

REPRINT
HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1211

(As passed the House, December 10, 1998)

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 2637, 2640, 16648, 18117, and 18237 (MCL
333.2637, 333.2640, 333.16648, 333.18117, and 333.18237), section
2640 as added by 1996 PA 307 and sections 16648, 18117, and 18237
as amended by 1993 PA 79, and by adding section 16281.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2637. (1) The department shall establish procedures
2 pursuant to section 2678 to protect the confidentiality of, and
3 regulate the disclosure of, data and records contained in a
4 departmental data system or system of records.

5 (2) The procedures ESTABLISHED UNDER SUBSECTION (1) shall be
6 consistent with the policy established under sections 2611 and
7 2613.

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1 (3) ~~The~~ EXCEPT AS PROVIDED IN SECTION 2640, THE procedures
2 ESTABLISHED UNDER SUBSECTION (1) shall specify the data contained
3 in a departmental data system or system of records ~~which~~ THAT
4 shall not be disclosed unless items identifying a person by name,
5 address, number, symbol, or any other identifying particular are
6 deleted.

7 (4) The procedures ESTABLISHED UNDER SUBSECTION (1) shall
8 regulate the use and disclosure of data contained in a departmen-
9 tal data system or system of records released to researchers,
10 other persons, including designated medical research projects as
11 ~~defined~~ DESCRIBED in section 2631, or governmental entities. A
12 person who receives data pursuant to this section shall not dis-
13 close an item of information contained in the data except in con-
14 formance with the authority granted by the department and with
15 the purpose for which the data was originally requested by the
16 researcher. The director may contract with researchers or other
17 persons to implement and enforce this subsection. A contract
18 made pursuant to this subsection shall DO BOTH OF THE FOLLOWING:

19 (a) Require the department to provide monitoring to assure
20 compliance with this section.

21 (b) Provide for termination if this section or the contract
22 is violated.

23 (5) An officer or employee of the department shall not dis-
24 close data contained in a departmental data system or system of
25 records except as authorized in the procedures adopted pursuant
26 to this section.

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1 (6) The department periodically shall review the procedures
2 adopted under this section.

3 (7) A person whose contract is terminated pursuant to sub-
4 section (4)(b) is not eligible to make a subsequent contract with
5 the department.

6 Sec. 2640. (1) The department shall give prompt access to
7 the parentage registry to the family independence agency or its
8 agent for the purpose of the family independence agency's duty to
9 aid in the establishment or enforcement of child support
10 obligations. The family independence agency or its agent may use
11 or disclose the information from the parentage registry in carry-
12 ing out that duty.

13 (2) NOTWITHSTANDING SECTION 2637, IF THERE IS A COMPELLING
14 NEED FOR MEDICAL RECORDS OR INFORMATION TO DETERMINE WHETHER
15 CHILD ABUSE OR NEGLECT HAS OCCURRED OR TO TAKE ACTION TO PROTECT
16 A CHILD WHERE THERE MAY BE A SUBSTANTIAL RISK OF HARM, THE
17 DEPARTMENT SHALL GIVE ACCESS TO A FAMILY INDEPENDENCE AGENCY
18 CASEWORKER OR ADMINISTRATOR DIRECTLY INVOLVED IN THE INVESTIGA-
19 TION TO THE CHILD'S MEDICAL RECORDS AND INFORMATION THAT ARE PER-
20 TINENT TO THE CHILD ABUSE OR NEGLECT INVESTIGATION. MEDICAL
21 RECORDS OR INFORMATION DISCLOSED UNDER THIS SECTION SHALL INCLUDE
22 THE IDENTITY OF THE INDIVIDUAL TO WHOM THE RECORD OR INFORMATION
23 PERTAINS.

24 (3) THE DEPARTMENT SHALL PROVIDE THE ACCESS DESCRIBED BY
25 SUBSECTION (2) ONLY UPON RECEIPT OF A WRITTEN REQUEST FROM A
26 CASEWORKER OR ADMINISTRATOR DIRECTLY INVOLVED IN THE
27 INVESTIGATION AND SHALL PROVIDE THAT ACCESS WITHIN 14 CALENDAR

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1 DAYS AFTER THE RECORD HOLDER RECEIVES THE WRITTEN REQUEST. THE
2 DEPARTMENT SHALL PROVIDE THAT ACCESS REGARDLESS OF THE CONSENT OF
3 THE PERSON FROM WHOM CONSENT WOULD OTHERWISE BE REQUIRED.

4 (4) TO THE EXTENT NOT PROTECTED BY THE IMMUNITY CONFERRED BY
5 1964 PA 170, MCL 691.1401 TO 691.1415, AN INDIVIDUAL WHO IN GOOD
6 FAITH PROVIDES ACCESS TO MEDICAL RECORDS OR INFORMATION UNDER
7 SUBSECTION (2) IS IMMUNE FROM CIVIL OR ADMINISTRATIVE LIABILITY
8 ARISING FROM THAT CONDUCT, UNLESS THE CONDUCT WAS GROSS NEGLI-
9 GENCE OR WILLFUL AND WANTON MISCONDUCT.

10 (5) THIS SECTION DOES NOT APPLY TO A REPORT, RECORD, DATUM,
11 OR INFORMATION WHOSE CONFIDENTIALITY AND DISCLOSURE ARE GOVERNED
12 BY SECTION 5131.

13 SEC. 16281. (1) IF THERE IS A COMPELLING NEED FOR RECORDS
14 OR INFORMATION TO DETERMINE WHETHER CHILD ABUSE OR CHILD NEGLECT
15 HAS OCCURRED OR TO TAKE ACTION TO PROTECT A CHILD WHERE THERE MAY
16 BE A SUBSTANTIAL RISK OF HARM, A FAMILY INDEPENDENCE AGENCY CASE-
17 WORKER OR ADMINISTRATOR DIRECTLY INVOLVED IN THE CHILD ABUSE OR
18 NEGLECT INVESTIGATION SHALL NOTIFY A LICENSEE OR REGISTRANT THAT
19 A CHILD ABUSE OR NEGLECT INVESTIGATION HAS BEEN INITIATED REGARD-
20 ING A CHILD WHO HAS RECEIVED SERVICES FROM THE LICENSEE OR REGIS-
21 TRANT AND SHALL REQUEST IN WRITING THE CHILD'S MEDICAL RECORDS
22 AND INFORMATION THAT ARE PERTINENT TO THAT INVESTIGATION. UPON
23 RECEIPT OF THIS NOTIFICATION AND REQUEST, THE LICENSEE OR REGIS-
24 TRANT SHALL REVIEW ALL OF THE CHILD'S MEDICAL RECORDS AND INFOR-
25 MATION IN THE LICENSEE'S OR REGISTRANT'S POSSESSION TO DETERMINE
26 IF THERE ARE MEDICAL RECORDS OR INFORMATION THAT IS PERTINENT TO
27 THAT INVESTIGATION. WITHIN 14 DAYS AFTER RECEIPT OF A REQUEST

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1 MADE UNDER THIS SUBSECTION, THE LICENSEE OR REGISTRANT SHALL
2 RELEASE THOSE PERTINENT MEDICAL RECORDS AND INFORMATION TO THE
3 CASEWORKER OR ADMINISTRATOR DIRECTLY INVOLVED IN THE CHILD ABUSE
4 OR NEGLECT INVESTIGATION.

5 (2) THE FOLLOWING PRIVILEGES DO NOT APPLY TO MEDICAL RECORDS
6 OR INFORMATION RELEASED OR MADE AVAILABLE UNDER SUBSECTION (1):

7 (A) THE PHYSICIAN-PATIENT PRIVILEGE CREATED IN SECTION 2157
8 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL
9 600.2157.

10 (B) THE DENTIST-PATIENT PRIVILEGE CREATED IN SECTION 16648.

11 (C) THE LICENSED PROFESSIONAL COUNSELOR-CLIENT AND LIMITED
12 LICENSED COUNSELOR-CLIENT PRIVILEGE CREATED IN SECTION 18117.

13 (D) THE PSYCHOLOGIST-PATIENT PRIVILEGE CREATED IN SECTION
14 18237.

15 (E) ANY OTHER HEALTH PROFESSIONAL-PATIENT PRIVILEGE CREATED
16 OR RECOGNIZED BY LAW.

17 (3) TO THE EXTENT NOT PROTECTED BY THE IMMUNITY CONFERRED BY
18 1964 PA 170, MCL 691.1401 TO 691.1415, AN INDIVIDUAL WHO IN GOOD
19 FAITH PROVIDES ACCESS TO MEDICAL RECORDS OR INFORMATION UNDER
20 THIS SECTION IS IMMUNE FROM CIVIL OR ADMINISTRATIVE LIABILITY
21 ARISING FROM THAT CONDUCT, UNLESS THE CONDUCT WAS GROSS NEGLI-
22 GENCE OR WILLFUL AND WANTON MISCONDUCT.

23 (4) THIS SECTION DOES NOT APPLY TO A REPORT, RECORD, DATUM,
24 OR INFORMATION WHOSE CONFIDENTIALITY AND DISCLOSURE ARE GOVERNED
25 BY SECTION 5131.

26 (5) A DUTY UNDER THIS ACT RELATING TO CHILD ABUSE AND
27 NEGLECT DOES NOT ALTER A DUTY IMPOSED UNDER ANOTHER STATUTE,

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1 INCLUDING THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.621 TO
2 722.638, REGARDING THE REPORTING OR INVESTIGATION OF CHILD ABUSE
3 OR NEGLECT.

4 Sec. 16648. (1) Information relative to the care and treat-
5 ment of a dental patient acquired as a result of providing pro-
6 fessional dental services ~~shall be~~ IS confidential and
7 privileged. Except with the written consent of the patient or
8 the patient's attorney in fact or personal representative, OR
9 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), a dentist or a
10 person employed by the dentist shall not disclose or be required
11 to disclose that information.

12 (2) This section does not prohibit disclosure of the infor-
13 mation described in subsection (1) in the following instances:

14 (a) Disclosure as part of the defense to a claim in a court
15 or administrative agency challenging the dentist's professional
16 competence.

17 (b) Disclosure pursuant to ~~Act No. 270 of the Public Acts~~
18 ~~of 1967, being sections 331.531 to 331.533 of the Michigan~~
19 ~~Compiled Laws~~ 1967 PA 270, MCL 331.531 TO 331.533.

20 (c) Disclosure in relation to a claim for payment of fees.

21 (d) Disclosure to a third party payer of information relat-
22 ing to fees for services in the course of a good faith examina-
23 tion of the dentist's records to determine the amount and cor-
24 rectness of fees or the type and volume of services furnished
25 pursuant to provisions for payment established by a third party
26 payer, or information required for a third party payer's
27 predeterminations, post treatment reviews, or audits. For

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1 purposes of this subdivision, "third party payer" includes, BUT
2 IS NOT LIMITED TO, a nonprofit dental care corporation, nonprofit
3 health care corporation, insurer, benefit fund, health mainte-
4 nance organization, and ~~a~~ dental capitation plan.

5 (e) Disclosure, pursuant to a court order, to a police
6 agency as part of a criminal investigation.

7 (f) Disclosure as provided in section 2844a.

8 (g) Disclosure made pursuant to section 16222 if the
9 licensee reasonably believes it is necessary to disclose the
10 information to comply with section 16222.

11 (H) DISCLOSURE UNDER SECTION 16281.

12 Sec. 18117. For the purposes of this part, the confidential
13 relations and communications between a licensed professional
14 counselor or a limited licensed counselor and a client of the
15 licensed professional counselor or a limited licensed counselor
16 are privileged communications, and ~~nothing in~~ this part
17 ~~requires any~~ DOES NOT REQUIRE A privileged communication to be
18 disclosed, except as otherwise provided by law. Confidential
19 information may be disclosed only upon consent of the client,
20 ~~or~~ pursuant to section 16222 if the licensee reasonably
21 believes it is necessary to disclose the information to comply
22 with section 16222, OR UNDER SECTION 16281.

23 Sec. 18237. A psychologist licensed or allowed to use ~~the~~
24 THAT title under this part or an individual under his or her
25 supervision ~~shall not~~ CANNOT be compelled to disclose confiden-
26 tial information acquired from an individual consulting the
27 psychologist in his or her professional capacity ~~and which~~ IF

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1 THE information is necessary to enable the psychologist to render
2 services. Information may be disclosed with the consent of the
3 individual consulting THE PSYCHOLOGIST, or if the individual con-
4 sulting THE PSYCHOLOGIST is a minor, with the consent of the
5 minor's guardian, ~~or~~ pursuant to section 16222 if the psycholo-
6 gist reasonably believes it is necessary to disclose the informa-
7 tion to comply with section 16222, OR UNDER SECTION 16281. In a
8 contest on the admission of a deceased individual's will to pro-
9 bate, an heir at law of the decedent, whether a proponent or con-
10 testant of the will, and the personal representative of the dece-
11 dent may waive the privilege created by this section.

12 Enacting section 1. This amendatory act takes effect March
13 1, 1999.