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SFA



BILL ANALYSIS

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Senate Bill 1211 (as enrolled)
Sponsor: Senator Gary Peters
Senate Committee: Families, Mental Health and Human Services
House Committee: Judiciary

PUBLIC ACT 496 of 1998

Date Completed: 1-26-99

CONTENT

The bill amended the Public Health Code to require the Department of Community Health (DCH) and health professionals to release to a Family Independence Agency caseworker medical records or information about a child who is the subject of an abuse or neglect investigation, under certain circumstances.
The bill will take effect on March 1, 1999.

DCH Disclosure

Under the Code, 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 is a compelling need for medical records or information to determine whether child abuse or neglect has occurred or to take action to protect a child where there may be a substantial risk of harm, the DCH must give access to a Family Independence Agency (FIA) caseworker or administrator directly involved in the investigation, to the child's medical records and information that are pertinent to the child abuse or neglect investigation. Medical records or information disclosed under this provision must include the identity of the individual to whom the record or information pertains.

The DCH must provide the access only upon receipt of a written request from a caseworker or administrator directly involved in the investigation, and must provide the access within 14 calendar days after the record holder receives the written request. The DCH must provide the access

regardless of the consent of the person from whom consent otherwise would be required.

Health Professional Disclosure

Under the bill, if there is a compelling need for records or information to determine whether child abuse or neglect has occurred or to take action to protect a child where there may be a substantial risk of harm, an FIA caseworker or administrator directly involved in the child abuse or neglect investigation must notify a licensee or registrant that an investigation has been initiated regarding a child who has received services from the licensee or registrant, and must make a written request for the child's medical records and information that are pertinent to the investigation.

Upon receiving the notice and request, the licensee or registrant must review all of the child's medical records and information in his or her possession to determine if there are records or information pertinent to the investigation. Within 14 days after receiving the request, the licensee or registrant must release those pertinent medical records or information to the caseworker or administrator directly involved in the investigation.

The bill specifies that the following privileges do not apply to medical records or 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/Statutory Duty

To the extent not protected by the immunity conferred by the governmental immunity law, an individual who in good faith provides access to a record or information under the bill, will be immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

The bill's disclosure requirements do not apply to a report, record, datum, or information whose confidentiality and disclosure are governed by Section 5131 of the Code (which pertains to information associated with serious communicable diseases, HIV infection, and AIDS).

The bill specifies that a duty under the Code relating to child abuse and neglect does not alter a duty imposed under another statute, including the Child Protection Law, regarding the reporting or investigation of child abuse or neglect.

MCL 333.2637 et al. Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill will have no fiscal impact on the Family Independence Agency or the Department of Community Health.

Fiscal Analyst: C. Cole
P. Graham

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.