

# HOUSE BILL 1392

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CF SB 864

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By: **Delegates Lam, Branch, Gutierrez, McComas, and Morhaim**

Introduced and read first time: February 9, 2018

Assigned to: Health and Government Operations

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## A BILL ENTITLED

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 medical record without the authorization of a person in interest to legal counsel for  
10 the patient or recipient in connection with or for use in certain proceedings; requiring  
11 a certain emergency facility to notify a certain division in the Office in a certain  
12 manner and within a certain time period of the acceptance of an emergency evaluatee  
13 into the facility; requiring that notice be given to a certain division in the Office of a  
14 certain admission of an individual into a certain facility or certain hospital within a  
15 certain period of time after the admission of the individual into the facility or  
16 hospital; requiring that certain notices include certain documents; requiring a  
17 certain individual who has been involuntarily admitted to a certain facility or a  
18 certain hospital to be evaluated by certain staff within a certain time period before  
19 a certain hearing; requiring a certain facility to notify a certain division in the Office  
20 in a certain manner of a certain admission of an individual into the facility within a  
21 certain period of time after a certain change in the admission status of the individual;  
22 defining certain terms; making conforming and stylistic changes; and generally  
23 relating to the procedures related to emergency evaluatees and involuntarily admitted  
24 or committed individuals.

25 BY repealing and reenacting, with amendments,  
26 Article – Health – General  
27 Section 4–302(c), 4–306(b)(11) and (12), 4–307(k)(1)(v) and (vi), 10–624, 10–631(b),  
28 and 10–803  
29 Annotated Code of Maryland  
30 (2015 Replacement Volume and 2017 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to  
2 Article – Health – General  
3 Section 4–306(b)(13), 4–307(k)(1)(vii), and 10–632(h)  
4 Annotated Code of Maryland  
5 (2015 Replacement Volume and 2017 Supplement)

6 BY repealing and reenacting, without amendments,  
7 Article – Health – General  
8 Section 10–631(a)  
9 Annotated Code of Maryland  
10 (2015 Replacement Volume and 2017 Supplement)

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

13 **Article – Health – General**

14 4–302.

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

19 **[(2)] (II)** A health care provider shall:

20 **[(i)] 1.** Inform a patient of the health care information that the  
21 health care provider may include in a directory and the persons to whom the health care  
22 provider may disclose the information; and

23 **[(ii)] 2.** As soon as practicable, provide the patient with the  
24 opportunity to restrict or prohibit disclosure of directory information.

25 **[(3)] (III)** If providing an opportunity under **[paragraph (2)(ii) of this**  
26 **subsection] SUBPARAGRAPH (II)2 OF THIS PARAGRAPH** to restrict or prohibit the  
27 disclosure of directory information is not practicable because of the patient’s incapacity or  
28 need for emergency care or treatment, a health care provider may disclose the patient’s  
29 directory information if the disclosure is:

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

32 **[(ii)] 2.** Determined to be, based on the health care provider’s  
33 professional judgment, in the patient’s best interest.

1           **(2) (I) A HEALTH CARE PROVIDER SHALL DISCLOSE DIRECTORY**  
2 **INFORMATION ABOUT A PATIENT TO THE MENTAL HEALTH DIVISION IN THE OFFICE**  
3 **OF THE PUBLIC DEFENDER IF THE PATIENT IS:**

4                   **1. INVOLUNTARILY ADMITTED TO THE HEALTH CARE**  
5 **FACILITY UNDER TITLE 10, SUBTITLE 6 OF THIS ARTICLE; OR**

6                   **2. ADMITTED TO THE HEALTH CARE FACILITY AS A**  
7 **COMMITTED PERSON UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE.**

8           **(II) A HEALTH CARE PROVIDER SHALL DISCLOSE DIRECTORY**  
9 **INFORMATION ABOUT A PATIENT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH**  
10 **REGARDLESS OF WHETHER THE REQUEST REFERS TO THE PATIENT BY NAME.**

11 4–306.

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

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

16                           (i) The additional limitations under § 4–307 of this subtitle for  
17 disclosure of a medical record developed primarily in connection with the provision of  
18 mental health services; and

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

22                   (12) To a guardian ad litem appointed by a court to protect the best interests  
23 of a minor or a disabled or elderly individual who is a victim of a crime or a delinquent act,  
24 for the sole purpose and use of the guardian ad litem in carrying out the guardian ad litem’s  
25 official function to protect the best interests of the minor or the disabled or elderly  
26 individual in a criminal or juvenile delinquency court proceeding as permitted under 42  
27 C.F.R. § 164.512(e); OR

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

30                   **(I) AN INVOLUNTARY ADMISSION PROCEEDING UNDER TITLE**  
31 **10, SUBTITLE 6 OF THIS ARTICLE;**

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

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

3 4–307.

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

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

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

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

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

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

23                                   (vi) In the event of the death of a recipient, to the office of the medical  
24 examiner as authorized under § 5–309 or § 10–713 of this article; **OR**

25                   **(VII) TO LEGAL COUNSEL FOR THE RECIPIENT IN CONNECTION**  
26 **WITH OR FOR USE IN:**

27                           1. **AN INVOLUNTARY ADMISSION PROCEEDING UNDER**  
28 **TITLE 10, SUBTITLE 6 OF THIS ARTICLE;**

29                           2. **A RELEASE PROCEEDING UNDER TITLE 10, SUBTITLE**  
30 **8 OF THIS ARTICLE; OR**

31                           3. **A COMMITMENT OR RELEASE PROCEEDING UNDER**  
32 **TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE.**

1 10-624.

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

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

5 (ii) Is signed and submitted by a physician, psychologist, clinical  
6 social worker, licensed clinical professional counselor, clinical nurse specialist in  
7 psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical  
8 marriage and family therapist, health officer or designee of a health officer, or peace officer.

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

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

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

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

19 **(II) WITHIN 24 HOURS AFTER THE EMERGENCY FACILITY**  
20 **ACCEPTS THE EMERGENCY EVALUEE, THE EMERGENCY FACILITY SHALL NOTIFY**  
21 **THE MENTAL HEALTH DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER, BY**  
22 **E-MAIL OR FACSIMILE, OF THE ACCEPTANCE OF THE EMERGENCY EVALUEE INTO**  
23 **THE EMERGENCY FACILITY.**

24 **(III) THE NOTICE REQUIRED UNDER SUBPARAGRAPH (II) OF**  
25 **THIS PARAGRAPH SHALL INCLUDE ANY LEGAL DOCUMENTS RELATING TO THE**  
26 **ACCEPTANCE OF THE EMERGENCY EVALUEE INTO THE EMERGENCY FACILITY.**

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

30 (3) Promptly after the examination, the emergency evaluatee shall be  
31 released unless the emergency evaluatee:

32 (i) Asks for voluntary admission; or

33 (ii) Meets the requirements for involuntary admission.

1 (4) An emergency evaluatee may not be kept at an emergency facility for  
2 more than 30 hours.

3 10-631.

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

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

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

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

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

13 (5) In substance:

14 (i) Those provisions of this subtitle under which the individual is  
15 admitted;

16 (ii) The provisions of this section; and

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

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

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

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

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

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

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

29 (4) Notice of the admission of a minor shall be given as promptly as

1 possible.

2           **(5) (I) WITHIN 24 HOURS AFTER THE ADMISSION OF THE**  
3 **INDIVIDUAL, NOTICE OF THE ADMISSION SHALL BE GIVEN TO THE MENTAL HEALTH**  
4 **DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER.**

5           **(II) THE NOTICE REQUIRED UNDER SUBPARAGRAPH (I) OF THIS**  
6 **PARAGRAPH SHALL INCLUDE ANY LEGAL DOCUMENTS RELATING TO THE**  
7 **ADMISSION.**

8 10-632.

9           **(H) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE**  
10 **MEANINGS INDICATED.**

11           **(II) “GERIATRIC EVALUATION SERVICES STAFF” MEANS THE**  
12 **STAFF OF COUNTY HEALTH DEPARTMENTS WHO EVALUATE THE APPROPRIATENESS**  
13 **OF ADMISSION TO FACILITIES OR VETERANS’ ADMINISTRATION HOSPITALS OF**  
14 **INDIVIDUALS AT LEAST 65 YEARS OLD.**

15           **(III) “SEMIANNUAL HEARING” MEANS A SEMIANNUAL HEARING**  
16 **SCHEDULED BY A FACILITY OR VETERANS’ ADMINISTRATION HOSPITAL TO**  
17 **DETERMINE WHETHER AN INDIVIDUAL WHO HAS BEEN ADMITTED INVOLUNTARILY**  
18 **TO THE FACILITY OR HOSPITAL CONTINUES TO MEET THE REQUIREMENTS FOR**  
19 **INVOLUNTARY ADMISSION UNDER § 10-617 OF THIS SUBTITLE.**

20           **(2) AN INDIVIDUAL WHO HAS BEEN ADMITTED INVOLUNTARILY**  
21 **UNDER PART III OF THIS SUBTITLE AND IS AT LEAST 65 YEARS OLD SHALL BE**  
22 **EVALUATED BY GERIATRIC EVALUATION SERVICES STAFF WITHIN 2 WEEKS BEFORE**  
23 **A SEMIANNUAL HEARING IS HELD BY THE FACILITY OR VETERANS’**  
24 **ADMINISTRATION HOSPITAL.**

25 10-803.

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

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

33           **(2) IF THE ADMISSION STATUS OF THE INDIVIDUAL IS CHANGED FROM**

1 **A VOLUNTARY TO AN INVOLUNTARY ADMISSION, THE FACILITY SHALL NOTIFY THE**  
2 **MENTAL HEALTH DIVISION IN THE OFFICE OF THE PUBLIC DEFENDER, BY E-MAIL**  
3 **OR FACSIMILE, OF THE INVOLUNTARY ADMISSION WITHIN 24 HOURS AFTER THE**  
4 **CHANGE IN ADMISSION STATUS IS MADE.**

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

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