

SENATE BILL NO. 1211

June 11, 1998, Introduced by Senator PETERS and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 2637, 2640, 5131, 16648, 18117, and 18237 (MCL 333.2637, 333.2640, 333.5131, 333.16648, 333.18117, and 333.18237), section 2640 as added by 1996 PA 307, section 5131 as amended by 1997 PA 57, 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.

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.

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 RECORDS OR INFORMATION TO DETERMINE WHETHER CHILD ABUSE
15 OR NEGLECT HAS OCCURRED OR TO TAKE ACTION TO PROTECT A CHILD
16 WHERE THERE MAY BE A SUBSTANTIAL RISK OF HARM, THE DEPARTMENT
17 SHALL GIVE ACCESS TO A FAMILY INDEPENDENCE AGENCY EMPLOYEE
18 DIRECTLY INVOLVED IN THE INVESTIGATION TO RECORDS AND INFORMATION
19 PERTAINING TO A CHILD WHO IS A SUBJECT OF A CHILD ABUSE OR
20 NEGLECT INVESTIGATION. A RECORD OR INFORMATION DISCLOSED UNDER
21 THIS SECTION SHALL INCLUDE THE IDENTITY OF THE INDIVIDUAL TO WHOM
22 THE RECORD OR INFORMATION PERTAINS.

23 (3) THE DEPARTMENT SHALL PROVIDE THE ACCESS DESCRIBED BY
24 SUBSECTION (2) ONLY UPON RECEIPT OF A WRITTEN REQUEST FROM A
25 FAMILY INDEPENDENCE AGENCY EMPLOYEE DIRECTLY INVOLVED IN THE
26 INVESTIGATION AND SHALL PROVIDE THAT ACCESS WITHIN 14 CALENDAR
27 DAYS AFTER THE RECORD HOLDER RECEIVES THE WRITTEN REQUEST. THE

1 DEPARTMENT SHALL PROVIDE THAT ACCESS REGARDLESS OF THE CONSENT OF
2 THE PERSON FROM WHOM CONSENT WOULD OTHERWISE BE REQUIRED.

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

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

12 Sec. 5131. (1) All reports, records, and data pertaining to
13 testing, care, treatment, reporting, and research ~~, and informa-~~
14 ~~tion pertaining to partner notification under section 5114a, that~~
15 ~~are~~ associated with the serious communicable diseases or infec-
16 tions of HIV infection and acquired immunodeficiency syndrome AND
17 INFORMATION PERTAINING TO PARTNER NOTIFICATION UNDER SECTION
18 5114A are confidential. A person shall release reports, records,
19 data, and information described in this subsection only pursuant
20 to this section.

21 (2) Except as otherwise provided by law, the test results of
22 a test for HIV infection or acquired immunodeficiency syndrome
23 and the fact that such a test was ordered is information that is
24 subject to section 2157 of the revised judicature act of 1961,
25 1961 PA 236, MCL 600.2157.

26 (3) The disclosure of information pertaining to HIV
27 infection or acquired immunodeficiency syndrome in response to a

1 court order and subpoena is limited to only the following cases
2 and is subject to all of the following restrictions:

3 (a) A court that is petitioned for an order to disclose the
4 information shall determine both of the following:

5 (i) That other ways of obtaining the information are not
6 available or would not be effective.

7 (ii) That the public interest and need for the disclosure
8 outweigh the potential for injury to the patient.

9 (b) If a court issues an order for the disclosure of the
10 information, the order shall do all of the following:

11 (i) Limit disclosure to those parts of the patient's record
12 that are determined by the court to be essential to fulfill the
13 objective of the order.

14 (ii) Limit disclosure to those persons whose need for the
15 information is the basis for the order.

16 (iii) Include such other measures as considered necessary by
17 the court to limit disclosure for the protection of the patient.

18 (4) A person who releases information pertaining to HIV
19 infection or acquired immunodeficiency syndrome to a legislative
20 body shall not identify in the information a specific individual
21 who was tested or is being treated for HIV infection or acquired
22 immunodeficiency syndrome.

23 (5) Subject to subsection (7), subsection (1) does not apply
24 to the following:

25 (a) Information pertaining to an individual who is HIV
26 infected or has been diagnosed as having acquired
27 immunodeficiency syndrome, if the information is disclosed to the

1 department, a local health department, or other health care
2 provider for 1 or more of the following purposes:

3 (i) To protect the health of an individual.

4 (ii) To prevent further transmission of HIV.

5 (iii) To diagnose and care for a patient.

6 (b) Information pertaining to an individual who is HIV
7 infected or has been diagnosed as having acquired immunodefi-
8 ciency syndrome, if the information is disclosed by a physician
9 or local health officer to an individual who is known by the phy-
10 sician or local health officer to be a contact of the individual
11 who is HIV infected or has been diagnosed as having acquired
12 immunodeficiency syndrome, if the physician or local health offi-
13 cer determines that the disclosure of the information is neces-
14 sary to prevent a reasonably foreseeable risk of further trans-
15 mission of HIV. This subdivision imposes an affirmative duty
16 upon a physician or local health officer to disclose information
17 pertaining to an individual who is HIV infected or has been diag-
18 nosed as having acquired immunodeficiency syndrome to an individ-
19 ual who is known by the physician or local health officer to be a
20 contact of the individual who is HIV infected or has been diag-
21 nosed as having acquired immunodeficiency syndrome. A physician
22 or local health officer may discharge the affirmative duty
23 imposed under this subdivision by referring the individual who is
24 HIV infected or has been diagnosed as having acquired immunodefi-
25 ciency syndrome to the appropriate local health department for
26 assistance with partner notification under section 5114a. The
27 physician or local health officer shall include as part of the

1 referral the name and, if available, address and telephone number
2 of each individual known by the physician or local health officer
3 to be a contact of the individual who is HIV infected or has been
4 diagnosed as having acquired immunodeficiency syndrome.

5 (c) Information pertaining to an individual who is HIV
6 infected or has been diagnosed as having acquired immunodefi-
7 ciency syndrome, if the information is disclosed by an authorized
8 representative of the department or by a local health officer to
9 an employee of a school district, and if the department represen-
10 tative or local health officer determines that the disclosure is
11 necessary to prevent a reasonably foreseeable risk of transmis-
12 sion of HIV to pupils in the school district. An employee of a
13 school district to whom information is disclosed under this sub-
14 division is subject to subsection (1).

15 (d) Information pertaining to an individual who is HIV
16 infected or has been diagnosed as having acquired immunodefi-
17 ciency syndrome, if the disclosure is expressly authorized in
18 writing by the individual. This subdivision applies only if the
19 written authorization is specific to HIV infection or acquired
20 immunodeficiency syndrome. If the individual is a minor or inca-
21 pacitated, the written authorization may be executed by the
22 parent or legal guardian of the individual.

23 (e) Information disclosed under section 5114, 5114a,
24 5119(3), 5129, 5204, 16281, or 20191 or information disclosed as
25 required by rule promulgated under section 5111(1)(b) or (i).

26 (f) Information pertaining to an individual who is HIV
27 infected or has been diagnosed as having acquired

1 immunodeficiency syndrome, if the information is part of a report
2 required under the child protection law, 1975 PA 238, MCL 722.621
3 to ~~722.636~~ 722.638.

4 (g) Information pertaining to an individual who is HIV
5 infected or has been diagnosed as having acquired immunodefi-
6 ciency syndrome, if the information is disclosed by the
7 ~~department of social services~~ FAMILY INDEPENDENCE AGENCY, the
8 department of ~~mental~~ COMMUNITY health, the probate court OR THE
9 FAMILY DIVISION OF THE CIRCUIT COURT, or a child placing agency
10 in order to care for a minor and to place the minor with a child
11 care organization. ~~licensed under 1973 PA 116, MCL 722.111 to~~
12 ~~722.128.~~ The person disclosing the information shall disclose it
13 only to the director of the child care organization or, if the
14 child care organization is a private home, to the individual who
15 holds the license OR REGISTRATION for the child care
16 organization. An individual to whom information is disclosed
17 under this subdivision is subject to subsection (1). As used in
18 this subdivision, "child care organization" and "child placing
19 agency" mean those terms as defined in section 1 of 1973 PA 116,
20 MCL 722.111.

21 (6) A person who releases the results of an HIV test or
22 other information described in subsection (1) in compliance with
23 subsection (5) is immune from civil or criminal liability and
24 administrative penalties including, but not limited to, licensure
25 sanctions, for the release of that information.

26 (7) A person who discloses information under subsection (5)
27 shall not include in the disclosure information that identifies

1 the individual to whom the information pertains, unless the
 2 identifying information is determined by the person making the
 3 disclosure to be reasonably necessary to prevent a foreseeable
 4 risk of transmission of HIV. This subsection does not apply to
 5 information disclosed under subsection (5)(d), (f), or (g).

6 (8) A person who violates this section is guilty of a misde-
 7 meanor, punishable by imprisonment for not more than 1 year or a
 8 fine of not more than \$5,000.00, or both, and is liable in a
 9 civil action for actual damages or \$1,000.00, whichever is great-
 10 er, and costs and reasonable attorney fees. This subsection also
 11 applies to the employer of a person who violates this section,
 12 unless the employer had in effect at the time of the violation
 13 reasonable precautions designed to prevent the violation.

14 SEC. 16281. (1) UPON WRITTEN REQUEST OF A FAMILY INDEPEN-
 15 DENCE AGENCY EMPLOYEE DIRECTLY INVOLVED IN THE INVESTIGATION AND
 16 WITHIN 14 CALENDAR DAYS AFTER THE RECORD HOLDER RECEIVES THE
 17 REQUEST, A LICENSEE OR REGISTRANT WHO PROVIDES TREATMENT TO A
 18 CHILD WHO IS THE SUBJECT OF AN INVESTIGATION UNDER THE CHILD PRO-
 19 TECTION LAW, 1975 PA 238, MCL 722.621 TO 722.638, SHALL PROVIDE
 20 ACCESS TO THE CHILD'S MEDICAL RECORDS TO THE FAMILY INDEPENDENCE
 21 AGENCY EMPLOYEE, REGARDLESS OF THE CONSENT OF THE PERSON FROM
 22 WHOM CONSENT WOULD OTHERWISE BE REQUIRED.

23 (2) THE FOLLOWING PRIVILEGES DO NOT APPLY TO INFORMATION
 24 RELEASED OR MADE AVAILABLE UNDER SUBSECTION (1):

25 (A) THE PHYSICIAN-PATIENT PRIVILEGE CREATED IN SECTION 2157
 26 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL
 27 600.2157.

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

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

4 (D) THE PSYCHOLOGIST-PATIENT PRIVILEGE CREATED IN SECTION
5 18237.

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

8 (3) TO THE EXTENT NOT PROTECTED BY THE IMMUNITY CONFERRED BY
9 1964 PA 170, MCL 691.1401 TO 691.1415, AN INDIVIDUAL WHO IN GOOD
10 FAITH PROVIDES ACCESS TO A RECORD OR INFORMATION AS REQUIRED BY
11 THIS SECTION IS IMMUNE FROM CIVIL OR ADMINISTRATIVE LIABILITY
12 ARISING FROM THAT CONDUCT, UNLESS THE CONDUCT WAS GROSS NEGLI-
13 GENCE OR WILLFUL AND WANTON MISCONDUCT.

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

17 Sec. 16648. (1) Information relative to the care and treat-
18 ment of a dental patient acquired as a result of providing pro-
19 fessional dental services ~~shall be~~ IS confidential and
20 privileged. Except with the written consent of the patient or
21 the patient's attorney in fact or personal representative, OR
22 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), a dentist or a
23 person employed by the dentist shall not disclose or be required
24 to disclose that information.

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

1 (a) Disclosure as part of the defense to a claim in a court
2 or administrative agency challenging the dentist's professional
3 competence.

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

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

8 (d) Disclosure to a third party payer of information relat-
9 ing to fees for services in the course of a good faith examina-
10 tion of the dentist's records to determine the amount and cor-
11 rectness of fees or the type and volume of services furnished
12 pursuant to provisions for payment established by a third party
13 payer, or information required for a third party payer's prede-
14 terminations, post treatment reviews, or audits. For purposes of
15 this subdivision, "third party payer" includes, BUT IS NOT
16 LIMITED TO, a nonprofit dental care corporation, nonprofit health
17 care corporation, insurer, benefit fund, health maintenance
18 organization, and ~~a~~ dental capitation plan.

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

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

22 (g) Disclosure made pursuant to section 16222 if the
23 licensee reasonably believes it is necessary to disclose the
24 information to comply with section 16222.

25 (H) DISCLOSURE UNDER SECTION 16281.

26 Sec. 18117. For the purposes of this part, the confidential
27 relations and communications between a licensed professional

1 counselor or a limited licensed counselor and a client of the
2 licensed professional counselor or a limited licensed counselor
3 are privileged communications, and ~~nothing in~~ this part
4 ~~requires any~~ DOES NOT REQUIRE A privileged communication to be
5 disclosed, except as otherwise provided by law. Confidential
6 information may be disclosed only upon consent of the client,
7 ~~or~~ pursuant to section 16222 if the licensee reasonably
8 believes it is necessary to disclose the information to comply
9 with section 16222, OR UNDER SECTION 16281.

10 Sec. 18237. A psychologist licensed or allowed to use ~~the~~
11 THAT title under this part or an individual under his or her
12 supervision ~~shall not~~ CANNOT be compelled to disclose confiden-
13 tial information acquired from an individual consulting the psy-
14 chologist in his or her professional capacity ~~and which~~ IF THE
15 information is necessary to enable the psychologist to render
16 services. Information may be disclosed with the consent of the
17 individual consulting THE PSYCHOLOGIST, or if the individual con-
18 sulting THE PSYCHOLOGIST is a minor, with the consent of the
19 minor's guardian, ~~or~~ pursuant to section 16222 if the psycholo-
20 gist reasonably believes it is necessary to disclose the informa-
21 tion to comply with section 16222, OR UNDER SECTION 16281. In a
22 contest on the admission of a deceased individual's will to pro-
23 bate, an heir at law of the decedent, whether a proponent or con-
24 testant of the will, and the personal representative of the dece-
25 dent may waive the privilege created by this section.