

HOUSE BILL No. 5217

October 3, 1991, Introduced by Reps. Bennane, Hunter, Yokich, Palamara, Gire, Gubow, Scott, Barns and Rocca and referred to the Committee on Public Health.

A bill to provide for and to regulate the disclosure of health care information; to prescribe the powers, and duties of certain state agencies and departments; to regulate certain insurers and health benefits providers; and to prescribe penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

DEFINITIONS

3 Sec. 101. This act shall be known and may be cited as the
4 "health care information act".

5 Sec. 102. As used in this act:

6 (a) "Audit" means an assessment, evaluation, determination,
7 or investigation of a health care provider or health facility by
8 a person not employed by or affiliated with the health care

1 provider or health facility to determine compliance with 1 or
2 more of the following:

3 (i) Statutory, regulatory, fiscal, medical, or scientific
4 standards.

5 (ii) A private or public program of payments to or for serv-
6 ices rendered by a health care provider.

7 (iii) Requirements for licensing, accreditation, or
8 certification.

9 (b) "Directory information" means information disclosing the
10 presence and the general health condition of a particular patient
11 who is 1 of the following:

12 (i) An inpatient in a health care facility.

13 (ii) Currently receiving emergency health care in a health
14 care facility.

15 (iii) Currently an outpatient in a health care facility
16 receiving health care that involves a stay of more than 8 hours.

17 (c) "General health condition" means the patient's health
18 status described in 1 or more of the following terms or in terms
19 denoting similar conditions:

20 (i) Critical.

21 (ii) Serious.

22 (iii) Fair.

23 (iv) Good.

24 (d) "Health care" means any care, service, or procedure pro-
25 vided by a health care provider or health facility to diagnose,
26 treat, or maintain a patient's physical condition, or that
27 affects the structure or any function of the human body.

1 (e) "Health facility" means a health facility or agency
2 licensed under article 17 of the public health code, Act No. 368
3 of the Public Acts of 1978, being sections 333.20101 to 333.22260
4 of the Michigan Compiled Laws, or any other organized entity
5 where a health care provider provides health care to patients.

6 (f) "Health care information" or "medical record" means any
7 information, whether oral or recorded in any form or medium, that
8 identifies or can readily be associated with the identity of a
9 patient and relates to the patient's health care, and includes
10 any record of disclosures of health care information. Health
11 care information includes, but is not limited to, medical histo-
12 ries, records, reports, summaries, diagnoses and prognoses,
13 treatment and medication ordered and given, notes, entries, and
14 X-rays and other imaging records. Health care information does
15 not include any of the following:

16 (i) Ordinary business records pertaining to patients'
17 accounts.

18 (ii) Nursing audits.

19 (iii) Physician audits.

20 (iv) Evaluations done by the department of public health.

21 (v) Other audit activities conducted by the department of
22 public health pursuant to administrative rules.

23 (vi) Professional practice review documents.

24 (vii) Evaluations or reviews, other than those listed in
25 subparagraphs (ii) to (vi), used only for in-service education or
26 quality assurance programs or required for accreditation or
27 participation in federally funded programs.

(viii) Mental health records.

(ix) Evaluations done by a department within a health facility for administrative purposes.

(x) Reports, records, and data governed under part 51 of Act No. 368 of the Public Acts of 1978, being sections 333.5101 to 333.5133 of the Michigan Compiled Laws.

(xi) Records governed under sections 6111 to 6113 of Act No. 368 of the Public Acts of 1978, being sections 333.6111 to 333.6113 of the Michigan Compiled Laws.

(g) "Health care provider" means a person who is licensed or otherwise authorized under article 15 of Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, to provide health care in the ordinary course of business or practice of a health profession. Health care provider does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices or psychiatrists, psychologists, social workers, or counselors who provide mental health services.

(h) "Institutional review board" means any board, committee, or other group formally designated by an institution or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(i) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

1 (j) "Minor" does not include an individual who is
2 emancipated under section 4 of Act No. 293 of the Public Acts of
3 1968, being section 722.4 of the Michigan Compiled Laws.

4 (k) "Patient" means an individual who receives or has
5 received health care. Patient includes a deceased individual who
6 has received health care.

7 (l) "Person" means an individual, corporation, estate,
8 trust, partnership, association, joint venture, government, gov-
9 ernmental subdivision or agency, or any other legal or commercial
10 entity.

11 (m) "Third party payer" means a health insurer, nonprofit
12 health care corporation, health maintenance organization, pre-
13 ferred provider organization, medicaid, medicare, or other health
14 care benefits or payment program.

15 ARTICLE 2

16 DISCLOSURE OF HEALTH CARE INFORMATION

17 Sec. 201. (1) Except as otherwise provided in section 204,
18 a health care provider or health facility, an individual who
19 assists a health care provider or health facility in the delivery
20 of health care, an agent or employee of a health care provider or
21 health facility, a third party payer, or any other individual who
22 comes in contact with medical records in the course of the
23 individual's employment shall not disclose health care informa-
24 tion about a patient to any other person without the patient's
25 written authorization. A disclosure of health care information
26 made under a patient's written authorization shall conform to the
27 authorization.

1 (2) A health care provider or health facility shall
2 maintain, in conjunction with a patient's recorded health care
3 information, a record of each person who has received or
4 examined, in whole or in part, the recorded health care informa-
5 tion during the immediately preceding 3 years. The record of
6 disclosure shall include the name, address, and institutional
7 affiliation, if any, of each person receiving or examining the
8 recorded health care information, the date of the receipt or
9 examination, and, to the extent practicable, a description of the
10 information disclosed. This subsection does not apply to a
11 person who has examined the recorded health care information pur-
12 suant to section 204(1) and (2)(a) and (b).

13 Sec. 202. (1) An adult patient or his or her legal guardian
14 or patient advocate or the parent or legal guardian of a patient
15 who is a minor may authorize a health care provider or health
16 facility to disclose the patient's health care information.
17 Subject to subsection (2), a health care provider or health
18 facility shall honor an authorization and if requested provide a
19 copy of the recorded health care information, unless the health
20 care provider or health facility denies the patient access to
21 health care information under section 302.

22 (2) A health care provider or health facility may charge a
23 reasonable fee, not to exceed the actual cost for providing the
24 health care information, unless the request is for copies of the
25 health care information. If the request is for copies of health
26 care information, the health care provider or health facility is
27 subject to the cost limitations set forth in section 301(2). A

1 health care provider or health facility may refuse to honor a
2 disclosure authorization until the fee is paid. A health care
3 provider or health facility shall not charge a fee for an audit
4 requested by a state agency.

5 (3) A health care provider shall not withhold health care
6 information in order to force payment of a fee for services
7 rendered, except a fee for providing the health care information
8 as authorized under subsection (2).

9 (4) A disclosure authorization to a health care provider or
10 health facility, a written release described in
11 section 205(1)(a), and a written waiver of the right to claim
12 confidentiality described in section 205(1)(b) shall meet all of
13 the following requirements:

14 (a) Be in writing, dated, and signed by the patient.

15 (b) Identify the nature of the information to be disclosed.

16 (c) Identify the person to whom the information is to be
17 disclosed.

18 (d) Specify the purpose for which the information may be
19 used by any of the parties to whom it is disclosed.

20 (e) Contain a specific expiration date. If the disclosure
21 authorization has no specific expiration date, then the disclo-
22 sure authorization is valid for 6 months from the date of its
23 execution.

24 (f) Contain a written explanation that the patient has the
25 right to a copy of or to inspect the disclosed information.

26 (5) Except as otherwise provided by this act, the signing of
27 a disclosure authorization by a patient is not a waiver of any

1 rights a patient has under other statutes, the rules of evidence,
2 or common law.

3 (6) A health care provider or health facility shall retain
4 each disclosure authorization or revocation in conjunction with
5 any health care information from which disclosures are made. A
6 health care provider or health facility may retain a disclosure
7 authorization or revocation apart from the health care informa-
8 tion to which it pertains, as long as the disclosure authoriza-
9 tion or revocation is available for inspection in the same manner
10 as the health care information.

11 (7) Except for authorizations to provide information to
12 third party payers, a disclosure authorization shall not permit
13 the release of health care information relating to health care
14 received by the patient beyond the expiration date contained on
15 the disclosure authorization or the date specified in subsection
16 (4)(e). The health care information that is disclosed to a third
17 party payer from a patient's medical record to enable him or her
18 to apply for or receive benefits may be limited to only the iden-
19 tity of the patient and health care provider and a description of
20 the nature, purpose, quantity, date of, and need for the services
21 provided and, if necessary, any pertinent X-rays, photographs,
22 models, or impressions required for billing. A request by a
23 third party payer for additional information shall state with
24 particularity what further information is needed and the reasons
25 for the request. If the patient refuses to consent to the dis-
26 closure of more information, the third party payer shall not
27 cancel benefits or refuse to accept an application for or renew

1 benefits. Except as provided in section 206(1)(b) and except for
2 purposes of claims adjudication, fraud investigation, postpayment
3 review, audit review, or peer review, a third party payer shall
4 not disclose information disclosed to the third party payer
5 except with the consent of the person entitled to give consent.
6 A signed disclosure for use in obtaining reimbursement from third
7 party health care payers has an expiration date of 1 year after
8 signature if no expiration date appears on the form.

9 (8) A disclosure authorization in effect on the effective
10 date of this act is valid for 1 year after the effective date of
11 this act, unless an earlier date is specified or it is revoked
12 under section 203. Health care information disclosed under such
13 an authorization is otherwise subject to this act. A disclosure
14 authorization executed after the effective date of this act
15 becomes invalid after the expiration date contained in the dis-
16 closure authorization. If a disclosure authorization does not
17 contain an expiration date, the disclosure authorization expires
18 upon the expiration of 6 months after the date it is received by
19 a health care provider or health facility.

20 Sec. 203. (1) A patient may revoke a disclosure authoriza-
21 tion in writing to a health care provider or health facility at
22 any time unless disclosure is required to effectuate payments for
23 health care that has been provided by the health care provider or
24 health facility, or other lawful action has been taken by the
25 health care provider or health facility before receipt of the
26 revocation.

1 (2) A health care provider or health facility may make a
2 disclosure of health care information based upon a reasonable,
3 good faith reliance on a disclosure authorization if the health
4 care provider or health facility does not have actual notice of
5 the revocation of the disclosure authorization at the time the
6 disclosure is made.

7 Sec. 204. (1) A health care provider or health facility may
8 disclose health care information about a patient without the
9 patient's disclosure authorization if the health care information
10 disclosed is limited to that specific information needed by the
11 requester to achieve the purpose for which the information is
12 requested and if the disclosure is 1 or more of the following:

13 (a) Made to a person who is providing health care to the
14 patient at the time the disclosure is made.

15 (b) Made to a person who requires the health care informa-
16 tion for health care education including, but not limited to,
17 seminars and lectures; to provide planning, quality assurance,
18 risk management, peer review, or administrative, financial, or
19 actuarial services to the health care provider; for litigation or
20 other legal action by or on behalf of the health care provider;
21 or for assisting the health care provider in the delivery of
22 health care, and the health care provider reasonably believes
23 that the person to whom the disclosure is made will take appro-
24 priate steps to protect the health care information.

25 (c) Made to any other health care provider or health facil-
26 ity who has previously provided health care to the patient, to
27 the extent necessary to provide health care to the patient,

1 unless the patient has instructed the health care provider in
2 writing not to make the disclosure or, if the patient is physi-
3 cally unable to execute such a writing, the patient has orally
4 instructed the health care provider not to make the disclosure.
5 If a patient gives an oral instruction under this subdivision not
6 to disclose information, the health care provider to whom the
7 instruction is given shall enter the instruction into the
8 patient's medical record.

9 (d) Except as otherwise provided by law, made to a parent or
10 legal guardian in the case of a patient who is a minor.

11 (e) Made to a person who is a patient advocate for the
12 patient under a durable power of attorney for health care to the
13 extent that a patient advocate is required to make health care
14 decisions for the patient.

15 (f) Made to the legal guardian of an adult patient, if the
16 legal guardian has the power to make health care decisions for
17 the patient.

18 (g) Made to a health care provider or health facility who is
19 the successor in interest to the health care provider or health
20 facility maintaining the health care information, unless the
21 patient has instructed the health care provider in writing not to
22 make the disclosure or, if the patient is physically unable to
23 execute such a writing, the patient has orally instructed the
24 health care provider not to make the disclosure. If the patient
25 gives an oral instruction to not disclose, the health care pro-
26 vider shall enter the instruction in writing in the patient's
27 permanent medical record. If the patient becomes physically able

1 to execute written instructions not to make the disclosure, the
2 patient shall execute the written instructions and request the
3 health care provider to enter the written instructions into the
4 patient's permanent medical record.

5 (h) Made for use in research if no patient identifiers are
6 released to the researcher or for use in research that may
7 involve the release of identifying information if the research
8 project has been approved by an institutional review board that
9 has considered all of the following requirements:

10 (i) That the research project is of sufficient importance to
11 outweigh the intrusion into the privacy of the patient that would
12 result from the disclosure.

13 (ii) That the research project contains reasonable safe-
14 guards to protect the health care information from redisclosure.

15 (iii) That the research project contains reasonable safe-
16 guards to protect against identifying, directly or indirectly,
17 any patient in any report of the research project.

18 (iv) That the research project contains procedures to remove
19 or destroy at the earliest opportunity, consistent with the pur-
20 poses of the project, health care information that would enable
21 the patient to be identified, unless an institutional review
22 board authorizes retention of identifying information for pur-
23 poses of another research project.

24 (i) Made to a person who obtains the health care information
25 for purposes of an audit, if that person agrees in writing to
26 both of the following:

1 (i) Remove or destroy, at the earliest opportunity
2 consistent with the purpose of the audit, health care information
3 that would enable the patient to be identified.

4 (ii) Not to disclose the health care information further,
5 except to accomplish the audit or report unlawful or improper
6 conduct involving fraud in payment for health care by a health
7 care provider or health facility or a patient, or other unlawful
8 conduct by the health care provider or health facility.

9 (j) Made to an official of a state correctional facility or
10 county jail in which the patient is detained.

11 (k) Directory information, unless the patient has instructed
12 the health care provider or health facility not to make the
13 disclosure.

14 (l) Made to federal, state, or local public health authori-
15 ties, to the extent the health care provider or health facility
16 is required or permitted by law to report health care information
17 or if needed to protect the public health.

18 (m) Made to federal, state, or local law enforcement author-
19 ities to the extent required by law.

20 (n) Made pursuant to compulsory process in accordance with
21 section 205.

22 (o) Made to a person who is providing or has agreed to pro-
23 vide care in an adult foster care facility licensed under the
24 adult foster care facility licensing act, Act No. 218 of the
25 Public Acts of 1979, being sections 400.701 to 400.737 of the
26 Michigan Compiled Laws, if the person residing or to be placed in
27 the adult foster care facility does not have a legal guardian or

1 other legally authorized person to make health care decisions for
2 that person.

3 (2) A health care provider or health facility shall disclose
4 health care information about a patient without the patient's
5 authorization if the disclosure is 1 or more of the following:

6 (a) Made to the department of licensing and regulation or
7 its successor agency or authorized representative for purposes of
8 an investigation under article 15 of the public health code, Act
9 No. 368 of the Public Acts of 1978, being sections 333.16101 to
10 333.18838 of the Michigan Compiled Laws.

11 (b) Made to a federal or state agency whose duties and func-
12 tions are related to the administration of the program for medi-
13 cal assistance under title XIX of the social security act or the
14 children's special health care services program under title V of
15 the social security act and to the state department of social
16 services in the administration of a health care program other
17 than a health care program described in this subdivision.

18 Sec. 205. (1) Except as otherwise provided in
19 section 204(2), a health care provider or health facility shall
20 not disclose health care information pursuant to compulsory legal
21 process or discovery in any judicial, legislative, or administra-
22 tive proceeding unless 1 or more of the following apply:

23 (a) The patient has consented in writing to the release of
24 the health care information in response to compulsory process or
25 a discovery request. The written release described in this sub-
26 division shall comply with the requirements of section 202(4).

1 (b) The patient has knowingly waived the right to claim
2 confidentiality for the health care information sought by
3 executing a written waiver. The written waiver described in this
4 subdivision shall comply with the requirements of section 202(4)
5 and shall contain a statement that the person knowingly waives
6 the right to claim confidentiality for the health care informa-
7 tion sought.

8 (c) The patient is a party to the proceeding and has placed
9 his or her physical or mental condition in issue.

10 (d) The patient's physical or mental condition is relevant
11 to the execution or witnessing of a will.

12 (e) The physical or mental condition of a deceased patient
13 is placed in issue by any person claiming or defending through or
14 as a beneficiary of the patient.

15 (f) A patient's health care information is to be used in the
16 patient's commitment proceeding.

17 (g) The health care information is for use in any law
18 enforcement proceeding or investigation in which a health care
19 provider is the subject or a party. However, health care infor-
20 mation so obtained shall not be used in any proceeding against
21 the patient unless the matter relates to payment for the
22 patient's health care, or unless authorized under
23 subdivision (i).

24 (h) The health care information is relevant to a proceeding
25 brought under article 8.

26 (i) A court has determined that particular health care
27 information is subject to compulsory legal process or discovery

1 because the party seeking the information has demonstrated that
2 the interest in access outweighs the patient's privacy interest.

3 (2) Unless the court, for good cause shown, determines that
4 the notification should be waived or modified, if health care
5 information is sought under subsection (1)(c) or in a civil pro-
6 ceeding or investigation, the person seeking discovery or compul-
7 sory process shall mail a notice of the compulsory process or
8 discovery request by first-class mail to the patient, beneficia-
9 ry, or the patient's or beneficiary's attorney of record not less
10 than 10 days before presenting the certificate required under
11 subsection (3) to the health care provider or health facility.

12 (3) Service of compulsory process or discovery requests upon
13 a health care provider or health facility shall be accompanied by
14 a written certification, signed by the person seeking to obtain
15 health care information, or his or her authorized representative,
16 identifying at least 1 subdivision of subsection (1) under which
17 compulsory process or discovery is being sought. The certificate
18 shall also state, in the case of information sought under
19 subsection (1)(c), (d), (e), or (i), that the requirements of
20 subsection (2) for notice have been met. A person may sign the
21 certification only if the person reasonably believes that the
22 subdivision of subsection (1) identified in the certification
23 provides an appropriate basis for the use of discovery or compul-
24 sory process. Unless otherwise ordered by the court, the health
25 care provider or health facility shall maintain a copy of the
26 process and the written certification as a permanent part of the
27 patient's health care information.

1 (4) Production of health care information under this
2 section, in and of itself, does not constitute a waiver of any
3 privilege, objection, or defense existing under other law or rule
4 of evidence or procedure.

5 Sec. 206. (1) Except as otherwise provided in subsection
6 (2), for purposes of an audit by a third party payer, a health
7 care provider or health facility shall disclose to a third party
8 payer or an outside consultant involved in the audit health care
9 information about a patient without the patient's authorization,
10 if the third party payer agrees to all of the following:

11 (a) Remove or destroy, at the earliest opportunity consis-
12 tent with the purpose of the audit, health care information that
13 would enable the patient to be identified.

14 (b) Not disclose the health care information except to
15 accomplish the audit or report unlawful or improper conduct
16 involving fraud in payment for health care by a health care pro-
17 vider or health facility or patient, or other unlawful conduct by
18 the health care provider or health facility.

19 (2) For purposes of an audit by a third party payer, a
20 health care provider may disclose to the third party payer or an
21 outside consultant involved in the audit health care information
22 consisting of dental records about a patient without the
23 patient's authorization, pursuant to this subsection. The dis-
24 closure is limited to information relating to fees for services
25 in the course of a good faith examination of the health care
26 provider's records to determine the amount and correctness of
27 fees or the type and volume of health care furnished pursuant to

1 provisions for payment established by the third party payer or
2 information required for the third party payer's predetermina-
3 tions, posttreatment reviews, or audits.

4 ARTICLE 3

5 EXAMINATION AND COPYING OF RECORD

6 Sec. 301. (1) Upon receipt of a written request from a
7 patient to examine or copy all or part of the patient's recorded
8 health care information, a health care provider or health facili-
9 ty, as promptly as required under the circumstances, but not
10 later than 10 business days after receipt of the written request,
11 shall do 1 or more of the following, as appropriate:

12 (a) Make the information available for examination during
13 regular business hours and provide a copy, if requested, to the
14 patient of all or part of the health care information, as deter-
15 mined by the patient or his or her legal guardian or patient
16 advocate if the patient is an adult or the parent or legal guard-
17 ian of the patient if the patient is a minor. Before the health
18 care information is made available to the patient, the health
19 care provider or health facility shall remove or delete from a
20 copy any information that could reasonably be expected to iden-
21 tify an individual who provided information in confidence and
22 under circumstances in which confidentiality was statutorily
23 required or permitted. If the patient examines the original
24 health care information, the health care provider or health
25 facility shall replace the identifying information when the
26 patient or his or her legal guardian or patient advocate if the
27 patient is an adult or the parent or legal guardian of the

1 patient if the patient is a minor is finished with the
2 examination.

3 (b) Inform the patient if the information does not exist or
4 cannot be found.

5 (c) If the health care provider or health facility to whom
6 the written request is directed does not maintain a record of the
7 information, so inform the patient and provide the name and
8 address, if known, of the health care provider or health facility
9 that maintains the record.

10 (d) If the information is in use or unusual circumstances
11 have delayed handling the request, inform the patient and specify
12 in writing the reasons for the delay and the earliest date when
13 the information will be available for examination or copying or
14 when the request will be otherwise disposed of.

15 (e) Deny the request, in whole or in part, under section 302
16 and inform the patient of the denial.

17 (f) If the health care provider is unavailable during the
18 period of 10 business days, upon becoming available immediately
19 notify the patient of the health care provider's return and com-
20 plete the request pursuant to this subsection within 10 business
21 days after becoming available.

22 (2) Upon request, a health care provider shall provide an
23 explanation of any code or abbreviation used by the health care
24 provider in the health care information or any other code or
25 abbreviation used in the health care information the meaning of
26 which is known by the health care provider. If a record of the
27 particular health care information requested is not maintained by

1 the health care provider or health facility in the requested
2 form, the health care provider or health facility is not required
3 to create a new record or reformulate an existing record to make
4 the health care information available in the requested form.
5 Except as otherwise provided in this subsection and
6 subsection (3), the health care provider or health facility may
7 charge a retrieval fee not to exceed the actual cost of retrieval
8 and a copying fee not to exceed 20 cents per page for health care
9 information provided at the request of an adult patient or his or
10 her legal guardian or patient advocate or in the case of a minor
11 the patient's parent or legal guardian for the patient's personal
12 use and not for the use of a third party.

13 (3) A health care provider or health facility may charge a
14 reasonable fee for all requests for health care information from
15 statutorily authorized parties other than requests described in
16 subsection (2) and may prohibit copying until the fee is paid. A
17 health care provider or health facility may charge a fee only for
18 those parts of the health care information actually provided.
19 The 20 cents per page limit set forth in subsection (2) and the
20 fee limitation set forth in this subsection do not apply to
21 copies of X-rays or electroencephalogram tracings or other imag-
22 ing records. A health care provider or health facility may
23 charge the actual cost of copying such imaging records.

24 (4) A person entitled to examine and copy health care infor-
25 mation may supply his or her own copying equipment on the
26 premises of the health care provider or health facility and pay
27 only the retrieval fee authorized in subsection (2).

1 (5) The department may promulgate rules to adjust the
2 20-cent per page limit set forth in subsection (2) to allow
3 health care providers and health facilities to meet the costs of
4 providing copies.

5 Sec. 302. (1) A health care provider or health facility may
6 deny a request for health care information under section 301 if
7 the health care provider or health facility reasonably concludes
8 that either or both of the following apply:

9 (a) The information in the medical record was compiled and
10 is used solely for litigation in which the health care provider
11 or health facility is a party. As used in this subdivision,
12 "medical record" is limited to that part of the medical record
13 consisting of notes made by an attorney for the health care pro-
14 vider or health facility.

15 (b) The information in the medical record was compiled and
16 is used solely for quality assurance, peer review, or administra-
17 tive purposes.

18 (c) Access to the health care information is otherwise pro-
19 hibited by law.

20 (2) If a health care provider or health facility denies a
21 request for health care information under this section, the
22 health care provider or health facility, to the extent possible,
23 shall segregate health care information for which access has been
24 denied under subsection (1) from health care information for
25 which access cannot be denied and permit the patient to examine
26 or copy the disclosable health care information.

1 (3) If a health care provider or health facility denies a
2 patient's request for health care information, in whole or in
3 part, under subsection (1), the health care provider or health
4 facility shall permit examination and copying of the record by
5 another health care provider or health facility that is selected
6 by the patient to treat or advise the patient for the same condi-
7 tion as the health care provider or health facility denying the
8 request or by the patient's attorney of record for purposes of
9 litigation. The health care provider or health facility denying
10 the request shall inform the patient of the patient's right to
11 select another health care provider or health facility under this
12 subsection. If the patient does not or cannot select another
13 health care provider or health facility, he or she may petition
14 the court for an order of disclosure.

15 Sec. 303. (1) Medical records retained by a health care pro-
16 vider pertaining to health care rendered by the health care pro-
17 vider in the course of the health care provider's private prac-
18 tice are the property of the health care provider. However, the
19 information contained in the medical records is subject to exami-
20 nation and copying as provided in this article, and is the prop-
21 erty of the patient to whom the health care was rendered.

22 (2) Medical records retained by a health facility pertaining
23 to health care rendered in the health facility by a health care
24 provider that is employed by or under contract to the health
25 facility or admitted to practice in the health facility are the
26 property of the health facility. However, information contained
27 in the medical records is subject to examination and copying as

1 provided in this article, and is the property of the patient to
2 whom the health care was rendered. Medical records described in
3 this subsection are not the property of the health care provider
4 who rendered the health care.

5 ARTICLE 4

6 AMENDMENT OF MEDICAL RECORD

7 Sec. 401. (1) For purposes of accuracy or completeness, a
8 patient may request in writing that a health care provider or
9 health facility amend a record of the patient's health care
10 information kept by the health care provider or health facility.

11 (2) As promptly as required under the circumstances, but not
12 later than 10 business days after receiving a request from a
13 patient to amend a record of the patient's health care informa-
14 tion kept by the health care provider or health facility, the
15 health care provider or health facility shall do 1 or more of the
16 following, as appropriate:

17 (a) Make the requested amendment and inform the patient of
18 the action and of the patient's right to have the amendment sent
19 to previous recipients of the health care information in question
20 within 14 business days after the amendment is made.

21 (b) Inform the patient if the record no longer exists or
22 cannot be found.

23 (c) If the health care provider or health facility does not
24 maintain the record, inform the patient and provide the patient
25 with the name and address, if known, of the person who maintains
26 the record.

1 (d) If the record is in use or unusual circumstances have
2 delayed the handling of the amendment request, inform the patient
3 and specify in writing the reasons for the delay and the earliest
4 date when the amendment will be made or when the request will
5 otherwise be disposed of.

6 (e) Inform the patient in writing of the health care
7 provider's or health facility's refusal to amend the record as
8 requested, the reason for the refusal, and the patient's right to
9 add a statement of disagreement and to have that statement sent
10 to previous recipients of the disputed health care information.

11 Sec. 402. (1) In making an amendment under this section,
12 the health care provider or health facility shall do both of the
13 following:

14 (a) Add the amending information as a part of the medical
15 record.

16 (b) Mark the challenged entries as amended entries and indi-
17 cate the place in the record where the amended information is
18 located, in a manner practicable under the circumstances.

19 (2) If the health care provider or health facility maintain-
20 ing the record of the patient's health care information refuses
21 to make the patient's requested amendment, the health care pro-
22 vider or health facility shall do both of the following:

23 (a) Permit the patient to file, as a part of the record of
24 the patient's health care information, a concise statement of the
25 amendment requested and the reasons for the amendment.

26 (b) Mark the challenged entry to indicate that the patient
27 claims the entry is inaccurate or incomplete and indicate the

1 place in the medical record where the statement of disagreement
2 is located, in a manner practicable under the circumstances.

3 Sec. 403. (1) Upon written request of a patient, a health
4 care provider or health facility shall take reasonable steps to
5 provide copies of amended information or of a statement of dis-
6 agreement to all persons designated by the patient who are iden-
7 tified in the health care information as having examined or
8 received copies of the information sought to be amended.

9 (2) A health care provider or health facility may charge the
10 patient a reasonable fee, not exceeding 20 cents per page for
11 distributing amended information or the statement of disagree-
12 ment, unless the health care provider's or health facility's
13 error necessitated the amendment.

14 ARTICLE 5

15 NOTICE OF INFORMATION PRACTICES

16 Sec. 501. (1) A health care provider or health facility
17 that maintains a record of a patient's health care information
18 shall create a notice of information practices that contains sub-
19 stantially the following language:

20 NOTICE

21 "We keep a record of the health care we provide you.
22 You may ask us to see and copy that record. The cost to
23 you of copying that record is 20 cents per page. You
24 may also ask us to amend that record. We will not dis-
25 close your record to others unless you direct us to do
26 so or unless the law authorizes or compels us to do so.

(2) The health care provider or health facility shall post a copy of the notice of information practices required under subsection (1) in a conspicuous place and, upon request, a health care provider or health facility shall provide patients or prospective patients with a copy of the notice. The health care provider or health facility shall include the information contained in the notice in the disclosure authorization form.

10 (3) The notice of information practices shall include infor-
11 mation concerning any administrative costs associated with
12 obtaining a copy of a medical record.

13 (4) The department of licensing and regulation or its suc-
14 cessor agency or authorized representative shall enforce this
15 section as it applies to health care providers and may impose
16 administrative penalties for a violation of this section. The
17 department of public health shall enforce this section as it
18 applies to health facilities and may impose administrative penal-
19 ties for a violation of this section.

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1 under the laws of this state, only the minor may exercise the
2 rights of a patient under this act as to information pertaining
3 to health care to which the minor lawfully consented.

4 (2) A person authorized to act for a patient shall act in
5 good faith to represent the best interests of the patient.

6 Sec. 602. A personal representative of a deceased patient
7 may exercise all of the deceased patient's rights under this
8 act. If there is no personal representative, or upon discharge
9 of the personal representative, a deceased patient's rights under
10 this act may be exercised by persons who are authorized by law to
11 act for the deceased patient. As used in this section, "personal
12 representative" means that term as defined in section 9 of the
13 revised probate code, Act No. 642 of the Public Acts of 1978,
14 being section 700.9 of the Michigan Compiled Laws.

15 ARTICLE 7

16 SECURITY SAFEGUARDS AND RECORD RETENTION

17 Sec. 701. A health care provider or health facility shall
18 effect reasonable safeguards for the security of all health care
19 information maintained by the health care provider or health
20 facility.

21 Sec. 702. (1) A health care provider or health facility
22 shall retain medical records in the original or reproduced form
23 for not less than 7 years after the date the health care to which
24 the medical records pertain is rendered. If the patient is a
25 minor at the time the health care is rendered, the health care
26 provider or health facility shall retain the medical records for
27 not less than 7 years after the date the health care to which the

1 medical records pertain is rendered or until the minor reaches 18
2 years of age, whichever is longer.

3 (2) A health care provider or health facility shall retain
4 electroencephalogram tracings, X-ray films, and similar imaging
5 records for not less than 7 years. After the expiration of the
6 7-year period, such records may be destroyed by shredding, incin-
7 eration, or pulping or by other means determined appropriate by
8 rule of the department. Interpretations of electroencephalogram
9 tracings, X-ray films, and similar imaging records are subject to
10 subsection (1). A health care provider at the time treatment is
11 rendered and a health facility at the time of admission or dis-
12 charge shall notify each patient in writing of the requirements
13 of this section. The written notice shall include a statement
14 that if the patient wants a copy of the medical records, he or
15 she must so notify the health care provider or health facility in
16 writing before the expiration of the 7-year period. The notice
17 shall also inform the patient as to the procedure for obtaining
18 copies of medical records and of the requirements of subsection
19 (4). The notice required under this subsection need only be
20 given once to a particular patient.

21 (3) After the period required under subsection (1) or (2), a
22 health care provider or health facility may destroy the medical
23 records by shredding, incineration, or other means as provided by
24 rule of the department of public health. However, the health
25 care provider or health facility shall retain basic information
26 from each medical record destroyed. For purposes of this
27 subsection, basic information consists of all of the following:

1 (a) For a health care provider:

2 (i) The patient's name, birth date, and social security
3 number.

4 (ii) A list of diagnoses and health care consisting of inva-
5 sive procedures and the dates the diagnoses or procedures were
6 made or performed, chronic illnesses, genetic diseases, or
7 chronic mental illness.

8 (b) For a health facility:

9 (i) The patient's name, birth date, and social security
10 number.

11 (ii) Dates of admission and discharge.

12 (iii) Name of attending physician.

13 (iv) Operative reports.

14 (v) Surgical pathology reports.

15 (vi) Discharge summaries.

16 (4) A health care provider or health facility shall retain
17 the basic information as described in subsection (3) for not less
18 than 25 years after the date the health care to which the basic
19 information pertains is rendered. If the health care is rendered
20 to a minor, the health care provider or health facility shall
21 retain the basic information during the period of minority and
22 for not less than 25 years after the minor reaches 18 years of
23 age.

24 (5) Before a health care provider or health facility closes
25 or otherwise stops providing health care to patients, the health
26 care provider or health facility shall arrange for the retention
27 and preservation of medical records in compliance with this

1 section. A health care provider or health facility may
2 computerize or minify medical records by the use of microfilm or
3 other similar photographic process or by a process determined
4 appropriate by the department of public health by rule, as long
5 as the storage method used creates an unalterable record that is
6 readily accessible.

7 (6) A health care provider or health facility that closes or
8 otherwise stops providing health care to patients shall publish
9 notice of the closure in a newspaper of general circulation in
10 the county in which the health care provider's practice or the
11 health facility is located for not less than 5 consecutive days.
12 The notice required under this subsection shall be published not
13 less than 2 months before the effective date of the closure and
14 shall contain at least all of the following information:

15 (a) If the health care provider or health facility has con-
16 tracted with an entity to retain medical records after the clo-
17 sure, the name and address of the entity and the name and tele-
18 phone number of an individual employed by the entity who will be
19 able to give further information regarding retention and accessi-
20 bility of the medical records.

21 (b) Notice that a patient may obtain a copy of his or her
22 medical records before closure or that if the patient so chooses,
23 he or she may obtain the original medical records for his or her
24 own retention or for retention by another health care provider or
25 health facility. If a health care provider or health facility
26 gives an original medical record to a patient, then the health
27 care provider or health facility shall retain a record of the

1 name, last known address, social security number, date of birth,
2 and telephone number of the patient. The health care provider or
3 health facility shall keep the information required by this sub-
4 section with all other medical records retained by the health
5 care provider or health facility. If all patients of the health
6 care provider or health facility choose to obtain their original
7 medical records, then the health care provider or health facility
8 shall retain a record of the information required under this sub-
9 division and transmit the record to the department of public
10 health. The department of public health shall make the records
11 available to the department of social services for the adminis-
12 tration of programs administered by the department of social
13 services.

14 (7) If a patient does not respond to the notice published
15 under subsection (6), and the health care provider or health
16 facility has not contracted with an entity to retain medical
17 records as described in subsection (6), the health care provider
18 or health facility shall contract for storage of medical records
19 with another health care provider or health facility or other
20 entity. If the health care provider or health facility can show
21 sufficient evidence that it has attempted to find a new location
22 for the medical records but has not been successful, it may
23 request the department of public health to serve as the storage
24 site. The department of public health shall take possession of
25 medical records if requested to do so under this subsection, but
26 may require that the medical records be computerized or minified
27 as described in subsection (5), if appropriate. If minifying or

1 computerization is not available, the department of public health
2 shall accept the actual medical records.

3 (8) A health care provider or health facility that destroys
4 medical records in compliance with this section is not subject to
5 criminal or civil liability for the destruction.

6 (9) The department of public health may promulgate rules to
7 implement this section.

8 ARTICLE 8

9 CIVIL REMEDIES AND CRIMINAL AND ADMINISTRATIVE SANCTIONS

10 Sec. 801. (1) A person who willfully discloses health care
11 information in violation of this act, and who knew or should have
12 known that the disclosure was prohibited, is guilty of a misde-
13 meanor, punishable by imprisonment for not more than 1 year or a
14 fine of not more than \$10,000.00, or both.

15 (2) A person who, by means of bribery; theft; misrepresenta-
16 tion of identity, purpose of use, or entitlement to the informa-
17 tion; or trespass, examines or obtains health care information
18 maintained by a health care provider or health facility in viola-
19 tion of this act is guilty of a misdemeanor, punishable by
20 imprisonment for not more than 1 year or a fine of not more than
21 \$10,000.00, or both.

22 (3) A person who, knowing that a certification under
23 section 205(3) or a disclosure authorization under section 202 is
24 false, willfully presents the certification or disclosure autho-
25 rization to a health care provider or health facility is guilty
26 of a misdemeanor, punishable by imprisonment for not more than 1
27 year, a fine of not more than \$10,000.00, or both.

1 (4) A health care provider or health facility that violates
2 section 702 by destroying medical records without attempting to
3 notify patients as required under that section is guilty of a
4 misdemeanor punishable by imprisonment for not more than 1 year
5 or a fine of not more than \$10,000.00, or both, for each patient
6 whose medical records were destroyed in violation of
7 section 702.

8 (5) A health care provider or health facility that violates
9 section 702(6)(b) by failing to keep a record of each patient who
10 chooses to obtain his or her original medical records is guilty
11 of a misdemeanor, punishable by imprisonment for not less than 1
12 year or a fine of not more than \$10,000.00, or both, for each
13 patient for whom a record was not kept.

14 Sec. 802. The attorney general or a county prosecutor shall
15 prosecute violations of this act and may maintain a civil action
16 to enforce this act. The court may order any relief authorized
17 under section 803.

18 Sec. 803. (1) A person aggrieved by a violation of this act
19 may maintain a civil action as provided in this section.

20 (2) The court may order a health care provider or health
21 facility or other person to comply with this act and may order
22 any other appropriate relief.

23 (3) A health care provider or health facility that relies in
24 good faith upon a certification pursuant to section 205(3) is not
25 liable for disclosures made in reliance on that certification.

26 (4) In an action by a patient alleging that health care
27 information was improperly withheld under article 3, the burden

1 of proof is on the health care provider or health facility to
2 establish that the information was properly withheld.

3 (5) If the court determines that there is a violation of
4 this act, the aggrieved person may recover damages for pecuniary
5 losses sustained as a result of the violation, and, in addition,
6 if the violation results from willful or grossly negligent con-
7 duct, the aggrieved person may recover exemplary damages of not
8 more than \$5,000.00, exclusive of any pecuniary loss.

9 (6) The court may assess reasonable attorney's fees and all
10 other expenses reasonably incurred in the litigation to the pre-
11 vailing party.

12 (7) A health care provider or health facility shall not
13 enter into a contract that would alter the provisions of this
14 act.

15 Sec. 804. (1) A health care provider who denies a request
16 for health care information in violation of this act is subject
17 to administrative penalties under article 15 of the public health
18 code, Act No. 368 of the Public Acts of 1978, being
19 sections 333.16101 to 333.18838 of the Michigan Compiled Laws.

20 (2) A health facility that denies a request for health care
21 information in violation of this act is subject to administrative
22 penalties under article 17 of the public health code, Act No. 368
23 of the Public Acts of 1978, being sections 333.20101 to 333.22260
24 of the Michigan Compiled Laws.

25 (3) A health care provider or health facility that discloses
26 or denies access to health care information in compliance with

1 this act is not subject to civil, administrative, or criminal
2 liability for the disclosure or denial.