



HOUSE BILL No. 4749

May 11, 1993, Introduced by Reps. Bennane, Leland, Berman, Hollister, Jondahl, Wetters, Dobronski, Varga, Gire, Scott, Shepich, Wallace, Gubow, Olshove, Profit, Yokich, Saunders, Freeman, Emerson, Ciaramitaro, Baade, DeMars, Harder, Curtis, Harrison, Griffin, Brown, Porreca, Hood, Stallworth, Rivers, Richard A. Young, Mathieu, Byrum, Barns, Jacobetti, Gagliardi, Owen and Keith 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

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

Sec. 102. As used in this act:

(a) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider or health facility by 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) "Business day" means a day other than a Saturday,
10 Sunday, or holiday recognized and observed by the state or fed-
11 eral government.

12 (c) "Directory information" means information disclosing the
13 presence and the general health condition of a particular patient
14 who is 1 of the following:

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

16 (ii) Currently receiving emergency health care in a health
17 care facility.

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

20 (d) "General health condition" means the patient's health
21 status described in 1 or more of the following terms or in terms
22 denoting similar conditions:

23 (i) Critical.

24 (ii) Serious.

25 (iii) Fair.

26 (iv) Good.

1 (e) "Health care" means any care, service, or procedure
2 provided by a health care provider or health facility to
3 diagnose, treat, or maintain a patient's physical condition, or
4 that affects the structure or any function of the human body.

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

10 (g) "Health care information" or "medical record" means any
11 information recorded in any form or medium that identifies or can
12 readily be associated with the identity of a patient and relates
13 to the patient's health care, and includes any record of disclo-
14 sures of health care information. Health care information
15 includes, but is not limited to, medical histories, records,
16 reports, summaries, diagnoses and prognoses, treatment and medi-
17 cation ordered and given, notes, entries, and X-rays and other
18 imaging records. Health care information does not include any of
19 the following:

20 (i) Ordinary business records pertaining to patients'
21 accounts.

22 (ii) Nursing audits.

23 (iii) Physician audits.

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

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

1 (vi) Professional practice review documents disclosed under
2 Act No. 270 of the Public Acts of 1967, being sections 331.531 to
3 331.533 of the Michigan Compiled Laws.

4 (vii) Evaluations or reviews, other than those listed in
5 subparagraphs (ii) to (vi), used only for in-service education or
6 quality assurance programs or required for accreditation or par-
7 ticipation in federally funded programs.

8 (viii) Mental health records.

9 (ix) Evaluations done by a department within a health facil-
10 ity for administrative purposes.

11 (x) Reports, records, and data governed under part 51 of Act
12 No. 368 of the Public Acts of 1978, being sections 333.5101 to
13 333.5133 of the Michigan Compiled Laws.

14 (xi) Records governed under sections 6111 to 6113 of Act
15 No. 368 of the Public Acts of 1978, being sections 333.6111 to
16 333.6113 of the Michigan Compiled Laws.

17 (h) "Health care provider" means a person who is licensed or
18 otherwise authorized under article 15 of Act No. 368 of the
19 Public Acts of 1978, being sections 333.16101 to 333.18838 of the
20 Michigan Compiled Laws, to provide health care in the ordinary
21 course of business or practice of a health profession. Health
22 care provider does not include a person who provides health care
23 solely through the sale or dispensing of drugs or medical devices
24 or a psychiatrist, psychologist, social worker, or counselor who
25 provides mental health services.

26 (i) "Institutional review board" means any board, committee,
27 or other group formally designated by an institution or

1 authorized under federal or state law, to review, approve the
2 initiation of, or conduct periodic review of research programs to
3 assure the protection of the rights and welfare of human research
4 subjects.

5 (j) "Maintain", as related to health care information, means
6 to hold, possess, preserve, retain, store, or control health care
7 information.

8 (k) "Minor" means an individual who is less than 18 years of
9 age, but does not include an individual who is emancipated under
10 section 4 of Act No. 293 of the Public Acts of 1968, being sec-
11 tion 722.4 of the Michigan Compiled Laws.

12 (l) "Patient" means an individual who receives or has
13 received health care. Patient includes a deceased individual who
14 has received health care.

15 (m) "Person" means an individual, corporation, estate,
16 trust, partnership, association, joint venture, government, gov-
17 ernmental subdivision or agency, or any other legal or commercial
18 entity.

19 (n) "Personal representative" means that term as defined in
20 section 9 of the revised probate code, Act No. 642 of the Public
21 Acts of 1978, being section 700.9 of the Michigan Compiled Laws.

22 (o) "Third party payer" means a health insurer, nonprofit
23 health care corporation, health maintenance organization, pre-
24 ferred provider organization, nonprofit dental care corporation,
25 medicaid, medicare, or other public or private health care bene-
26 fits or payment program.

ARTICLE 2

DISCLOSURE OF HEALTH CARE INFORMATION

1 Sec. 201. (1) Except as otherwise provided in section 204,
2 a health care provider or health facility, an individual who
3 assists a health care provider or health facility in the delivery
4 of health care, an agent or employee of a health care provider or
5 health facility, a third party payer, or any other person who
6 comes in contact with medical records in the course of the
7 person's employment shall not disclose health care information
8 about a patient to any other person without the patient's written
9 authorization. A disclosure of health care information made
10 under a patient's written authorization shall conform to the
11 authorization.

12 (2) A health care provider or health facility shall main-
13 tain, in conjunction with a patient's recorded health care infor-
14 mation, a record of each person who has received or examined, in
15 whole or in part, the recorded health care information during the
16 immediately preceding 3 years. The record of disclosure shall
17 include the name, address, and institutional affiliation, if any,
18 of each person receiving or examining the recorded health care
19 information, the date of the receipt or examination, and, to the
20 extent practicable, a description of the health care information
21 disclosed. This subsection does not apply to a person who has
22 examined the recorded health care information pursuant to
23 section 204.

24 Sec. 202. (1) An adult patient, or his or her legal
25 guardian or patient advocate or conservator, or the parent or

1 legal guardian of a patient who is a minor may authorize a health
2 care provider or health facility to disclose the patient's health
3 care information. Subject to subsection (2), a health care pro-
4 vider or health facility shall honor a disclosure authorization
5 under this subsection and, if requested, provide a copy of the
6 recorded health care information, unless the health care provider
7 or health facility denies the patient access to health care
8 information under section 302.

9 (2) A health care provider or health facility may charge a
10 reasonable fee, not to exceed the actual cost, for providing the
11 health care information, unless a contract with a third party
12 payer provides otherwise or unless the request is for copies of
13 the health care information. If the request is for copies of
14 health care information, the health care provider or health
15 facility is subject to the cost limitations set forth in
16 section 301(2). A health care provider or health facility may
17 refuse to honor a disclosure authorization until the fee is
18 paid. A health care provider or health facility shall not charge
19 a fee for an audit requested by a state agency or an audit
20 required under a contract with a third party payer.

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

25 (4) A disclosure authorization to a health care provider or
26 health facility, a written release described in
27 section 205(1)(a), and a written waiver of the right to claim

1 confidentiality described in section 205(1)(b) shall meet all of
2 the following requirements:

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

4 (b) Identify the nature of the health care information to be
5 disclosed.

6 (c) Identify the person to whom the health care information
7 is to be disclosed.

8 (d) Specify the purpose for which the health care informa-
9 tion may be used by any of the parties to whom it is disclosed.

10 (e) Contain a specific expiration date. If the disclosure
11 authorization has no specific expiration date, then the disclo-
12 sure authorization is valid until revoked by the patient.

13 (f) Contain a written explanation that the patient has the
14 right to a copy of or to inspect the disclosed health care
15 information.

16 (5) Except as otherwise provided by this act, the signing of
17 a disclosure authorization by a patient is not a waiver of any
18 rights a patient has under other statutes, the rules of evidence,
19 or common law.

20 (6) A health care provider or health facility shall retain
21 each disclosure authorization or revocation in conjunction with
22 any health care information from which disclosures are made. A
23 health care provider or health facility may retain a disclosure
24 authorization or revocation apart from the health care informa-
25 tion to which it pertains, as long as the disclosure authoriza-
26 tion or revocation is available for inspection in the same manner
27 as the health care information and the health care information is

1 annotated to indicate the existence of the disclosure
2 authorization or revocation.

3 (7) Except for authorizations to provide information to
4 third party payers, a disclosure authorization expires as pro-
5 vided in subsection (9).

6 (8) The health care information that is disclosed to a third
7 party payer from a patient's medical record or provided by
8 another third party payer to enable the patient to apply for or
9 receive benefits may be limited to only the identity of the
10 patient and health care provider and a description of the nature,
11 purpose, quantity, date of, and need for the services provided
12 and, if necessary, any pertinent X-rays, photographs, models, or
13 impressions required for billing. A request by a third party
14 payer for additional information shall state with particularity
15 what further information is needed and the reasons for the
16 request. Except as provided in section 206(1)(b) and (2) and
17 except for purposes of claims adjudication, fraud investigation,
18 posttreatment review, postpayment review, audit review, or peer
19 review, a third party payer shall not disclose health care infor-
20 mation disclosed to the third party payer except with the consent
21 of the person entitled to give consent. A signed disclosure form
22 for use in obtaining reimbursement from third party payers
23 expires on the expiration date appearing on the disclosure form.
24 If no expiration date appears on the form, the signed disclosure
25 form expires when revoked by the patient.

26 (9) A disclosure authorization in effect on the effective
27 date of this act expires on the expiration date appearing on the

1 disclosure authorization form or, if no expiration date appears
2 on the disclosure authorization form, it expires when revoked by
3 the patient. Health care information disclosed under such an
4 authorization is otherwise subject to this act. A disclosure
5 authorization executed after the effective date of this act
6 becomes invalid after the expiration date appearing on the dis-
7 closure authorization form. If no expiration date appears on the
8 disclosure authorization, the disclosure authorization expires
9 when it is revoked by the patient.

10 Sec. 203. (1) A patient may revoke a disclosure authoriza-
11 tion in writing to a health care provider or health facility at
12 any time unless disclosure is required to effectuate payments for
13 health care that has been provided by the health care provider or
14 health facility, or other lawful action has been taken by the
15 health care provider or health facility before receipt of the
16 revocation.

17 (2) A health care provider or health facility may make a
18 disclosure of health care information based upon a reasonable,
19 good faith reliance on a disclosure authorization if the health
20 care provider or health facility does not have actual notice of
21 the revocation of the disclosure authorization at the time the
22 disclosure is made.

23 Sec. 204. (1) A health care provider or health facility may
24 disclose health care information about a patient without the
25 patient's disclosure authorization if the health care information
26 disclosed is limited to that specific health care information

1 needed to achieve the purpose for which the information is
2 requested and if the disclosure is 1 or more of the following:

3 (a) Made to a person who is providing health care to the
4 patient at the time the disclosure is made, to the extent neces-
5 sary to provide health care to the patient.

6 (b) Made to a person who requires the health care informa-
7 tion for health care education including, but not limited to,
8 seminars and lectures; to provide planning, quality assurance,
9 risk management, peer review, utilization review, or administra-
10 tive, financial, or actuarial services to the health care provid-
11 er; for litigation or other legal action by or on behalf of the
12 health care provider; or for assisting the health care provider
13 in the delivery of health care, and the health care provider rea-
14 sonably believes that the person to whom the disclosure is made
15 will take appropriate steps to maintain the confidentiality of
16 the health care information.

17 (c) Made to any other health care provider or health facil-
18 ity who has previously provided health care to the patient, to
19 the extent necessary to provide health care to the patient,
20 unless the patient has instructed the health care provider in
21 writing not to make the disclosure or, if the patient is physi-
22 cally unable to execute such a writing, the patient has orally
23 instructed the health care provider not to make the disclosure.
24 If a patient gives an oral instruction under this subdivision not
25 to disclose health care information, the health care provider to
26 whom the instruction is given shall enter a memorandum of the

1 instruction in writing into the patient's permanent medical
2 record.

3 (d) Made to a health care provider or health facility who is
4 the successor in interest to the health care provider or health
5 facility maintaining the health care information, unless the
6 patient has instructed the health care provider in writing not to
7 make the disclosure or, if the patient is physically unable to
8 execute such a writing, the patient has orally instructed the
9 health care provider not to make the disclosure. If the patient
10 gives an oral instruction not to disclose health care informa-
11 tion, the health care provider shall enter the instruction in
12 writing into the patient's permanent medical record. If the
13 patient becomes physically able to execute written instructions
14 not to make the disclosure, the patient shall execute the written
15 instructions and request the health care provider to enter the
16 written instructions into the patient's permanent medical
17 record.

18 (e) Made for use in research if no patient identifiers are
19 released to the researcher or for use in research that may
20 involve the release of identifying information and if the
21 research project has been approved by an institutional review
22 board that has considered all of the following requirements:

23 (i) That the research project is of sufficient importance to
24 outweigh the intrusion into the privacy of the patient that would
25 result from the disclosure.

1 (ii) That the research project contains reasonable
2 safeguards to protect the health care information from
3 redisclosure.

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

7 (iv) That the research project contains procedures to remove
8 or destroy at the earliest opportunity, consistent with the pur-
9 poses of the project, health care information that would enable
10 the patient to be identified, unless an institutional review
11 board authorizes retention of identifying information for pur-
12 poses of another research project.

13 (f) Directory information, unless the patient has instructed
14 the health care provider or health facility in writing not to
15 make the disclosure.

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

19 (a) Made to the department of commerce or its successor
20 agency or authorized representative for purposes of an investiga-
21 tion under article 15 of the public health code, Act No. 368 of
22 the Public Acts of 1978, being sections 333.16101 to 333.18838 of
23 the Michigan Compiled Laws.

24 (b) Made to a federal or state agency whose duties and func-
25 tions are related to the administration of the program for medi-
26 cal assistance under title XIX of the social security act,
27 chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396g and 1396i to

1 1396u, or the children's special health care services program
2 under title V of the social security act, chapter 531, 49
3 Stat. 620, 42 U.S.C. 701 to 703, 704, and 705 to 709, and to the
4 state department of social services in the administration of a
5 health care program other than a health care program described in
6 this subdivision.

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

9 (d) Made to a person who is a patient advocate or an agent
10 for the patient under a durable power of attorney for health care
11 to the extent that the patient advocate or agent is required to
12 make health care decisions for the patient.

13 (e) Made to the legal guardian of an adult patient, if the
14 legal guardian has the power to make health care decisions for
15 the patient.

16 (f) Made to a person who obtains the health care information
17 for purposes of an audit, if that person agrees in writing to
18 both of the following:

19 (i) Remove or destroy, at the earliest opportunity consis-
20 tent with the purpose of the audit, health care information that
21 would enable the patient to be identified.

22 (ii) Not to disclose the health care information further,
23 except to accomplish the audit or report unlawful or improper
24 conduct involving fraud in obtaining payment for health care by a
25 health care provider or health facility or a patient, or other
26 unlawful conduct by the health care provider or health facility.

1 (g) Made to an official of a state correctional facility or
2 county jail in which the patient is detained.

3 (h) Made to federal, state, or local public health authori-
4 ties, to the extent the health care provider or health facility
5 is required or permitted by law to report health care information
6 or if needed to protect the public health.

7 (i) Made to federal, state, or local law enforcement author-
8 ities to the extent required by law.

9 (j) Made pursuant to compulsory process in accordance with
10 section 205.

11 (k) Made to a person who is providing or has agreed to pro-
12 vide care in an adult foster care facility licensed under the
13 adult foster care facility licensing act, Act No. 218 of the
14 Public Acts of 1979, being sections 400.701 to 400.737 of the
15 Michigan Compiled Laws, if the person residing or to be placed in
16 the adult foster care facility does not have a legal guardian or
17 other legally authorized person to make health care decisions for
18 that person.

19 (l) Made to a trustee under a trust agreement executed by
20 the patient, if the patient is deceased and there is no personal
21 representative or if the trustee is acting pursuant to a provi-
22 sion in the trust agreement that requires a determination that
23 the patient has become disabled due to a mental or physical
24 disability.

25 (m) Made to a personal representative of the patient.

26 Sec. 205. (1) Except as otherwise provided in
27 section 204(2) and subject to subsections (2) and (3), a health

1 care provider or health facility shall not disclose health care
2 information pursuant to compulsory legal process or discovery in
3 any judicial, legislative, or administrative proceeding unless 1
4 or more of the following apply:

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

9 (b) The patient has knowingly waived the right to claim con-
10 fidentiality for the health care information sought by executing
11 a written waiver. The written waiver described in this subdivi-
12 sion shall comply with the requirements of section 202(4) and
13 shall contain a statement that the person knowingly waives the
14 right to claim confidentiality for the health care information
15 sought.

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

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

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

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

25 (g) The health care information is for use in any law
26 enforcement proceeding or investigation in which a health care
27 provider is the subject or a party. However, health care

1 information so obtained shall not be used in any proceeding
2 against the patient unless the matter relates to payment for the
3 patient's health care, or unless authorized under
4 subdivision (i).

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

7 (i) A court has determined that particular health care
8 information is subject to compulsory legal process or discovery
9 because the party seeking the information has demonstrated that
10 the interest in access outweighs the patient's privacy interest.

11 (2) Unless the court, for good cause shown, determines that
12 the notification should be waived or modified, if health care
13 information is sought under subsection (1)(c), (d), (e), or (i)
14 or in a civil proceeding or investigation, the person seeking
15 discovery or compulsory process shall mail a notice of the com-
16 pulsory process or discovery request by first-class mail to the
17 patient, beneficiary, or the patient's or beneficiary's attorney
18 of record not less than 10 days before presenting the certificate
19 required under subsection (3) to the health care provider or
20 health facility.

21 (3) Service of compulsory process or discovery requests upon
22 a health care provider or health facility shall be accompanied by
23 a written certification, signed by the person seeking to obtain
24 health care information or his or her authorized representative
25 identifying at least 1 subdivision of subsection (1) under which
26 compulsory process or discovery is being sought. The certificate
27 shall also state, in the case of information sought under

1 subsection (1)(c), (d), (e), or (i), that the requirements of
2 subsection (2) for notice have been met. A person may sign the
3 certification only if the person reasonably believes that the
4 subdivision of subsection (1) identified in the certification
5 provides an appropriate basis for the use of discovery or compul-
6 sory process. Unless otherwise ordered by the court, the health
7 care provider or health facility shall maintain a copy of the
8 process and the written certification as a permanent part of the
9 patient's health care information.

10 (4) Production of health care information under this sec-
11 tion, in and of itself, does not constitute a waiver of any priv-
12 ilege, objection, or defense existing under other statutes, the
13 common law, or the rules of evidence.

14 Sec. 206. (1) Except as otherwise provided in subsection
15 (2), for purposes of an audit by a third party payer, a health
16 care provider or health facility shall disclose to the third
17 party payer or an outside consultant involved in the audit health
18 care information about a patient without the patient's authoriza-
19 tion, if the third party payer agrees to all of the following:

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

23 (b) Not disclose the health care information except to
24 accomplish the audit or report unlawful or improper conduct
25 involving fraud in obtaining payment for health care by a health
26 care provider or health facility or patient, or other unlawful
27 conduct by the health care provider or health facility.

1 (2) For purposes of an audit by a third party payer, a
2 health care provider may disclose to the third party payer or an
3 outside consultant involved in the audit health care information
4 consisting of dental records about a patient without the
5 patient's authorization, pursuant to this subsection. The dis-
6 closure is limited to information relating to fees for services
7 in the course of a good faith examination of the health care
8 provider's records to determine the amount and correctness of
9 fees or the type and volume of health care furnished pursuant to
10 provisions for payment established by the third party payer or
11 information required for the third party payer's predetermina-
12 tions, posttreatment reviews, or audits.

13 ARTICLE 3

14 EXAMINATION AND COPYING OF RECORD

15 Sec. 301. (1) Upon receipt of a written request from a
16 patient to examine or copy all or part of the patient's recorded
17 health care information, a health care provider or health facili-
18 ty, as promptly as required under the circumstances, but not
19 later than 15 business days after receipt of the written request,
20 shall do 1 or more of the following, as appropriate:

21 (a) Make the information available for examination during
22 regular business hours and provide a copy, if requested, to the
23 patient of all or part of the health care information, as deter-
24 mined by the patient. Before the health care information is made
25 available to the patient, the health care provider or health
26 facility shall remove or delete from a copy any information that
27 could reasonably be expected to identify an individual who

1 provided information in confidence and under circumstances in
2 which confidentiality was statutorily required or permitted. If
3 the patient examines the original health care information, the
4 health care provider or health facility shall replace the identi-
5 fying information when the patient is finished with the
6 examination.

7 (b) Inform the patient if the health care information does
8 not exist or cannot be found.

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

14 (d) If the health care information is in use or unusual cir-
15 cumstances have delayed handling the request, inform the patient
16 and specify in writing the reasons for the delay and the earliest
17 date when the health care information will be available for exam-
18 ination or copying or when the request will be otherwise disposed
19 of.

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

22 (f) If the health care provider is unavailable during the
23 period of 15 business days, upon becoming available immediately
24 notify the patient of the health care provider's return and com-
25 plete the request pursuant to this subsection within 15 business
26 days after becoming available.

1 (2) Upon request, a health care provider shall provide an
2 explanation of any code or abbreviation used by the health care
3 provider in the health care information or any other code or
4 abbreviation used in the health care information the meaning of
5 which is known by the health care provider.

6 (3) If a record of the particular health care information
7 requested is not maintained by the health care provider or health
8 facility in the requested form, the health care provider or
9 health facility is not required to create a new record or refor-
10 mulate an existing record to make the health care information
11 available in the requested form.

12 (4) Except as otherwise provided in this subsection and
13 subsections (5) and (6), the health care provider or health
14 facility may charge a retrieval fee not to exceed the actual cost
15 of retrieval and a copying fee not to exceed 20 cents per page
16 for health care information provided at the request of an adult
17 patient or his or her legal guardian or patient advocate or in
18 the case of a minor the patient's parent or legal guardian for
19 the patient's personal use and not for the use of a third party.
20 The 20 cent per page limit set forth in this subsection repre-
21 sents a subsidized rate that is below cost; however, the state
22 has an interest in protecting the patient's right to access to
23 his or her medical records.

24 (5) A health care provider or health facility may charge a
25 reasonable fee for all requests for health care information from
26 statutorily authorized parties other than requests described in
27 subsection (4) and may prohibit copying until the fee is paid. A

1 health care provider or health facility may charge a fee only for
2 those parts of the health care information actually provided.
3 The 20 cents per page limit set forth in subsection (4) and the
4 fee limitation set forth in this subsection do not apply to
5 copies of X-rays or electroencephalogram tracings or other imag-
6 ing records. A health care provider or health facility may
7 charge the actual cost of copying such imaging records.

8 (6) A person entitled to examine and copy health care infor-
9 mation may supply his or her own copying equipment on the
10 premises of the health care provider or health facility and pay
11 only the retrieval fee authorized in subsection (4). The health
12 care provider or health facility may charge a retrieval fee that
13 reflects the cost of supervising examination and copying of
14 health care information under this subsection.

15 (7) A third party payer may charge a retrieval and copying
16 fee of not more than \$2.00 per page for health care information
17 provided upon request or under subpoena for use in civil litiga-
18 tion in which the third party payer is not a party.

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

23 (a) The information in the medical record was compiled and
24 is used solely for litigation in which the health care provider
25 or health facility is a party. As used in this subdivision,
26 "medical record" is limited to that part of the medical record

1 consisting of notes made by an attorney for the health care
2 provider or health facility.

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

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

8 (2) If a health care provider or health facility denies a
9 request for health care information under this section, the
10 health care provider or health facility, to the extent possible,
11 shall segregate health care information for which access has been
12 denied under subsection (1) from health care information for
13 which access cannot be denied and permit the patient to examine
14 or copy the disclosable health care information.

15 (3) If a health care provider or health facility denies a
16 patient's request for health care information, in whole or in
17 part, under subsection (1), the health care provider or health
18 facility shall permit examination and copying of the health care
19 information by another health care provider or health facility
20 that is selected by the patient to treat or advise the patient
21 for the same condition for which the patient was treated by the
22 health care provider or health facility denying the request or by
23 the patient's attorney of record for purposes of litigation. The
24 health care provider or health facility denying the request shall
25 inform the patient of the patient's right to select another
26 health care provider or health facility to examine or copy the
27 health care information under this subsection. If the patient

1 does not or cannot select another health care provider or health
2 facility, he or she may petition a court of competent jurisdic-
3 tion for an order of disclosure.

4 Sec. 303. (1) The record of health care information retained
5 by a health care provider pertaining to health care rendered by
6 the health care provider in the course of the health care
7 provider's private practice is the property of the health care
8 provider. However, the health care information contained in the
9 record is subject to examination and copying as provided in this
10 article, and is the property of the patient to whom the health
11 care was rendered.

12 (2) The record of health care information retained by a
13 health facility pertaining to health care rendered in the health
14 facility by a health care provider who is employed by or under
15 contract to the health facility or admitted to practice in the
16 health facility is the property of the health facility. However,
17 the health care information contained in the record is subject to
18 examination and copying as provided in this article, and is the
19 property of the patient to whom the health care was rendered.
20 The record of health care information described in this subsec-
21 tion is not the property of the health care provider who rendered
22 the health care.

23 ARTICLE 4

24 ADDITIONS TO MEDICAL RECORDS

25 Sec. 401. (1) For purposes of accuracy or completeness, a
26 patient may request in writing that a health care provider or
27 health facility add to the patient's health care information kept

1 by the health care provider or health facility, pursuant to this
2 article.

3 (2) As promptly as required under the circumstances, but not
4 later than 15 business days after receiving a request from a
5 patient to append the patient's health care information kept by
6 the health care provider or health facility, the health care pro-
7 vider or health facility shall do 1 or more of the following, as
8 appropriate:

9 (a) Make the requested addition and inform the patient of
10 the action and of the patient's right under section 403 to have
11 the addition sent to previous recipients of the health care
12 information in question within 14 business days after the addi-
13 tion is made.

14 (b) Inform the patient if the health care information no
15 longer exists or cannot be found.

16 (c) If the health care provider or health facility does not
17 maintain the health care information, inform the patient and pro-
18 vide the patient with the name and address, if known, of the
19 person who maintains the health care information.

20 (d) If the health care information is in use or unusual cir-
21 cumstances have delayed the handling of the addition request,
22 inform the patient and specify in writing the reasons for the
23 delay and the earliest date when the addition will be made or
24 when the request will otherwise be disposed of.

25 (e) Inform the patient in writing of the health care
26 provider's or health facility's refusal to append the health care
27 information as requested, the reason for the refusal, and the

1 patient's right under section 402 (2) to add a statement of
2 disagreement and to have that statement sent to previous recip-
3 ients of the disputed health care information.

4 Sec. 402. (1) In adding information under this article, the
5 health care provider or health facility shall do both of the
6 following:

7 (a) Make the additional information part of the medical
8 record.

9 (b) Mark the challenged entries as added entries and indi-
10 cate the place in the medical record where the added information
11 is located, in a manner practicable under the circumstances.

12 (2) If the health care provider or health facility maintain-
13 ing the patient's health care information refuses to make the
14 patient's requested addition, the health care provider or health
15 facility shall do both of the following:

16 (a) Permit the patient to file, as a part of the patient's
17 health care information, a concise statement of the addition
18 requested and the reasons for the addition.

19 (b) Mark the challenged entry to indicate that the patient
20 claims the entry is inaccurate or incomplete and indicate the
21 place in the medical record where the statement of disagreement
22 is located, in a manner practicable under the circumstances.

23 Sec. 403. (1) Upon written request of a patient, a health
24 care provider or health facility shall take reasonable steps
25 within 14 business days after the addition or statement of dis-
26 agreement is made to provide copies of additional information or
27 of a statement of disagreement to all persons designated by the

1 patient who are identified in the health care information as
2 having examined or received copies of the additional
3 information.

4 (2) Unless the health care provider's or health facility's
5 error necessitated the additional information, a health care pro-
6 vider or health facility may charge the patient a reasonable fee,
7 not exceeding 20 cents per page for distributing additional
8 information or the statement of disagreement.

9 ARTICLE 5

10 NOTICE OF INFORMATION PRACTICES

11 Sec. 501. (1) A health care provider or health facility
12 that maintains a patient's health care information shall create a
13 notice of information practices that contains substantially the
14 following language:

15 NOTICE

16 "We keep a record of the health care we provide you.
17 You may ask us to see and copy that record. The cost to
18 you of copying that record is 20 cents per page plus a
19 retrieval fee. You may also ask us to add to that
20 record. We will not disclose your record to others
21 unless you direct us to do so or unless the law autho-
22 rizes or compels us to do so. You may see your record
23 or get more information about it at

24 _____."

25 (2) A health care provider or health facility shall post a
26 copy of the notice of information practices required under
27 subsection (1) in a conspicuous place. The health care provider

1 or health facility shall include the information contained in the
2 notice in its disclosure authorization form.

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

6 (4) The department of commerce or its successor agency or
7 authorized representative shall enforce this section as it
8 applies to health care providers. The department of public
9 health shall enforce this section as it applies to health
10 facilities.

11 ARTICLE 6

12 PERSONS AUTHORIZED TO ACT FOR PATIENT

13 Sec. 601. (1) A person legally authorized to consent to or
14 refuse health care for another may exercise the rights of that
15 person under this act to the extent necessary to effectuate the
16 terms or purposes of the grant of authority. If a patient is
17 less than 18 years of age, but is emancipated or otherwise autho-
18 rized to consent to health care without parental consent under
19 the laws of this state, only the patient or the patient's autho-
20 rized representative may exercise the rights of a patient under
21 this act as to health care information pertaining to health care
22 to which the patient lawfully consented.

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

25 Sec. 602. A personal representative of a deceased patient
26 may exercise all of the deceased patient's rights under this
27 act. If there is no personal representative, or upon discharge

1 of the personal representative, a deceased patient's rights under
2 this act may be exercised by persons who are authorized by law to
3 act for the deceased patient.

4 ARTICLE 7

5 SECURITY SAFEGUARDS AND RECORD RETENTION

6 Sec. 701. A health care provider or health facility shall
7 effect reasonable safeguards for the security of all health care
8 information maintained by the health care provider or health
9 facility.

10 Sec. 702. (1) A health care provider or health facility
11 shall retain health care information in the original or repro-
12 duced form for not less than 7 years after the date the health
13 care to which the health care information pertains is rendered.
14 If the patient is a minor at the time the health care is
15 rendered, the health care provider or health facility shall
16 retain the health care information for not less than 7 years
17 after the date the health care to which the health care informa-
18 tion pertains is rendered or until the minor reaches 18 years of
19 age, whichever is longer.

20 (2) A health care provider or health facility shall retain
21 electroencephalogram tracings, X-ray films, and similar imaging
22 records for not less than 7 years after the date of their
23 creation. After the expiration of the 7-year period, such medi-
24 cal records may be destroyed by shredding, incineration, or pulp-
25 ing or by other means determined appropriate by rule of the
26 department of public health. Interpretations of
27 electroencephalogram tracings, X-ray films, and similar imaging

1 records are subject to subsection (1). A health care provider at
2 the time treatment is rendered and a health facility at the time
3 of admission or discharge shall notify each patient in writing of
4 the requirements of this section. The written notice shall
5 include a statement that if the patient wants a copy of the
6 health care information, he or she must so notify the health care
7 provider or health facility in writing before the expiration of
8 the 7-year period. The notice shall also inform the patient as
9 to the procedure for obtaining copies of health care information
10 and of the requirements of subsection (4). The notice required
11 under this subsection need only be given once to a particular
12 patient.

13 (3) After the period required under subsection (1) or (2), a
14 health care provider or health facility may destroy health care
15 information other than electroencephalograms, tracings, X-ray
16 films, and similar imaging records by shredding, incineration, or
17 other means determined appropriate by rule of the department of
18 public health or may retain the health care information. If the
19 health care provider or health facility destroys the health care
20 information, the health care provider or health facility shall
21 retain basic information from each medical record destroyed, or a
22 health facility may retain an abstract of each medical record
23 destroyed if the abstract contains information that is substan-
24 tially similar to the basic information described in
25 subdivision (b). For purposes of this subsection, basic informa-
26 tion 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 illnesses.

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 or abstract as described in subsection (3)
18 for not less than 25 years after the date the health care to
19 which the basic information or abstract pertains is rendered. If
20 the health care is rendered to a minor, the health care provider
21 or health facility shall retain the basic information during the
22 period of minority and for not less than 25 years after the minor
23 reaches 18 years of age. Upon the expiration of the 25-year
24 period required under this subsection, the health care provider
25 or health facility shall either retain the medical record, the
26 basic information, or the abstract indefinitely or request the
27 department of public health to take possession of the medical

1 record, the basic information, or the abstract. The department
2 of public health shall take possession of the medical record, the
3 basic information, or the abstract if requested to do so under
4 this subsection, and shall retain the medical record, the basic
5 information, or the abstract indefinitely.

6 Sec. 703. (1) Before a health care provider or health facil-
7 ity closes or otherwise stops providing health care to patients,
8 the health care provider or health facility shall arrange for the
9 retention and preservation of health care information in compli-
10 ance with this section. A health care provider or health facil-
11 ity may computerize or minify health care information by the use
12 of microfilm or other similar photographic process or by a pro-
13 cess determined appropriate by the department of public health by
14 rule, as long as the storage method used creates an unalterable
15 record that is readily accessible.

16 (2) A health care provider or health facility that closes or
17 otherwise stops providing health care to patients shall publish
18 notice of the closure in a newspaper of general circulation in
19 the county in which the health care provider's practice or the
20 health facility is located for not less than 5 consecutive days.
21 The notice required under this subsection shall be published not
22 less than 1 month before the effective date of the closure or
23 cessation of providing health care and shall contain at least all
24 of the following information:

25 (a) If the health care provider or health facility has con-
26 tracted with an entity to retain medical records after the
27 closure or cessation of providing health care, the name and

1 address of the entity and the name and telephone number of an
2 individual employed by the entity who will be able to give fur-
3 ther information regarding retention and accessibility of the
4 medical records.

5 (b) Notice that a patient may obtain a copy of his or her
6 medical records before closure or cessation of providing health
7 care or that if the patient so chooses, he or she may obtain the
8 original medical records for his or her own retention or for
9 retention by another health care provider or health facility.

10 (3) If a health care provider or health facility gives an
11 original medical record to a patient as described in subsection
12 (2)(b), then the health care provider or health facility shall
13 retain a record of the name, last known address, social security
14 number, date of birth, and telephone number of the patient and
15 the fact that the patient was given the original medical record.
16 The health care provider or health facility shall keep the infor-
17 mation required by this subsection with all other medical records
18 retained by the health care provider or health facility. If all
19 patients of the health care provider or health facility choose to
20 obtain their original medical records, then the health care pro-
21 vider or health facility shall retain a record of the information
22 required under this subsection and transmit the record to the
23 department of public health. The department of public health
24 shall make the records available to the department of social
25 services for the administration of programs administered by the
26 department of social services.

1 (4) If a patient does not respond to the notice published
2 under subsection (2), and the health care provider or health
3 facility has not contracted with an entity to retain medical
4 records as described in subsection (2)(a), the health care pro-
5 vider or health facility shall contract for storage of medical
6 records with another health care provider or health facility or
7 other entity. If the health care provider or health facility can
8 demonstrate to the satisfaction of the department that it has
9 attempted to find a new location for the medical records but has
10 not been successful, it may request the department of public
11 health to serve as the storage site. The department of public
12 health shall take possession of the original medical records if
13 requested to do so under this subsection, and shall retain them
14 indefinitely.

15 Sec. 704. A health care provider or health facility that
16 destroys medical records in compliance with this article is not
17 subject to criminal or civil liability for the destruction.

18 Sec. 705. The department of public health may promulgate
19 rules to implement this section.

20 Sec. 706. The department of public health, in consultation
21 with appropriate health care provider organizations and health
22 facility organizations, shall conduct a study on the feasibility
23 of a standardized numbering system to be used by health care pro-
24 viders and health facilities in cataloging medical records. The
25 department of public health shall report to the legislature on
26 the study required by this section within 1 year after the
27 effective date of this act.

ARTICLE 8

CIVIL REMEDIES AND CRIMINAL AND ADMINISTRATIVE SANCTIONS

Sec. 801. The attorney general or a county prosecutor or a person aggrieved by a violation of this act may maintain a civil action to enforce this act in a court of competent jurisdiction. The court may order any relief authorized under section 802.

Sec. 802. (1) A court in which an action is filed under section 801 may order a health care provider or health facility or other person to comply with this act and may order any other appropriate relief.

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

(3) In an action by a patient alleging that health care information was improperly withheld under article 3, the burden of proof is on the health care provider or health facility to establish that the information was properly withheld.

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

(5) The court may assess reasonable attorney's fees and costs reasonably incurred in the litigation to the prevailing party.

1 (6) A health care provider or health facility shall not
2 enter into a contract that would alter the provisions of this
3 act.

4 Sec. 803. (1) A health care provider who denies a request
5 for health care information in violation of article 3 or violates
6 article 5 is subject to administrative penalties under article 15
7 of the public health code, Act No. 368 of the Public Acts of
8 1978, being sections 333.16101 to 333.18838 of the Michigan
9 Compiled Laws.

10 (2) A health facility that denies a request for health care
11 information in violation of article 3 or violates article 5 is
12 subject to administrative penalties under article 17 of the
13 public health code, Act No. 368 of the Public Acts of 1978, being
14 sections 333.20101 to 333.22260 of the Michigan Compiled Laws.

15 (3) A health care provider or health facility that discloses
16 or denies access to health care information in good faith compli-
17 ance with this act is not subject to civil, administrative, or
18 criminal liability for the disclosure or denial.