

24. Altering, Maintaining, or Destroying Medical Records
HEALTH-GENERAL ARTICLE, §§4-401, 4-403

§4-401. Concealment of records and reports.

(a) *"Provider" defined.* — In this section, "provider" means:

- (1) An acupuncturist;
- (2) A chiropractor;
- (3) A dentist;
- (4) A nurse;
- (5) An optometrist;
- (6) A physician;
- (7) A podiatrist; or

(8) A person who is employed by or under contract with a hospital, nursing institution, or other health care provider.

(b) *Concealment prohibited.* — A provider may not knowingly or willfully destroy, damage, alter, obliterate, or otherwise obscure a medical record, hospital report, laboratory report, X-ray report, or other information about a patient in an effort to conceal the information from use as evidence in an administrative, civil, or criminal proceeding.

(c) *Penalty.* — A provider who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both.

§4-403. Destruction of medical records.

(a) *"Health care provider" defined.* —

(1) In this section, a "health care provider" means:

- (i) An acupuncturist;
- (ii) An audiologist;
- (iii) A chiropractor;
- (iv) A dietitian;
- (v) A dentist;
- (vi) An electrologist;
- (vii) A health care facility that is:

1. A freestanding ambulatory care facility as defined under § 19-3B-01 of this article;
2. A freestanding medical facility as defined under § 19-3A-01 of this article;

3. A health care facility as defined under § 10-101 of this article;
4. A health maintenance organization as defined under § 19-701 of this article;

5. A hospital as defined under § 19-301 of this article;
6. A limited service hospital as defined under § 19-301 of this article;
7. A related institution as defined in § 19-301 of this article; and
8. A residential treatment center as defined under § 19-301 of this article;

- (viii) A massage therapist;
- (ix) A mortician;
- (x) A nurse;
- (xi) A nutritionist;
- (xii) An occupational therapist;
- (xiii) An optometrist;
- (xiv) A physical therapist;
- (xv) A physician;
- (xvi) A podiatrist;
- (xvii) A professional counselor;
- (xviii) A psychologist;
- (xix) A social worker;
- (xx) A speech-language pathologist; and
- (xxi) A pharmacist.

(2) "Health care provider" includes an agent, employee, officer, or director of any entity listed under paragraph (1) of this subsection.

(b) *7 year period absent notification.* — Except for a minor patient, unless a patient is notified, a health care provider may not destroy a medical record or laboratory or X-ray report about a patient for 7 years after the record or report is made.

(c) *Minor patients.* — In the case of a minor patient, a medical record or laboratory or X-ray report about a minor patient may not be destroyed until the patient attains the age of majority plus 7 years, unless:

- (1) The parent or guardian of the minor patient is notified; or
- (2) If the medical care documented in the record was provided under § 20-102(c) or § 20-103(c) of this article, the minor patient is notified.

(d) *Notice.* — The notice under subsections (b) and (c) of this section shall:

- (1) Be made by:

(i) First-class mail to the last known address of the patient;

(ii) E-mail to the last known e-mail address of:

1. The patient; or

2. If the patient is a minor and the medical care documented in the record was not provided under § 20-102(c) or § 20-103(c) of this article, the parent or guardian of the patient;

(2) Include the date on which the record of the patient shall be destroyed; and

(3) Include a statement that the record or synopsis of the record, if wanted, must be retrieved at a designated location.

(e) The health care provider shall make the record or report available for retrieval:

(1) By the patient or the parent or guardian of the minor patient within 60 days before the date of destruction; and

(2) At the location designated in the notice of destruction of the record or report.

(f) *Procedure upon death of a physician, podiatrist, etc.* — After the death, retirement, surrender of the license, or discontinuance of the practice or business of a health care provider, the health care provider, the administrator of the estate, or a designee who agrees to provide for the maintenance of the medical records of the practice or business and who states, in writing to the appropriate health occupation board within a reasonable time, that the records will be maintained in compliance with this section, shall:

(1) Forward the notice required in this section before the destruction or transfer of medical records to:

(i) The patient; or

(ii) For a minor patient, the parent or guardian of the minor patient unless the medical care documented in the record was provided under § 20-102(c) or § 20-103(c) of this article.

(g) *Regulations.* —

(1) After consulting with the Maryland Hospital Association, the Maryland State Medical Society, and other interested parties, including consumers and payors, the Secretary shall adopt regulations governing the destruction of medical records.

(2) The regulations adopted under this subsection shall:

(i) Specify the manner in which a health care provider shall maintain and store medical records to:

1. Ensure confidentiality; and

2. Provide limited access to the medical records until the records are destroyed; and

(ii) Ensure that the method of destruction renders the medical records unreadable.

(3) The regulations adopted under this subsection may not:

(i) Require or encourage the destruction of medical records; or

(ii) Be inconsistent with any provision of law applicable to the maintenance or destruction of medical records.

(h) *Civil penalties.* —

(1) A health care provider or any other person who knowingly violates any provision of this subtitle is liable for actual damages.

(2) (i) In addition to any other penalties provided under this article, a health care facility that knowingly violates this section is subject to an administrative fine not exceeding \$10,000 for all violations cited in a single day.

(ii) 1. In addition to any other penalties provided under this article, an individual who knowingly violates this section is subject to the fines provided in subsubparagraph 2 of this subparagraph if the individual is:

A. A health care provider, as defined under subsection (a)(1)(i) through (vi) or (viii) through (xx) of this section; or

B. An agent, employee, officer, or director of a health care provider.

2. The administrative fines applicable to an individual covered under subsubparagraph 1 of this subparagraph shall be assessed as follows:

A. The first fine assessed or first set of fines assessed concurrently for all violations cited in a single day may not exceed \$1,000;

B. The second fine assessed or second set of fines assessed concurrently for all violations cited in a single day may not exceed \$2,500; and

C. The third or subsequent fine assessed or third or subsequent set of fines assessed concurrently for all violations cited in a single day may not exceed \$5,000.