

MSBA HLS HIPAA Subcommittee Comparison of HIPAA and Maryland Law

This document is a product of the MSBA-HLS HIPAA workgroup and is for informational purposes only and does not constitute legal advice.

Please note, references herein to MCMRA = Maryland Confidentiality of Medical Records Act, found at Md. Code Ann., Health-Gen. §§ 4-301 to 4-309.

Also note, the definition of “medical record” as set forth in Md. Code Ann., Health-Gen. § 4-301(g) (text below) and definition of “protected health information” (42 CFR § 164.501) are different and therefore, you should bear that in mind for purposes of your own pre-emption analysis.

Md. Code Ann., Health-Gen. § 4-301(g) --

"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.

"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.

Access by individuals to their own health information

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Request in writing?	164.508	If Notice of Privacy Practices states that request must be in writing – then it must be in writing	303(a)	Required	MCMRA appears to prevail since HIPAA permits written request to be required.
Timeframe for handling request	164.524(b)	30 days 30 day extensions in some cases (off-site)	304(a) 309(a)	304(a) requires providers to comply within a reasonable time 309(a) imposes penalties if a provider knowingly refuses to comply within 21 “working days” – so presumably, under Md law – providers generally should comply within 21 working days	MCMRA appears to prevail – if requiring information to be provided to individual in less time is interpreted as providing greater access. Workgroup consensus – no 30 day extension under Md law – address request in 21 working days in Md.
Fees	164.524(c)(4)	<u>To the “individual”</u> : reasonable cost of copying <u>only</u> ; postage. State fee for <u>copying</u> may be presumed reasonable	304(c)(3)	<u>To all</u> : \$18.16 preparation; .60 copying fee per page; actual cost of postage and handling.	Federal will prevail with respect to rate charged to “individual”. Consensus that “postage” includes any type of carrier fees. In Md, once HIPAA takes effect, cannot charge the \$18.16 fee, nor can you work it into the per page copying charge. Note: In 65 Fed Reg 82557 (Dec. 28, 2000) in the preamble, the 1 st carryover paragraph in the middle column states: “Covered Entities may not charge any fees for retrieving or handling the information or for processing the request Fees for copying and postage provided under state law, but not for other cost excluded under this rule , are presumed reasonable.” (emphasis added).

Please note: All cites to state code sections are to Health-Gen., Title 4, unless indicated otherwise.

Denial of Access: Differences

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Basis for denial(reviewable)	164.524(a)(3)	Belief disclosure would be reasonably likely to endanger the life or physical safety of individual or another person	304(a)(2)	Record must relate to psychiatric or psychological problem, then may deny access based on the belief disclosure would be injurious to health of patient.	Maryland rule provides greater right of access to individual as it limits these discretionary denials to records relating to psychiatric or psychological problems only. Federal law further limits the restriction to only those situations where "life or physical safety" would be endangered. Therefore basis of denial appears to be only if, first, record relates to psychiatric or psychological problem and, second, provider believes disclosure would be reasonably likely to endanger the life or physical safety of individual.
	164.524(a)(3)	PHI makes reference to another person, and LHCP (licensed health care professional) determines that access is reasonably likely to cause substantial harm to that person		No exception	Md appears to prevail as it provides greater right of access
	164.524(a)(3)	Request is made by personal representative, and LHCP determines that access is reasonably likely to cause substantial harm to individual or another person		No exception	Md appears to prevail as it provides greater right of access
No right of review	164.524(a)(2)	Correctional institution where disclosure could be hazardous to individual, inmates, or staff		No exception	Md appears to prevail as it provides greater right of access
	164.524(a)(2)	During pendency of research project, if individual properly informed		No exception	Md appears to prevail as it provides greater right of access Note: There may be an issue as to what constitutes a medical record and what constitutes a research record - Research: Stance is that records are not "medical records"; explain in authorization; ask for waiver from the beginning. Analyze carefully
	164.524(a)(2)	If records covered by Privacy Act		No exception	Md appears to prevail as it provides greater right of access
	164.524(a)(2)	If information obtained from another individual under guarantee of confidentiality, and access would be reasonably likely to reveal the source of that information		No exception	Md appears to prevail as it provides greater right of access

Denial of Access: Differences (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Not considered records to which access is required	164.524(a)(1) 164.501	Psychotherapy notes	307(a)(6)	"Personal note" seemingly exempted as not defined as part of medical record	Analyze personal note situations carefully. Do not place psychotherapy or personal notes in medical record b/c it will lose special protection
	164.524(a)(1)	Information compiled for use in litigation, etc.	302(b)(1)	If not kept in patient record, excluded by 4-302(b)(1)	Md rule appears to prevail, as provides more access
CLIA/Reporting of Laboratory Results	164.524(a)(1)	PHI subject to CLIA – provides for more than state law, b/c provides disclosure to person authorized to use the test.	17-202.1; COMAR 10.10.06.04	Generally, the laboratory: (a) reports medical test results only to the physician, dentist, or other authorized person who requested the test, or to another laboratory that requested the test; (b) sends a copy of a test result, other than a result for a health awareness or job-related alcohol or controlled dangerous substances test, directly to the individual tested only after the laboratory: (i) receives a written request from the individual, and (ii) notifies the authorized person who requested the test that the results will be released to the individual tested; (c) meets the applicable standards concerning test reports contained in 42 CFR §§ 493.1109 and 493.1715; and (d) reports a test result on a form that identifies the name and address of the laboratory that performed the test. For test results stemming from a health awareness test, set forth in COMAR 10.10.01.03B, and performed at a temporary laboratory, the laboratory may report those results directly to the individual tested.	COMAR is more restrictive than CLIA. CLIA incorporates the COMAR definition of "authorized" person to whom results may be released (ordering provider and the patient tested, provided the lab tells the ordering provider that the result is being released to patient). MD does not authorize release to a person "responsible for using" the result as permitted by CLIA. There is an unresolved conflict of COMAR with the MD pharmacist medication management provisions signed in to law in 2002 since pharmacists need lab results to participate in these programs but do not order the tests.
Form of denial	164.524(d)(2)	Reason for denial by CE must be written and contain basis, statement of review rights, right to complain to Sec'y and include contact	304(a)(2)	Not explicitly required to be in writing	Federal would likely prevail, as requirement of writing provides stronger right.
Appeal	164.530(d)	Entity must designate appeal officer, who was not involved in decision to deny and is LHCP	304(a)(2)	On written request, must provide summary and permit examination and copying by another LHCP authorized to treat the condition in question	Questionable which is more stringent, as federal provides appeal right but state requires provision of summary and examination and another LHCP authorized to treat the condition in ?

Right to amendment of one's own record

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
General Information	164.526(b)(1)	Must permit individual to request amendment to the designated record set. May require it to be in writing and require reason, <u>if stated in advance</u>	304(b)	Must establish procedures for a person in interest to request changes or additions to the medical record (deletions not permitted) Likely state definition of medical record includes same as designated record set	Federal appears to prevail, since it provides more specific rights
Timeframe	164.526(b)(2)	no later than 60 days, with 30 day extension allowed	304(b)(3)	reasonable	Federal timeframe appears to apply
Mechanics	164.526(c)	at a minimum, identifying the records that are affected by the amendment and appending or otherwise providing a link to that document	304(b)(2) 304(b)(3)(i)	making the requested change (person in interest may not have any information deleted)	Similar; federal grants more specific rights so appears to prevail
Disagreement	164.526(d)	Provide timely written denial including basis, right to submit written disagreement, right to have initial request & denial included in record, and complaint rights, both internally and to Sec'y	304(b)(3)(ii) & (4) & (5)	Provide written notice containing reasons for refusal and procedures, if any, for appeal. Shall permit patient to insert in record a concise statement of the reason the person in interest disagrees with the record. Provider may insert his response as well.	Similar; federal grants more specific rights so appears to prevail.
Notification to others of change or disagreement	164.526(c)	Covered entity must make reasonable efforts to inform and provide within reasonable time to persons identified by the individual as having received PHI about the individual and needing the amendment and persons, including business associates, that the covered entity knows received the information and may have relied or foreseeably could rely on it to the detriment of the individual.	304(b)(6)	Physician must provide to anyone designated by person in interest or to whom inaccurate, incomplete, or disputed record has been provided within last six months	Federal rule provides broader right of dissemination of correction, so appears to prevail.

Facility Directory

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Facility Directory – General	164.510(a)	<p>Unless an individual objects*; a covered health care provider may use the following information to maintain a facility directory: (a) name; (b) location in the covered health care provider's facility; (c) the individual's condition described in general terms that does not communicate specific medical information about the individuals; (d) religious affiliation.</p> <p>*Note: HIPAA requires that you give the patient an affirmative opportunity to object to be included in the provider's directory.</p>	301(b)(1)	<p>“Directory information” - “information concerning the presence and general health condition of a patient who has been admitted to a health care facility <u>or</u> who is currently receiving emergency health care in a health care facility.”</p> <p><u>Excluded</u>: health care information developed primarily in connection with mental health services.”</p> <p>“General health condition” means “health status of a patient” such as critical, poor, fair, good, excellent or “terms denoting similar conditions.”</p> <p>Do not release that patient is dead unless dead patient’s personal representative says it is ok to release</p> <p>May disclose directory information except if the patient has instructed the provider otherwise – but no affirmative duty to give patient opportunity to object.</p>	<p>HIPAA and MCMRA are generally comparable. HIPAA includes “religious affiliation” as a data element that may be disclosed to members of the clergy but is silent about excluding health care information “developed primarily in connection with mental health services.” MCMRA and HIPAA are comparable as to the other data elements that may be included in a facility directory. MCMRA appears to afford greater protection to ind.'s privacy with respect to disclosures to clergy (it is silent as to whether or not religious affiliation may or may not be disclosed – so presume it m/n be disclosed) and MCMRA is more protective when patients are receiving mental health services (see comparison row below).</p> <p>Note: Issues with press are going to be difficult.</p> <p>HIPAA appears to give more rights to patient in terms of objecting to be included in provider directory – give patient a <i>meaningful</i> opportunity to object. Good to document that in some way for purposes of HIPAA – have patient sign off on this in admissions materials. You need a systemic way to deal with this so that an objection is actually adhered to. For a hospital, this means more than just listing this right in the Notice of Privacy Practices.**</p> <p>Patient cannot answer – unconscious – can release if patient asked for by name and in best interest of patient.</p> <p>**respectively disagree with DHMH analysis of disclosure of religious affiliation.</p>

Facility Directory (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Facility Directory – Disclosure provisions	164.510(a)(1)(ii), 164.510(a)(2)	Under HIPAA, a health care provider may disclose directory information “to other persons who ask for the individual by name ” – except that religious affiliation information may only be disclosed to members of the clergy. A covered health care provider must give an individual notice about the information that it may include in a directory and the persons to whom it may disclose the information (including clergy disclosures) and give the individual the opportunity to restrict or prohibit some or all of the uses in the NPP.	302(c)	Health care provider may disclose directory information about a patient without authorization of a person in interest, except if the patient has instructed the health care provider in writing not to disclose directory information	HIPAA indicates that an ind.’s religious affiliation may be disclosed to clergy members – but Md is more stringent – d/n disclose religious affiliation in Md ; HIPAA restricts disclosures from facility directory to persons asking for a patient by name ; Md law requires an individual to object in writing to inclusion in a facility directory and HIPAA d/n require an individual's objection to be in writing. In Md, “directory information” d/n include health care information developed primarily in connection with mental health services, the identity of patients receiving mental health services should not be included in the facility directory. Workgroup discussed Md reference to presence in facility and decided that location in facility could be disclosed.
Facility Directory – Emergency Circumstances	164.510(a)(3)	So long as a proposed use or disclosure is consistent with a “prior expressed preference of the individual, if any” – a covered health care provider can disclose some or all of the facility directory information if it is in the individual’s best interest as determined by the covered health care provider, in the exercise of professional judgment. As soon as practicable the covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures	301(b)(1)	See discussion above.	Provisions of MCMRA and HIPAA are comparable. See discussion above regarding means by which individual may object. If you have not given the opportunity to object, you cannot disclose.

Uses and Disclosures for which Authorization is not Required (Non-Mental Health Records)

***Note: 512 disclosures should be kept track of for purposes of an accounting.

This portion of chart is analyzed in order of provision's appearance in HG 305 and 306

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
General Rule	164.512	<p>(a) Standard: Uses and disclosures required by law.</p> <p>(1) A CE may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.</p> <p>(2) A CE must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.</p>	<p>305</p> <p>306</p>	<p>A health care provider <i>may</i> disclose a medical record without the authorization of a person in interest. (This section may not be construed to impose an obligation on a health care provider to disclose a medical record.)</p> <p>A health care provider <i>shall</i> disclose a medical record without the authorization of a person in interest. (These are mandatory disclosures)</p>	
Payment Legal Counsel	164.506(c)	<p>Treatment, payment, health care operations</p> <p>(1) A covered entity may use or disclose PHI for its own treatment, payment, or health care operations.</p> <p>(2) A covered entity may disclose PHI for treatment activities of a health care provider.</p> <p>(3) A covered entity may disclose PHI to another covered entity or a health care provider for the payment activities of the entity that receives the information.</p> <p>(4) A covered entity may disclose PHI to another covered entity for health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the PHI being requested, the protected health information pertains to such relationship, and the disclosure is: (i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or (ii) For the purpose of health care fraud and abuse detection or compliance.</p> <p>(5) A covered entity that participates in an organized health care arrangement may disclose PHI about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.</p>	<p>305(b)(1) <i>May</i> disclose to:</p>	<p>(i) the provider's authorized employees, agents, medical staff, medical students, or consultants for the sole purpose of offering, providing, evaluating, or seeking payment;</p> <p>(ii) the provider's legal counsel regarding only the information in the medical record that relates to the subject matter of the representation; or;</p> <p>(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.</p>	<p>Most of provisions appear to be consistent</p> <p>But, 305(b)(1)(iii) is preempted by HIPAA and prevents holder of medical records to give medical records to legal counsel of another provider that is subject to a claim that has not yet been filed as a civil action.</p> <p><i>This is an important change post-HIPAA for the defense bar.</i></p>

Uses and Disclosures for which Authorization is not Required (Non-Mental Health Records)

***Note: 512 disclosures should be kept track of for purposes of an accounting. (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Certain specified purposes/ acknowledgment of non-redisclosure	164.512(i) 164.506(c)	Research Health care operations	305(b)(2) May disclose to:	If the person given access to the medical record signs an acknowledgment of the duty under the MCMRA 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.	Everything under this 305(b)(2) fits under "health care operations" except the research piece – for research purposes, make sure you follow the redisclosure provisions of 4-302(d) (duty not to re-disclose in Maryland) Both HIPAA and Md law must be followed when medical records are disclosed for research without authorization: Md. law requires a signed acknowledgment of the duty not to redisclose (and IRB review, approval, and waiver of consent where applicable), but HIPAA requires in addition that the CE obtain certain representations (for reviews preparatory to research, or research on decedents' PHI) or an IRB waiver of authorization. As far as a researcher needing to acknowledge the duty not to redisclose, note in Maryland, a researcher may alternatively receive from the research subject their authorization to redisclose. [See: Md. Health-Gen. Sec. 4-302(d).] If a HIPAA research authorization form list all potential redisclosures, and the research subject signs this form, one could argue that this fulfills the PI's requirement under Maryland law because the research subject is authorizing the PI to redisclose to the listed entities, and only to those listed entities. Note that the majority of the Maryland research community has taken the position that a Maryland authorization (which is limited to one year in length) is not required for disclosure of a medical record to a researcher; however, HIPAA requirements still apply to such disclosures.
Government agencies	164.510 164.512	Public health, abuse, health oversight, etc.	305(b)(3) May disclose to:	Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a government agency	Before jumping into this mack truck category under Md law, look for a specific cite under 510 & 512 of HIPAA that permits the disclosure Not listed, ask for a court order or

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Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
				performing its lawful duties as authorized by an act of the Maryland General Assembly or the United States Congress.	subpoena. Analyze carefully
Treatment	164.506(c)	Treatment	305(b)(4) COMAR 10.10.06.04	Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to another health care provider for the sole purpose of treating the patient or recipient on whom the medical record is kept.	10.10.06.04 does not permit the release of lab results to providers other than the ordering provider and this does not change with HIPAA. Also, note under Maryland law, you have to limit the release to what is the minimum necessary.

Uses and Disclosures for which Authorization is not Required (Non-Mental Health Records)

***Note: 512 disclosures should be kept track of for purposes of an accounting. (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Payment	164.506(c)	Payment	305(b)(5) May disclose to:	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 3 rd party payors and their agents meeting certain requirements (nonprofit health service plans, HMOs, fiscal intermediaries and carriers, Md DHMH, HHS, 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.	Provisions appear to be consistent
Emergency	164.510(a)(3) 164.510(b)(4) 512(f)(3)(ii) 512(f)(6)	Emergency circumstances	305(b)(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.	Provisions appear to be consistent
Family, close personal friend, etc.	164.510(b)(1)	Family member, other relative, close personal friend, or other person identified by the individual	305(b)(7) May disclose to:	Except if the patient has instructed the HCP 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).	Provisions appear to be consistent, but use good judgment Train your staff!! Provider likely should document disclosures to "close personal relationship/friend" in the chart for purposes of justifying disclosure in the future -- in case you have to give an explanation.

Uses and Disclosures for which Authorization is not Required (Non-Mental Health Records)

*****Note: 512 disclosures should be kept track of for purposes of an accounting. (cont'd)**

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Health Professional Licensing Boards	164.512(d)(1)	<p>d) Standard: Uses and disclosures for health oversight activities.</p> <p>(1) Permitted disclosures. A CE may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:</p> <p>(i) The health care system;</p> <p>(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;</p> <p>(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or</p> <p>(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.</p> <p>A health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:</p> <p>(i) The receipt of health care;</p> <p>(ii) A claim for public benefits related to health; or</p> <p>(iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.</p>	306(b)(2) Shall disclose to:	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:	Mandatory disclosure under State law Keep track of for purposes of accounting Document release in medical record
	164.512(e)	No specific exception, but, falls under "Required by Law" b/c this is a mandatory disclosure.	306(b)(3) Shall disclose to:	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;	Mandatory disclosure under State law Keep track of for purposes of accounting Document release in medical record But give notice to patients
	164.506(c) 164.512(d)	Health care operations or health oversight exceptions may be applicable	306(b)(4) Shall disclose to:	To a medical review committee or dental review committee as defined in § 14-101 of the Health Occupations Article	Mandatory disclosure under State law Keep track of for purposes of accounting Document release in medical record

Uses and Disclosures for which Authorization is not Required (Non-Mental Health Records)

***Note: 512 disclosures should be kept track of for purposes of an accounting. (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
	164.506(c)	Health care operations	306(b)(5) Shall disclose to:	To another health care provider as provided in § 19-308.2 or § 10-807 of the Health-General Article (transfers of patients between hospitals, transfers between facilities)	Mandatory disclosure under State law Keep track of for purposes of accounting Document release in medical record
Compulsory process	164.512(e)	A CE may disclose PHI in the course of any judicial or administrative proceeding: In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or (B) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.	306(b)(6) Shall disclose to:	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 4-306 (2), (7), and (8), in accordance with compulsory process, if the subpoena, summons, warrant, or court order contains a certification that: 1. A copy of the subpoena, summons, warrant, or court order has been served on the person whose records are sought by the party seeking the disclosure or production of the records; or 2. Service of the subpoena, summons, warrant, or court order has been waived by the court for good cause; --In accordance with a stipulation by a patient or person in interest; or --In accordance with a discovery request permitted by law to be made to a court, an administrative tribunal, or a party to a civil court, administrative, or health claims arbitration proceeding;	Mandatory disclosure under State law Keep track of for purposes of accounting Document release in medical record

Uses and Disclosures for which Authorization is not Required (Non-Mental Health Records)

***Note: 512 disclosures should be kept track of for purposes of an accounting. (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Law Enforcement Purposes	164.512(f)	A CE may disclose PHI for a law enforcement purpose to a law enforcement official In compliance with and as limited by the relevant requirements of: (A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer; (B) A grand jury subpoena; or (C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that: (1) The information sought is relevant and material to a legitimate law enforcement inquiry; (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) De-identified information could not reasonably be used.	306(b)(7) Shall disclose to:	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;	Mandatory disclosure under State law Keep track of for purposes of accounting Document release in medical record
To MIA	164.512(c)	No specific exception, but, as noted above ... (1) A CE may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.	306(b)(8) Shall disclose to:	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;	Mandatory disclosure under State law Keep track of for purposes of accounting Document release in medical record
Child fatalities	164.512(c)(1)(i)	A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect to extent req'd by law	306(b)(9) Shall disclose to:	To a State or local child fatality review team established under Title 5, Subtitle 7 of the Health-General article as necessary to carry out its official functions.	Mandatory disclosure under State law Keep track of for purposes of accounting Document release in medical record

Uses and Disclosures for which Authorization is not Required (Non-Mental Health Records)

***Note: 512 disclosures should be kept track of for purposes of an accounting. (cont'd)

This portion of chart is analyzed in order of provision's appearance in § 164.512

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Pursuant to process and as otherwise required by law	512(f)(1)(i)	As required by law including laws that require the reporting of certain types of wounds or other physical injuries		Numerous statutes and COMAR regulations re: mandatory reporting. See separate chart on MSBA HLS website	OK per state mandatory requirements; see mandatory reporting chart on MSBA HLS website http://www.msba.org
	512(f)(1)(ii)	In compliance with and as limited by the relevant requirements of: a court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer; a grand jury subpoena or an administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand or similar process authorized under law.	4-306(b)(7)	Subject to additional limitations for a medical record developed primarily in connection with the provision of mental health services in 4-307... Grand juries, prosecution agencies, law enforcement agencies 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 of the records	State law is slightly more restrictive and take everything that is in 512(f)(1)(ii)(C) and add in that: ...provided that the prosecution agencies and law enforcement agencies have written procedures to protect the confidentiality of the records (and the Court of Special Appeals has spoken in <i>Shady Grove Psychiatric Group v. State</i> , 128 Md. App. 163, 736 A.2d 1168 (Md. Ct. Spec. App. 1998) and another recent unreported case.
	512(f)(2)	May disclose PHI in response to a law enforcement official's request for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person	4-305(b)(3)	A health care provider may disclose a medical record without the authorization of a person in interest: Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a government agency performing its lawful duties as authorized by an act of the Maryland General Assembly or Congress	State law initially appears more restrictive b/c Md does not make global distinctions between suspect, fugitive, material witness, or missing person and others for purposes of disclosures of health care information. There are some specific provisions in 4-307(j)(1)(iii)(2) and 307(j)(1)(iv). However, pick your poison, use the govt. agency permissive disclosure – to CYA get an investigative demand or subpoena – but actually do not have to get it in writing. (And don't forget good faith exemption under Md law) Analyze carefully
Victims of Crime	512(f)(3)	May disclose PHI in response to a law enforcement official's request for information about an individual who is or is suspected to be a victim of crime	4-305(b)(3)	Provider may disclose a medical record without the authorization of a person in interest, subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a govt. agency performing its lawful duties as authorized by an act of the Md Gen. Assembly or Congress.	Allowed to talk to law enforcement for abuse purposes (mandatory reporting under state law). If the individual does not agree (or unconscious and cannot agree) – can you release per HIPAA under 512(f)(3), ok to release under 4-305(b)(3). Plus, this is "in response..." On the clinical level, do what is reasonable under the circumstances. Analyze carefully
Decedents	512(f)(4)	CE has a suspicion that such death may have resulted from criminal conduct	5-309 4-306(b)(7)	Medical examiner investigates deaths that appear to be result of violence, suicide, casualty, suddenly, unattended, suspicious manner	Disclosure to law enforcement permissive under both. Accountable if done.

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Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Crime on Premises	512(f)(5)	CE may disclose to a law enforcement official PHI that the CE believes in good faith constitutes evidence of criminal conduct that occurred on the premise of the CE	4-305(b)(3)	Provider may disclose a medical record without the authorization of a person in interest, subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a govt. agency performing its lawful duties as authorized by an act of the Md Gen. Assembly or Congress.	Not a gray area – disclose Also, look to your policy regarding subpoenas and warrants – is there other lawful authority? Disclose.
Reporting Crimes in Emergencies	512(f)(6)	CE providing emergency health care other than emergency on the premises (good Samaritan), may disclose PHI to a law enforcement official If such disclosure appears necessary to alert law enforcement to the commission and nature of a crime; the location of such crime or of the victims of such crimes and the identity, description, and location of the perpetrator of such crime. If CE believes that the medical emergency is result of abuse, neglect or DV, however, look under 512(c)	4-305(b)(3)	Provider may disclose a medical record without the authorization of a person in interest, subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a govt. agency performing its lawful duties as authorized by an act of the Md Gen. Assembly or Congress.	Not a gray area – disclose
To Coroners and Medical Examiners Funeral Directors	512(g)	A CE may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A CE may disclose PHI to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent.	4-212 State Govt. 10-617(b)	A certificate of death regardless of age of decedent shall be filled out and signed by: (i) The medical examiner, if the medical examiner takes charge of the body; or (ii) If the medical examiner does not take charge of the body, the physician who last attended the deceased. Notice to medical examiner. -- Each individual concerned with carrying out this subtitle promptly shall notify the medical examiner if: (1) The deceased was not under treatment by a physician during the terminal illness; (2) The cause of death is unknown; or (3) The individual considers any of the following conditions to be the cause of death or to have contributed to the death: (i) An accident, including a fall with a fracture or other injury. (ii) Homicide. (iii) Suicide. (iv) Other external manner of death. (v) Alcoholism. (vi) Criminal or suspected criminal abortion. Inability to determine cause of death. -- Time of presentation to mortician(funeral director) . -- (1) A physician who fills out a certificate of death shall give it or transmit it by approved electronic media, including facsimile, to the	Generally consistent Mandatory reporting to ME under State law, completion of death certificate and transmission to mortician. Accountable.

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
				mortician within 24 hours after the death occurred. (2) A medical examiner who fills out a certificate of death shall give it or transmit it by approved electronic media, including facsimile, to the mortician within 24 hours after the medical examiner took charge of the body.	
Cadaveric organ, eye or tissue donation	512(h)	A CE may use or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation	4-305(b)(8)	A health care provider may disclose a medical record without the authorization of a person in interest: To an appropriate organ, tissue, or eye recovery agency under the restrictions of § 5-408 of the HG article for a patient whose organs and tissues may be donated for the purpose of evaluating the patient for possible organ and tissue donation.	Generally consistent
Research	512(i)	A CE may use or disclose PHI for research, regardless of the source of funding of the research, provided that certain conditions are met.	4-305(b)(2)(ii)	A health care provider may disclose a medical record without the authorization of a person in interest if the person given access to the medical record signs an acknowledgment of the duty under the MCMRA not to redisclose any patient identifying information, to a person for research purposes, subject to the applicable requirements of an institutional review board.	See "Certain specified purposes/ acknowledgment of non-redisclosure" on page 9 above.
Serious threat to health or safety	512(j)	A CE may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the CE, in good faith, believes the use or disclosure is necessary under certain circumstances in regard to a serious threat to health or safety.			See analysis of 512(j) under mental health records.
Armed Forces	512(k)(1)(i)	A CE may use and disclose the PHI of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information: (A) Appropriate military command authorities; and (B) The purposes for which the PHI may be used or disclosed.	4-305(b)(3)	Provider may disclose a medical record without the authorization of a person in interest, subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a govt. agency performing its lawful duties as authorized by an act of the Md Gen. Assembly or Congress.	OK per 4-305(b)(3); subject to additional limitations for mental health records under 4-307
Discharge from Military	512(k)(1)(ii)	A CE that is a component of DOD or Transportation may disclose to the Department of Veterans Affairs (DVA), PHI of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a			This only applies to CEs that are components of DOD and DOT

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
		determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.			
Veterans	512(k)(1)(iii)	A CE that is a component of the Department of Veterans Affairs may use and disclose PHI to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.			Only applies to CEs that are VA hospitals; consult with counsel
Foreign military personnel	512(k)(1)(iv)	A CE may use and disclose the PHI of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to 512(k)(1)(i).	4-305(b)(3)	Provider may disclose a medical record without the authorization of a person in interest, subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a govt. agency performing its lawful duties as authorized by an act of the Md Gen. Assembly or Congress.	OK per 4-305(b)(3); subject to additional limitations for mental health records under 4-307
National security and intelligence	512(k)(2)	National security and intelligence	4-305(b)(3)	Provider may disclose a medical record without the authorization of a person in interest, subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a govt. agency performing its lawful duties as authorized by an act of the Md Gen. Assembly or Congress.	OK per 4-305(b)(3); subject to additional limitations for mental health records under 4-307
President	512(k)(3)	Protective services for the President	4-305(b)(3)	Provider may disclose a medical record without the authorization of a person in interest, subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307, to a govt. agency performing its lawful duties as authorized by an act of the Md Gen. Assembly or Congress.	OK per 4-305(b)(3); subject to additional limitations for mental health records under 4-307
	512(k)(4)				Only applies to CEs that are components of the Dept. of State; consult with agency counsel.
Disclosures to correctional institutions and other law enforcement custodial situations Health, safety, and	512(k)(5)	A CE may disclose to a correctional institution and a law enforcement official having lawful custody of an inmate or other ind., PHI about such inmate or ind., if the correctional institution or law enforcement official represents that such PHI is necessary for: (i)(A) the provision of health care to such individuals	Md. Health-Gen. §§ 18-213, 213.1, 213.2	§ 18-213. Notification of fire fighters, emergency medical technicians, rescue squadmen, law enforcement officers, correctional officers, etc., of exposure to contagious disease or virus; educational programs; equipment.	State law is more restrictive. Md does not make global distinctions between inmates and non-inmates for purposes of disclosures of health care information. There are some specific provisions in 4-307 and mandatory reporting requirements for contagious

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Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
protection of recipient or others.			4-307(j)(1)(i)(2)	<p>§ 18-213.1. Notification of members of the State Fire Marshal's office of exposure to contagious disease or virus; educational programs; equipment.</p> <p>§ 18-213.2. Notification of contact exposure to contagious disease or virus; postmortem examination.</p> <p>A health care provider may disclose a medical record without the authorization of a person in interest to the medical or mental health director of a juvenile or adult detention or correctional facility if, 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.</p>	<p>diseases.</p> <p>These comments may be updated in the future as the Committee is attempting to obtain information from relevant sources as to what happens now -- for example, if a warden says he needs information re: HIV ? (HIPAA envisions that this might occur? What authority under Md law to disclose?)</p>
Government programs providing public benefits	512(k)(6)	Government programs providing public benefits			Not analyzed by HIPAA workgroup; agency counsel should address

Disclosure of Mental Health Records -- Md. Code Ann., Health-Gen. § 4-307

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
When does a record include "mental health services" for purposes of § 4-307?		No comparable HIPAA provision	307(b) 301(i)	"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. For acute general hospital services, mental health services are considered to be the primarily rendered service only if service is provided pursuant to certain statutory sections relating to facilities with designated psych units.	Generally, an ER visit not going to result in a medical record being considered a mental health record – depends on nature of facility. Analyze carefully.
Minimum Necessary	45 CFR § 164.502 (b)(1)(i) 45 CFR § 164.514(d)	Minimum necessary standard does not apply to disclosures to or requests by a health care provider ("hcp") for treatment.	307(c) 305(b) (4)	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. § 4-305(b)(4) provides that a hcp can disclose a record to another provider for treatment purposes subject to 307	When a hcp makes a disclosure of mental health records for treatment purposes, pursuant to Maryland law, which is more stringent on this point, the hcp must do some minimum necessary analysis pursuant to § 4-307(c) Md appears to grant greater protection
Personal note v. psychotherapy notes	45 CFR § 164.501	During private session; separated	307(a)(6) 307(d)	Personal note definition in § 4-307(a)(6) – work product, not discoverable, kept separate Application: 4-307(d) – mental health provider may maintain personal note and it shall be considered a part of the medical record if it is disclosed other than to the provider's supervisor, another hcp, an atty of the hcp, or a recipient in regard to a malpractice action as specified in § 4-307(d)(3)	Consensus of Workgroup -- psychotherapy notes and personal notes are the same thing and that it is standard practice to keep them separate from the medical record. If disclosed under Md law, loses its status as "personal note", but still psychotherapy note and stills get greater HIPAA protection Under Md law, disclose to ind. other than as provided in statute, no longer personal note. Under HIPAA, disclosure to anyone with an authorization, still a psychotherapy note. HIPAA may grant greater protection

Disclosure of Mental Health Records -- Md. Code Ann., Health-Gen. § 4-307 (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
<p>Disclosures relating to psychological tests (This is an access and disclosure issue, so refer to beginning of chart) Criminal, civil disclosure issue resolved by Md law.</p>			<p>307(e)(1) 307(e)(2)</p>	<p>Generally, 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. 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. A subject of a psychological test may designate a licensed psychologist or psychiatrist to whom a hcp may disclose the medical record.</p>	<p>HIPAA might allow patients to get raw test data if the data has become part of the medical record.</p> <p>Is this the right of the mental health provider? Yes This is limited, right of mental health provider doing psychological testing.</p> <p>Fewer access right under Md law.</p>
<p>Disclosures relating to employment</p>	<p>164.501 164.512(b)(1)(v)</p>		<p>307(f)</p>	<p>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: In connection with a civil action or the EEOC initiated by the person in interest; or on a written authorization of the employer or prospective employer.</p>	<p>Record developed by employer in their role as an employer – gives person in interest access – HIPAA does not apply so you have to abide by this. No preemption analysis necessary.</p>

Disclosure of Mental Health Records -- Md. Code Ann., Health-Gen. § 4-307 (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Records relating to groups or families			307(g)	A health care provider may disclose a medical record that relates to and identifies more than one recipient in group or family therapy only: on the authorization of a person in interest for each recipient; as provided in the MCMRA; or as otherwise provided by law.	Is this like the minimum necessary provisions? If patient is in family therapy, and patient is being transferred, can you disclose medical record with information on patient's husband? For purposes of treatment of entire group – then likely do not need authorization Person in individual therapy, need authorization of other folks in group to release medical record Protection to some; denies access to another. Group consensus, if statute/regulation is more restrictive with respect to privacy, then it trumps access. If statute regulation articulates with more detail, trumps. Dissenting view – grants greater access/access prevails.
Core service agency (county agency that coordinates mental health services for a jurisdiction)		Treatment, payment, health care operations (TPO)	307(h)	§ 307 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 hcps that participate in the approved plan of a core service agency for the delivery of mental health services, if a recipient: has received a current list of the participating providers; and has signed a written agreement with the core service agency to participate in the client information system developed by the agency.	Medical assistance Would this be related to the treatment of an individual, or is this a planning service? This would be a treatment disclosure and comply with requirements of (h) TPO under HIPAA, no conflict

Disclosure of Mental Health Records -- Md. Code Ann., Health-Gen. § 4-307 (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Rate reviews, audits, health planning, licensures, approvals or accreditations of facilities	164.501 164.512(d)	Health care operations	307(i)	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 the MCMRA not to redisclose personal identifying information about a recipient, § 307 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.	HIPAA lets you do this, but MD requires this signed non re-disclosure. Business Associate Agreement may apply

Disclosure of Mental Health Records -- Md. Code Ann., Health-Gen. § 4-307 (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
Disclosure to Family Members of Mental Health Records	164.510(b)	<p>A covered entity may disclose an individual's PHI to a family member, close personal friend, or any other person the individual identifies, to allow for that person's involvement in the individual's care or payment related to the individual's health care. If the individual is present and has the capacity to make health care decisions, the covered entity may only disclose if the covered entity</p> <ol style="list-style-type: none"> 1. Obtains the individual's agreement; 2. Provides the individual with the opportunity to object to the disclosure and the individual does not express an objection; or 3. Reasonably infers from the circumstances that the individual does not object. <p>If the individual is not present, or the opportunity to agree/object to the disclosure cannot be practicably provided because of the individual's incapacity or an emergency circumstance, the covered entity may determine whether the disclosure is in the best interests of the individual and if so, disclose only the PHI that is directly relevant to the person's involvement with the individual's care.</p> <p>A covered entity may disclose an individual's location or general condition to family members, personal representatives, or persons responsible for the individual's care, if the CE obtains the individual's permission, gives the individual an opportunity to object, reasonably infers the individual does not object, or in an emergency if in the individual's best interests. If the individual is not present, disclosure must be limited to information directly relevant to the person's involvement in the individual's care.</p>	307(j)(1)(iv)	A public or private clinic, hospital, or other institution that provides or purports to provide treatment or other services for individuals who have mental disorders 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 <i>if that individual has filed a missing persons report regarding the recipient.</i>	State law appears to be more restrictive
Disclosure of Mental Health Records Pursuant to Judicial or Administrative Process	164.512(a)	1. Required by law. A covered entity may use or disclose PHI to the extent that such use or disclosure is required by law and the use and disclosure complies with and is limited to the relevant requirements of such law. "Required by law" means a mandate contained in law that compels a covered entity to make a use or disclosure of PHI and that is enforceable in a court of law.	307(k)(1)(vi)	1. <u>Subpoena</u> . A health care provider shall disclose a medical record without the authorization of a person in interest in accordance with a subpoena for medical records on specific recipients (a) To health professional licensing and disciplinary boards for the sole purpose of an investigation regarding licensure, certification, or discipline of a health professional or	HIPAA permits disclosures required by law, so state law applies when disclosure is pursuant to compulsory process. For discovery requests or subpoena without court order, HIPAA requires satisfactory assurance regarding notice to patient or a qualified protective order. Also, HIPAA requires specific

Disclosure of Mental Health Records -- Md. Code Ann., Health-Gen. § 4-307 (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
	<p>164.512(e)</p> <p>(See 45 CFR § 164.512(e) for standards related to "satisfactory assurance" and "qualified protective order.")</p>	<p>2. Judicial and administrative proceedings. A covered entity may disclose PHI in the course of judicial or administrative proceedings under the following circumstances</p> <p>(a) Order by a court or administrative tribunal; or</p> <p>(b) Subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal if</p> <p>(i) The covered entity receives "satisfactory assurance" from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or</p> <p>(ii) The covered entity receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets HIPAA requirements.</p>	<p>307(k)(1)(iv)</p>	<p>the improper practice of a health profession; and</p> <p>(b) To grand juries, prosecution agencies, and law enforcement agencies for the sole purpose of investigation and prosecution of a provider for theft and fraud, related offenses, obstruction of justice, perjury, unlawful distribution of controlled substances, and 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 have written procedures and in a criminal proceeding against a provider, and to the maximum extent possible, remove and protect recipient identifying information from the medical records used in the proceeding.</p> <p>2. <u>Court order</u>. A health care provider shall disclose a medical record without the authorization of a person in interest in accordance with a court order, other than compulsory process compelling disclosure, as permitted under §9-109(d), §9-909.1(d) (sections governing communications between patient and psychiatrist or psychologist), or §9-121(d) (section governing communications between licensed social worker and client) of the Courts and Judicial Proceedings Article, or as otherwise provided by law, to</p> <p>(a) A court;</p> <p>(b) An administrative law judge;</p> <p>(c) A health claims arbitrator; or</p> <p>(d) A party to a court, administrative, or arbitration proceeding.</p>	<p>additional content in notice.</p>

Disclosure of Mental Health Records -- Md. Code Ann., Health-Gen. § 4-307 (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
			307(k)(1)(v)	3. <u>Compulsory process or discovery request</u> . A health care provider shall disclose a medical record without the authorization of a person in interest in accordance with service of compulsory process or a discovery request, as permitted under §9-109(d), §9-909.1(d), or §9-121(d) of the Courts and Judicial Proceedings Article, or as otherwise provided by law, to a court, an administrative tribunal, or a party to a civil court, administrative, or health claims arbitration proceeding, if the request is accompanied by a certificate that notifies the recipient or the person in interest (or counsel for the same) that (1) disclosure is sought and (2) of the provision of law upon which the requestor is relying. The certificate must be attached to the copy of the request and be mailed on or before the date of filing.	
Disclosure of Mental Health Records to State-Designated Protection System for the Mentally Ill	164.512(c)	<p>A covered entity may disclose PHI about an individual whom the entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a legally authorized government authority if one of the following conditions is met –</p> <ul style="list-style-type: none"> (1) Disclosure is required by law; (2) The individual agrees to the disclosure; or (3) The disclosure authorized by law and <ul style="list-style-type: none"> (a) The covered entity believes disclosure is necessary to prevent serious harm to the individual or others; or (b) If the individual is incapacitated, a law enforcement or other public official authorized to receive the report represents that the PHI is necessary without delay for enforcement activity. <p>A covered entity must notify the individual that such report has been or will be made, except if it reasonably believes notification puts victim at risk of serious harm or unless the entity would be informing the personal representative and the entity reasonably</p>	307(k)(1)(ii)	<p>A health care provider shall disclose a medical record without the authorization of a person in interest to the State designated protection and advocacy system for mentally ill individuals under the federal Protection and Advocacy for Mental Ill Individuals Act of 1986, as amended, if</p> <ul style="list-style-type: none"> 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 patient has been subject to abuse or neglect; 2. The recipient by reason of mental or physical condition is unable to authorize disclosure; and 	Reporting of child abuse is expressly saved from preemption. Except for reports of adult abuse that are required by law, HIPAA will impose additional requirements (e.g., CE must obtain certain representations from public official or believe disclosure is necessary to prevent serious harm—unless individual agrees to the disclosure). HIPAA also requires notification to individual that report was made.

Disclosure of Mental Health Records -- Md. Code Ann., Health-Gen. § 4-307 (cont'd)

Coverage	CFR Section	Federal Law	Health General, Title 4, Section	State Law	Comparison
				inpatient provider, if The health care provider with the records has determined that disclosure is necessary for the continuing provision of mental health services; and The recipient is transferred As an involuntary commitment or by court order to the provider; Under State law to a juvenile or adult detention or correctional facility; or To a provider that is required by law or regulation to admit the patient.	
Mental Health Provider's Duty to Warn	164.512(j)	Consistent with applicable law and standards of ethical conduct, a covered entity may use or disclose PHI, if the CE, in good faith, believes that the use or disclosure 1. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is to a person(s) reasonably able to prevent or lessen the threat, including the target of the threat; or 2. Is necessary for law enforcement authorities to identify or apprehend an individual: (A) because of a statement by an individual admitting participation in a violent crime that the CE reasonably believes may have caused serious physical harm to the victim; or (B) where it appears from all of the circumstances that the individual has escaped from a correctional institution or lawful custody. <u>Exception only applies to 2(A) in this box:</u> A covered entity may not disclose information if learned (i) in the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure, or counseling or therapy; or (ii) through a request by the individual to initiate or to be referred for treatment, counseling, or therapy.	See Md. Code Ann., Cts. & Jud. Proc. § 5-609 307(j) 307(j)(1)(iii)(2)	A health care provider may disclose a medical record without the authorization of a person in interest 1. With respect to a mental health care provider's duty to warn of imminent harm, to inform the appropriate law enforcement agency and, if feasible, the specified victim or victims of (a) The nature of the threat; (b) The identity of the recipient making the threat; and (c) The identity of the specified victim or victims. 2. With respect to mental health facilities, to a law enforcement agency concerning a recipient who has been admitted involuntarily or by court order to the facility and is on an unauthorized absence or has otherwise left the facility w/o being discharged or released, 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 ind. for the purpose of (a) safely returning the ind. to custody; or(b) fulfilling the duty to warn of imminent danger.	HIPAA permits disclosures as necessary to comply with duty under state law. It appears that Maryland has an affirmative duty to report, but only under very limited circumstances, which are: (1) Duty is only for mental health care providers or administrators; (2) Must have known of the patient's propensity for violence (3) Must have learned of the propensity by the patient indicating it by speech, conduct, or writing (4) Patient must have indicated his or her <u>intention to inflict imminent physical injury upon a specified victim</u> or group of victims. This is a much more limited allowable disclosure without authorization than HIPAA allows. Therefore, because Maryland law appears to be more restrictive than HIPAA, state law will apply.