVOLUNTARY ADMISSION; AND

(III) A CERTIFICATION FOR INVOLUNTARY ADMISSION.

(3) THE RECORDS DISCLOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE LIMITED TO THOSE RECORDS NEEDED BY THE PUBLIC DEFENDER TO REPRESENT THE INDIVIDUAL IN THE PROCEEDINGS LISTED IN PARAGRAPH (1) OF THIS SUBSECTION.

(4) RECORDS PROVIDED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL BE PROVIDED:

(I) WITHIN 24 HOURS AFTER THE CERTIFICATION OF INVOLUNTARY ADMISSION; AND

(II) ONLY IF THE INDIVIDUAL HAS NOT YET RETAINED PRIVATE COUNSEL.

1 [(c)](D) When a disclosure is sought under this section:

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

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

7 4-307.

8 ~~(k) (1) A health care provider shall disclose a medical record without the~~
 9 ~~authorization of a person in interest;~~

10 ~~(v) In accordance with a subpoena for medical records on specific~~
 11 ~~recipients;~~

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

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

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

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

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

29 ~~(VII) TO LEGAL COUNSEL FOR THE RECIPIENT IN CONNECTION~~
 30 ~~WITH OR FOR USE IN;~~

31 (L) (1) SUBJECT TO PARAGRAPHS (2) THROUGH (4) OF THIS
 32 SUBSECTION, A HEALTH CARE PROVIDER SHALL DISCLOSE MEDICAL AND LEGAL
 33 RECORDS WITHOUT THE AUTHORIZATION OF AN INDIVIDUAL TO A PUBLIC

DEFENDER WHO STATES IN WRITING THAT THE OFFICE OF THE PUBLIC DEFENDER REPRESENTS THE INDIVIDUAL IN:

~~1.~~ (I) AN INVOLUNTARY ADMISSION PROCEEDING UNDER TITLE 10, SUBTITLE 6 OF THIS ARTICLE;

~~2.~~ (II) A RELEASE PROCEEDING UNDER TITLE 10, SUBTITLE 8 OF THIS ARTICLE; OR

~~3.~~ (III) A COMMITMENT OR RELEASE PROCEEDING UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE~~7~~.

(2) LEGAL RECORDS REQUIRED TO BE DISCLOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDE:

(I) AN EMERGENCY PETITION;

(II) AN APPLICATION FOR INVOLUNTARY ADMISSION; AND

(III) A CERTIFICATION FOR INVOLUNTARY ADMISSION.

(3) THE RECORDS DISCLOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE LIMITED TO THOSE RECORDS NEEDED BY THE PUBLIC DEFENDER TO REPRESENT THE INDIVIDUAL IN THE PROCEEDINGS LISTED IN PARAGRAPH (1) OF THIS SUBSECTION.

(4) RECORDS PROVIDED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL BE PROVIDED:

(I) WITHIN 24 HOURS AFTER THE CERTIFICATION OF INVOLUNTARY ADMISSION; AND

(II) ONLY IF THE INDIVIDUAL HAS NOT YET RETAINED PRIVATE COUNSEL.

~~10-624.~~

~~(a) (1) A peace officer shall take an emergency evaluate to the nearest emergency facility if the peace officer has a petition under Part IV of this subtitle that:~~

~~(i) Has been endorsed by a court within the last 5 days; or~~

~~(ii) Is signed and submitted by a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in~~

~~psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, health officer or designee of a health officer, or peace officer.~~

~~(2) After a peace officer takes the emergency evaluatee to an emergency facility, the peace officer need not stay unless, because the emergency evaluatee is violent, a physician asks the supervisor of the peace officer to have the peace officer stay.~~

~~(3) A peace officer shall stay until the supervisor responds to the request for assistance. If the emergency evaluatee is violent, the supervisor shall allow the peace officer to stay.~~

~~(4) If a physician asks that a peace officer stay, a physician shall examine the emergency evaluatee as promptly as possible.~~

~~(b) (1) (I) If the petition is executed properly, the emergency facility shall accept the emergency evaluatee.~~

10-625.

(a) If an emergency evaluatee meets the requirements for an involuntary admission and is unable or unwilling to agree to a voluntary admission under this subtitle, the examining physician shall take the steps needed for involuntary admission of the emergency evaluatee to an appropriate facility, which may be a general hospital with a licensed inpatient psychiatric unit.

(b) (1) If the examining physician is unable to have the emergency evaluatee admitted to a facility, the physician shall notify the Department.

(2) Within 6 hours after notification, the Department shall provide for admission of the emergency evaluatee to an appropriate facility.

~~(H) (C) (1) WITHIN ~~24~~ 30 HOURS AFTER THE EMERGENCY FACILITY ACCEPTS THE EMERGENCY EVALUEE EMERGENCY FACILITY COMPLETES AN APPLICATION FOR THE INVOLUNTARY ADMISSION OF AN EMERGENCY EVALUEE, THE EMERGENCY FACILITY SHALL NOTIFY THE MENTAL HEALTH DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER, BY E-MAIL OR FACSIMILE, OF THE ACCEPTANCE OF THE EMERGENCY EVALUEE INTO THE EMERGENCY FACILITY COMPLETION OF THE APPLICATION.~~

(2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE ANY LEGAL DOCUMENTS RELATING TO THE ACCEPTANCE OF THE EMERGENCY EVALUEE INTO THE EMERGENCY FACILITY, INCLUDING THE EMERGENCY PETITION, APPLICATION FOR INVOLUNTARY ADMISSION, AND CERTIFICATION FOR INVOLUNTARY ADMISSION.

1 **(3) A HEARING OFFICER MAY NOT ORDER THE RELEASE OF AN**
 2 **INDIVIDUAL WHO MEETS THE REQUIREMENTS FOR INVOLUNTARY ADMISSION ON**
 3 **THE GROUNDS THAT THE EMERGENCY FACILITY DID NOT NOTIFY THE OFFICE OF**
 4 **THE PUBLIC DEFENDER OF THE CERTIFICATION OF THE EMERGENCY EVALUEE FOR**
 5 **INVOLUNTARY ADMISSION WITHIN 30 HOURS AFTER THE EMERGENCY FACILITY**
 6 **COMPLETES THE APPLICATION FOR INVOLUNTARY ADMISSION AS REQUIRED UNDER**
 7 **PARAGRAPH (1) OF THIS SUBSECTION.**

8 **(4) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS**
 9 **SUBSECTION DOES NOT APPLY TO A PATIENT WHO AGREES TO VOLUNTARY**
 10 **ADMISSION.**

11 ~~(2) Within 6 hours after an emergency evaluatee is brought to an emergency~~
 12 ~~facility, a physician shall examine the emergency evaluatee, to determine whether the~~
 13 ~~emergency evaluatee meets the requirements for involuntary admission.~~

14 ~~(3) Promptly after the examination, the emergency evaluatee shall be~~
 15 ~~released unless the emergency evaluatee:~~

16 ~~(i) Asks for voluntary admission; or~~

17 ~~(ii) Meets the requirements for involuntary admission.~~

18 ~~(4) An emergency evaluatee may not be kept at an emergency facility for~~
 19 ~~more than 30 hours.~~

20 10-631.

21 (a) The Administration shall prepare and provide each facility with standard
 22 forms that provide, in clear and simple words, at least the following information:

23 (1) Notice of the admission of the individual;

24 (2) The right of the individual to consult with a lawyer that the individual
 25 chooses;

26 (3) The availability of the services of the legal aid bureaus, lawyer referral
 27 services, and other agencies that exist for the referral of individuals who need legal counsel;

28 (4) The right of the individual to call or write a lawyer or a referral agency
 29 or to have someone do so on behalf of the individual; and

30 (5) In substance:

31 (i) Those provisions of this subtitle under which the individual is
 32 admitted;

1 (ii) The provisions of this section; and

2 (iii) The provisions of Subtitle 7 of this title.

3 (b) (1) Within 12 hours after initial confinement of an individual to any facility
4 or a Veterans' Administration hospital, the form provided for in this section shall be read
5 and given to the individual.

6 (2) If the individual does not understand the notice required by this section
7 and its legal effect, the notice also shall be given to:

8 (i) The parent, guardian, or next of kin of the individual;

9 (ii) The applicant for an involuntary admission of the individual; and

10 (iii) Any other individual who has a significant interest in the status
11 of the individual.

12 (3) In any event, if possible, notice of the admission shall be given to the
13 parent, guardian, or next of kin of the individual.

14 (4) Notice of the admission of a minor shall be given as promptly as
15 possible.

16 (5) **WITHIN 24 HOURS AFTER THE ADMISSION OF THE INDIVIDUAL,**
17 **NOTICE OF THE ADMISSION SHALL BE GIVEN TO THE MENTAL HEALTH DIVISION IN**
18 **THE OFFICE OF THE PUBLIC DEFENDER.**

19 ~~10-632.~~

20 ~~(H) (1) (i) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE~~
21 ~~MEANINGS INDICATED.~~

22 ~~(H) "GERIATRIC EVALUATION SERVICES STAFF" MEANS THE~~
23 ~~STAFF OF COUNTY HEALTH DEPARTMENTS WHO EVALUATE THE APPROPRIATENESS~~
24 ~~OF ADMISSION TO FACILITIES OR VETERANS' ADMINISTRATION HOSPITALS OF~~
25 ~~INDIVIDUALS AT LEAST 65 YEARS OLD.~~

26 ~~(H) "SEMIANNUAL HEARING" MEANS A SEMIANNUAL HEARING~~
27 ~~SCHEDULED BY A FACILITY OR VETERANS' ADMINISTRATION HOSPITAL TO~~
28 ~~DETERMINE WHETHER AN INDIVIDUAL WHO HAS BEEN ADMITTED INVOLUNTARILY~~
29 ~~TO THE FACILITY OR HOSPITAL CONTINUES TO MEET THE REQUIREMENTS FOR~~
30 ~~INVOLUNTARY ADMISSION UNDER § 10-617 OF THIS SUBTITLE.~~

1 ~~(2) AN INDIVIDUAL WHO HAS BEEN ADMITTED INVOLUNTARILY~~
 2 ~~UNDER PART III OF THIS SUBTITLE AND IS AT LEAST 65 YEARS OLD SHALL BE~~
 3 ~~EVALUATED BY GERIATRIC EVALUATION SERVICES STAFF WITHIN 2 WEEKS BEFORE~~
 4 ~~A SEMIANNUAL HEARING IS HELD BY THE FACILITY OR VETERANS'~~
 5 ~~ADMINISTRATION HOSPITAL.~~

6 10-803.

7 (a) An individual who is admitted voluntarily to a facility, on an informal request,
 8 may leave the facility at any time between 9 a.m. and 4 p.m., unless the admission status
 9 of the individual has been changed to an involuntary admission.

10 (b) (1) An individual who has been admitted voluntarily, under a formal
 11 written application, may not be held for more than 3 days after the individual asks for
 12 release, unless the admission status of the individual has been changed to an involuntary
 13 admission.

14 (2) IF THE ADMISSION STATUS OF THE INDIVIDUAL IS CHANGED FROM
 15 A VOLUNTARY TO AN INVOLUNTARY ADMISSION, THE FACILITY SHALL NOTIFY THE
 16 MENTAL HEALTH DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER, BY E-MAIL
 17 OR FACSIMILE, OF THE INVOLUNTARY ADMISSION WITHIN 24 HOURS AFTER THE
 18 CHANGE IN ADMISSION STATUS IS MADE.

19 (c) A minor who has been admitted voluntarily, on the application of a parent or
 20 guardian of the minor, may not be held for more than 3 days after the applicant for the
 21 admission asks for release, unless the admission status of the minor has been changed to
 22 an involuntary admission.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 24 October 1, 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.