

HOUSE BILL No. 5957

June 23, 1998, Introduced by Reps. Brater, Anthony, DeHart, Voorhees, Bobier, Baird, Martinez, Jellema, LaForge, Hale, Schauer, Varga, Parks, Kilpatrick, Wojno, Agee, Schermesser, Ciaramitaro, Gire, Bogardus and Thomas and referred to the Committee on Health Policy.

A bill to provide for and to regulate access to and disclosure of health care information; to prescribe the powers and duties of certain state agencies and departments; and to prescribe administrative sanctions and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "health care information act".

3 Sec. 3. As used in this act:

4 (a) "Business day" means a day other than a Saturday, a
5 Sunday, or a holiday recognized and observed by the state or fed-
6 eral government.

7 (b) "Guardian" means an individual who is appointed as a
8 full guardian of a legally incapacitated person under section 444
9 of the revised probate code, 1978 PA 642, MCL 700.444, or who is

1 appointed as the guardian of a minor under section 422 or 424 of
2 the revised probate code, 1978 PA 642, MCL 700.422 and 700.424.

3 (c) "Health care" means any care, service, or procedure pro-
4 vided by a health care provider or health facility to diagnose,
5 treat, or maintain a patient's physical condition, or that
6 affects the structure or a function of the human body.

7 (d) "Health care information" means information recorded in
8 a form or medium that identifies or can readily be associated
9 with the identity of a patient and relates to the patient's
10 health care. Health care information includes, but is not
11 limited to, medical histories, medical records, medical reports,
12 medical summaries, medical diagnoses and prognoses, medical
13 treatment and medication ordered and given, notes, entries, and
14 x-rays and other imaging records. Health care information does
15 not include 1 or more 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 community health
21 or the department of consumer and industry services.

22 (v) Other audit activities conducted by the department of
23 community health or the department of consumer and industry serv-
24 ices pursuant to administrative rules.

25 (vi) Professional practice review documents disclosed under
26 1967 PA 270, MCL 331.531 to 331.533.

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

5 (viii) Mental health records.

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

8 (x) Reports, records, and data governed under part 51 of the
9 public health code, 1978 PA 368, MCL 333.5101 to 333.5133.

10 (xi) Records governed under sections 6111 to 6113 of the
11 public health code, 1978 PA 368, MCL 333.6111 to 333.6113.

12 (e) "Health care provider" means a person who is licensed or
13 registered or otherwise authorized under article 15 of the public
14 health code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide
15 health care in the ordinary course of business or practice of a
16 health profession. Health care provider does not include a
17 person who provides health care solely through the sale or dis-
18 pensing of drugs or medical devices or a psychiatrist, psycholo-
19 gist, social worker, or professional counselor who provides only
20 mental health services.

21 (f) "Health facility" means a health facility or agency
22 licensed under article 17 of the public health code, 1978 PA 368,
23 MCL 333.20101 to 333.22260, or any other organized entity where a
24 health care provider provides health care to patients.

25 (g) "Maintain", as related to health care information, means
26 to hold, possess, preserve, retain, store, or control health care
27 information.

1 (h) "Minor" means an individual who is less than 18 years of
2 age, but does not include an individual who is emancipated under
3 section 4 of 1968 PA 293, MCL 722.4.

4 (i) "Patient" means an individual, including, but not
5 limited to, a deceased individual, who receives or has received
6 health care.

7 (j) "Patient advocate" means an individual designated to
8 make medical treatment decisions under section 496 of the revised
9 probate code, 1978 PA 642, MCL 700.496.

10 (k) "Patient's agent" means an individual or other person
11 described in section 5(1) and (2) who is not the patient.

12 (l) "Person" means an individual, corporation, estate,
13 trust, partnership, association, joint venture, government, gov-
14 ernmental subdivision or agency, or other legal or commercial
15 entity.

16 (m) "Personal representative" means that term as defined in
17 section 9 of the revised probate code, 1978 PA 642, MCL 700.9.

18 (n) "Third party payer" means a public or private health
19 care payment or benefits program that is created, authorized, or
20 licensed under the laws of this state, including, but not limited
21 to, all of the following:

22 (i) A health insurer.

23 (ii) A nonprofit health care corporation.

24 (iii) A health maintenance organization.

25 (iv) A preferred provider organization.

26 (v) A nonprofit dental care corporation.

1 (vi) Medicaid or medicare.

2 Sec. 5. (1) An adult patient, his or her guardian, his or
3 her patient advocate or conservator, any other legal representa-
4 tive of the adult patient, or the parent or guardian of a patient
5 who is a minor has the right to access the adult patient's or
6 minor patient's health care information. The right of access
7 described in this subsection includes, but is not limited to, the
8 right to inspect and to copy health care information generated by
9 the health care provider or health facility that provided the
10 health care to the patient at reasonable times.

11 (2) An individual described in subsection (1) may grant the
12 right of access described in subsection (1) to a third party
13 payer or other person with whom the individual enters into a con-
14 tract or who has a common law right to access to the individual's
15 health care information.

16 (3) An individual or other person described in subsections
17 (1) or (2) may exercise the right of access granted in subsection
18 (1) by making a request either orally or in writing to the health
19 care provider or health facility that maintains the health care
20 information that is the subject of the request. Upon receipt of
21 a request under this subsection, a health care provider or health
22 facility shall, as promptly as required under the circumstances,
23 but not later than 15 business days after receipt of the request,
24 do 1 or more of the following:

25 (a) Make the health care information available for inspec-
26 tion or copying, or both, at the health care provider's or health
27 facility's business location during regular business hours or

1 provide a copy of all or part of the health care information, as
2 requested by the patient or patient's agent.

3 (b) If the health care provider or health facility has con-
4 tracted with another person to maintain the health care
5 provider's or health facility's health care information, the
6 health care provider or health facility shall transmit a request
7 made under this subsection to the person maintaining the health
8 care information. The health care provider or health facility
9 shall retrieve the health care information from the other person,
10 and shall then comply with subdivision (a).

11 (c) Inform the patient or the patient's agent if the health
12 care information does not exist or cannot be found.

13 (d) If the health care provider or health facility to which
14 the request is directed does not maintain the health care infor-
15 mation requested and does not have a contract with another person
16 as described in subdivision (b), so inform the patient or the
17 patient's agent and provide the name and address, if known, of
18 the health care provider or health facility that maintains the
19 health care information.

20 (e) If the health care provider is unavailable during the
21 period of 15 business days, upon becoming available, immediately
22 notify the patient or the patient's agent of the health care
23 provider's availability and complete the request within 15 busi-
24 ness days after becoming available.

25 Sec. 7. A health care provider or health facility that
26 receives a request for health care information under section 5
27 shall not inquire as to the purpose of the request.

1 Sec. 9. (1) Except as otherwise provided in subsections (3)
2 to (5), if a patient or the patient's agent makes a request for
3 health care information under section 5, the health care provider
4 or health facility to which the request is directed may charge
5 the patient or the patient's agent 1 or more of the following:

6 (a) A retrieval fee not to exceed \$5.00 per request.

7 (b) Subject to subsection (3), if the health care provider
8 or health facility copies the health care information for the
9 patient or the patient's agent, a copying fee of not more than 7
10 cents per 1 side of a letter- or legal-sized page.

11 (c) If the health care provider or health facility mails the
12 health care information to the patient or the patient's agent,
13 the actual postage incurred.

14 (2) A health care provider or health facility may charge a
15 fee under subsection (1) only for that part of the health care
16 information actually retrieved or copied, or both. A health care
17 provider or health facility may refuse to retrieve or copy health
18 care information for a patient or patient's agent until the
19 applicable fee is paid.

20 (3) The 7-cent-per-page limit set forth in subsection (1)(b)
21 does not apply to copies of x-rays, electroencephalogram trac-
22 ings, or other imaging records. A health care provider or health
23 facility may charge the actual cost of copying health care infor-
24 mation described in this subsection.

25 (4) A health care provider or health facility shall not
26 charge a fee for retrieving, copying, or mailing health care
27 information other than a fee allowed under subsection (1). A

1 health care provider or health facility shall waive all fees for
2 a patient who is a recipient of a state or federal program that
3 provides medical assistance or other financial assistance based
4 on disability or income status. The health care provider or
5 health facility may require the patient or the patient's agent to
6 provide satisfactory proof that the patient is a recipient of
7 assistance as described in this subsection.

8 (5) A patient or the patient's agent may supply his or her
9 own copying equipment on the premises of the health care provider
10 or health facility and pay only the retrieval fee allowed under
11 subsection (1)(a).

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

16 "NOTICE

17 We keep a record of the health care we provide you. You may
18 ask us to see and copy that record. The cost to you of copying
19 that record is 7 cents per page plus a retrieval fee of not more
20 than \$5.00 per request. We will not disclose your record to
21 others unless you direct us to do so or unless the law authorizes
22 or compels us to do so. You may see your record or get more
23 information about it at _____."

24 (2) A health care provider or health facility shall post a
25 copy of the notice of information practices required under sub-
26 section (1) in a conspicuous place that is accessible by
27 patients.

1 Sec. 13. (1) The department of consumer and industry
2 services shall impose administrative sanctions on a health care
3 provider who violates this act in the same manner as administra-
4 tive sanctions are imposed under article 15 of the public health
5 code, 1978 PA 368, MCL 333.16101 to 333.18838. The department
6 shall impose only a reprimand, restitution, or a fine of not more
7 than \$500.00 per violation under this subsection.

8 (2) The department of consumer and industry services shall
9 impose administrative sanctions on a health facility that vio-
10 lates this act in the same manner as administrative sanctions are
11 imposed under article 17 of the public health code, 1978 PA 368,
12 MCL 333.20101 to 333.22260. The department shall impose only a
13 fine of not more than \$500.00 per violation under this
14 subsection.

15 (3) The department or an individual making a request for
16 health care information under this act may seek injunctive relief
17 through the attorney general or the prosecuting attorney for the
18 county in which a violation of this act occurs. The circuit
19 court in which a petition is filed under this subsection may
20 restrain and enjoin a violation of this act or may compel compli-
21 ance with this act.

22 (4) A patient or a patient's agent may bring a civil action
23 for damages against a health care provider or a health facility
24 for a violation of this act. The court may award actual damages
25 or \$250.00, whichever is greater, along with reasonable attorney
26 fees and costs.