



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

ACCESS TO MEDICAL AND MENTAL HEALTH INFORMATION

Senate Bill 1211 (Substitute H-1)
Sponsor: Sen. Gary Peters

Senate Bill 1225 (Substitute H-1)
Sponsor: Sen. Jon Cisky

First Analysis (12-9-98)
House Committee: Judiciary
**Senate Committee: Families, Mental
Health and Human Services**

THE APPARENT PROBLEM:

The Lieutenant Governor's Children's Commission was established under Executive Order Number 1995-12 in May, 1995. The commission's explicit charge was to "review current laws, programs, procedures, policies, and training procedures that affect children, and create recommendations to help improve the quality of life for Michigan's children," and its conclusions were issued in July, 1996, in the report, "In Our Hands." As described in the report, the commission created five subcommittees to address early intervention, placement, permanency planning, post-termination, and confidentiality issues.

Senate bills have been introduced based upon the recommendations of the Commission on Children report. Specifically, one recommendation cites the need for FIA child protective services caseworkers to have access to medical and mental health information as part of an investigation of alleged child abuse or neglect.

THE CONTENT OF THE BILLS:

Senate Bill 1211 would amend the Public Health Code (MCL 333.2637 et al.) to require the Department of Community Health (DCH) and health professionals to release medical records and information about a child who was the subject of an abuse or neglect investigation, under certain circumstances.

DCH Disclosure. Currently, the DCH is required to establish procedures to protect the confidentiality of, and regulate the disclosure of, data and records contained in a departmental data system or system of records. The procedures must specify the data contained in a system that may not be disclosed unless items identifying a person are deleted.

The bill provides that, notwithstanding this requirement, if there were a compelling need for medical records or information to determine whether child abuse or neglect had occurred or to take action to protect a child where there could be substantial risk of harm, the DCH would have to give access to a child protective services caseworker or administrator directly involved in the investigation to records and information that were pertinent to the investigation. A record or information disclosed under this provision would have to include the identity of the individual to whom the record or information pertained.

The DCH would have to provide the access within 14 calendar days after the record holder received the written request from a child protective services caseworker or administrator who was directly involved in the investigation. The DCH would have to provide the access regardless of the consent of the person from whom consent otherwise would be required.

Health Professional Disclosure. Access to records or information from a health professional would only be allowed in cases where there was a compelling need for mental health records or information to determine whether child abuse or neglect had occurred or to take action to protect a minor from a substantial risk of harm. Such access would be limited to the records and information that the health professional in control of the records had determined, after review, were pertinent to the investigation.

After determining that a need existed for access to health records, a caseworker or administrator who was directly involved in a child abuse or neglect investigation would be required to notify the health

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professional of the investigation and to make a written request for pertinent information.

Upon written request of a child protective services caseworker directly involved in the investigation, or the caseworker's administrator, and within 14 calendar days after the record holder received the request, a health profession licensee or registrant who provided treatment to a child who was the subject of an investigation under the Child Protection Law would have to release those records and information that he or she had determined were pertinent to the caseworker or administrator, regardless of the consent of the person from whom consent otherwise would be required.

The following privileges would not apply to information released or made available under this provision:

- The physician-patient privilege.
- The dentist-patient privilege.
- The licensed professional counselor-client and limited licensed counselor-client privilege.
- The psychologist-patient privilege.
- Any other health professional-patient privilege created or recognized by law.

Immunity/Exception. To the extent not protected by the immunity conferred by the governmental immunity law, an individual who in good faith provided access to a record or information as required in the bill would be immune from civil or administrative liability arising from that conduct, unless the conduct were gross negligence or willful and wanton misconduct.

The bill's disclosure requirements would not apply to a report, record, datum, or information whose confidentiality and disclosure were governed by Section 5131 of the code (which pertains to information associated with serious communicable diseases, HIV infection, and AIDS). Any duties provided for by the Public Health Code related to child abuse and neglect would not alter any duties imposed under any other statutes, including the provisions of the Child Protection Law regarding the reporting or investigation of child abuse or neglect.

Effective Date. The bill would have an effective date of March 1, 1999.

Senate Bill 1225 would amend the Mental Health Code to provide access to confidential mental health information under certain circumstances. Access would only be allowed in cases where there was a compelling need for mental health records or information to determine whether child abuse or neglect had occurred or to take action to protect a minor from a substantial risk of harm and would be limited to the records and information that the mental health professional in control of the records had determined, after review, were pertinent to the investigation.

After determining that a need existed for access to mental health records, a caseworker or administrator who was directly involved in a child abuse or neglect investigation would be required to notify the mental health professional of the investigation and make a written request for pertinent information. After receiving such a request, a mental health professional would be required to review his or her records and information and, within 14 days, release those records and information that he or she had determined were pertinent to the caseworker or administrator. The following privileges would not apply to information released or made available under this provision:

- The physician-patient privilege.
- The dentist-patient privilege.
- The licensed professional counselor-client and limited licensed counselor-client privilege.
- The psychologist-patient privilege.
- Any other health professional-patient privilege created or recognized by law.

To the extent not protected by the immunity conferred by the governmental immunity law, an individual who in good faith provided access to a record or information as required in the bill would be immune from civil or administrative liability arising from that conduct, unless the conduct were gross negligence or willful and wanton misconduct. The bill would also specify that any duties provided for by the Public Health Code related to child abuse and neglect would not alter any duties imposed under any other statutes, including the provisions of the Child Protection Law regarding the reporting or investigation of child abuse or neglect.

Finally, the bill would provide for an effective date of March 1, 1999.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bills provide limited access to relevant records and information as determined by the physician or other health professional. Rather than allowing for a broad based "fishing expedition" into the child's health records, the bills limit access to the information that the health professional determined were relevant to the ongoing investigation.

Against:

By only allowing access to information as screened by a health professional, there is a risk that the information could be tainted where the health professional screening the information is a close friend or relation of the person suspected of abusing or neglecting the child.

POSITIONS:

There are no positions on the bill.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.