

Act No. 496
Public Acts of 1998
Approved by the Governor
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senator Peters

ENROLLED SENATE BILL No. 1211

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," 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:

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

(2) The procedures established under subsection (1) shall be consistent with the policy established under sections 2611 and 2613.

(3) Except as provided in section 2640, the procedures established under subsection (1) shall specify the data contained in a departmental data system or system of records that shall not be disclosed unless items identifying a person by name, address, number, symbol, or any other identifying particular are deleted.

(4) The procedures established under subsection (1) shall regulate the use and disclosure of data contained in a departmental data system or system of records released to researchers, other persons, including designated medical research projects as described in section 2631, or governmental entities. A person who receives data pursuant to this section shall not disclose an item of information contained in the data except in conformance with the authority granted by the department and with the purpose for which the data was originally requested by the researcher. The director may contract with researchers or other persons to implement and enforce this subsection. A contract made pursuant to this subsection shall do both of the following:

- (a) Require the department to provide monitoring to assure compliance with this section.
- (b) Provide for termination if this section or the contract is violated.

(5) An officer or employee of the department shall not disclose data contained in a departmental data system or system of records except as authorized in the procedures adopted pursuant to this section.

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

(7) A person whose contract is terminated pursuant to subsection (4)(b) is not eligible to make a subsequent contract with the department.

Sec. 2640. (1) The department shall give prompt access to the parentage registry to the family independence agency or its agent for the purpose of the family independence agency's duty to aid in the establishment or enforcement of child support obligations. The family independence agency or its agent may use or disclose the information from the parentage registry in carrying out that duty.

(2) Notwithstanding section 2637, 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 department shall give access to a family independence agency 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 section shall include the identity of the individual to whom the record or information pertains.

(3) The department shall provide the access described by subsection (2) only upon receipt of a written request from a caseworker or administrator directly involved in the investigation and shall provide that access within 14 calendar days after the record holder receives the written request. The department shall provide that access regardless of the consent of the person from whom consent would otherwise be required.

(4) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an individual who in good faith provides access to medical records or information under subsection (2) is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

(5) This section does not apply to a report, record, datum, or information whose confidentiality and disclosure are governed by section 5131.

Sec. 16281. (1) If there is a compelling need for records or information to determine whether child abuse or child neglect has occurred or to take action to protect a child where there may be a substantial risk of harm, a family independence agency caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a licensee or registrant that a child abuse or neglect investigation has been initiated regarding a child who has received services from the licensee or registrant and shall request in writing the child's medical records and information that are pertinent to that investigation. Upon receipt of this notification and request, the licensee or registrant shall review all of the child's medical records and information in the licensee's or registrant's possession to determine if there are medical records or information that is pertinent to that investigation. Within 14 days after receipt of a request made under this subsection, the licensee or registrant shall release those pertinent medical records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation.

(2) The following privileges do not apply to medical records or information released or made available under subsection (1):

(a) The physician-patient privilege created in section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(b) The dentist-patient privilege created in section 16648.

(c) The licensed professional counselor-client and limited licensed counselor-client privilege created in section 18117.

(d) The psychologist-patient privilege created in section 18237.

(e) Any other health professional-patient privilege created or recognized by law.

(3) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an individual who in good faith provides access to medical records or information under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

(4) This section does not apply to a report, record, datum, or information whose confidentiality and disclosure are governed by section 5131.

(5) A duty under this act relating to child abuse and neglect does not alter a duty imposed under another statute, including the child protection law, 1975 PA 238, MCL 722.621 to 722.638, regarding the reporting or investigation of child abuse or neglect.

Sec. 16648. (1) Information relative to the care and treatment of a dental patient acquired as a result of providing professional dental services is confidential and privileged. Except with the written consent of the patient or the

patient's attorney in fact or personal representative, or except as otherwise provided in subsection (2), a dentist or a person employed by the dentist shall not disclose or be required to disclose that information.

(2) This section does not prohibit disclosure of the information described in subsection (1) in the following instances:

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

(b) Disclosure pursuant to 1967 PA 270, MCL 331.531 to 331.533.

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

(d) Disclosure to a third party payer of information relating to fees for services in the course of a good faith examination of the dentist's records to determine the amount and correctness of fees or the type and volume of services furnished pursuant to provisions for payment established by a third party payer, or information required for a third party payer's predeterminations, post treatment reviews, or audits. For purposes of this subdivision, "third party payer" includes, but is not limited to, a nonprofit dental care corporation, nonprofit health care corporation, insurer, benefit fund, health maintenance organization, and dental capitation plan.

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

(f) Disclosure as provided in section 2844a.

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

(h) Disclosure under section 16281.

Sec. 18117. For the purposes of this part, the confidential relations and communications between a licensed professional counselor or a limited licensed counselor and a client of the licensed professional counselor or a limited licensed counselor are privileged communications, and this part does not require a privileged communication to be disclosed, except as otherwise provided by law. Confidential information may be disclosed only upon consent of the client, pursuant to section 16222 if the licensee reasonably believes it is necessary to disclose the information to comply with section 16222, or under section 16281.

Sec. 18237. A psychologist licensed or allowed to use that title under this part or an individual under his or her supervision cannot be compelled to disclose confidential information acquired from an individual consulting the psychologist in his or her professional capacity if the information is necessary to enable the psychologist to render services. Information may be disclosed with the consent of the individual consulting the psychologist, or if the individual consulting the psychologist is a minor, with the consent of the minor's guardian, pursuant to section 16222 if the psychologist reasonably believes it is necessary to disclose the information to comply with section 16222, or under section 16281. In a contest on the admission of a deceased individual's will to probate, an heir at law of the decedent, whether a proponent or contestant of the will, and the personal representative of the decedent may waive the privilege created by this section.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Henry R. Ballew

Clerk of the House of Representatives.

Approved _____

Governor.