

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4706

A bill to provide for and to regulate access to and disclosure of medical records; to prescribe powers and duties of certain state agencies and departments; to establish fees; to prescribe administrative sanctions; and to 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 "medical records access act".

3 Sec. 3. As used in this act:

4 (a) "Authorized representative" means either of the
5 following:

6 (i) A person empowered by the patient by explicit written
7 authorization to act on the patient's behalf to access, disclose,
8 or consent to the disclosure of the patient's medical record, in
9 accordance with this act.

10 (ii) If the patient is deceased, his or her personal

1 representative or his or her heirs at law or the beneficiary of
2 the patient's life insurance policy, to the extent provided by
3 section 2157 of the revised judicature act of 1961, 1961 PA 236,
4 MCL 600.2157.

5 (b) "Detroit consumer price index" means the most
6 comprehensive index of consumer prices available for the Detroit
7 area from the bureau of labor statistics of the United States
8 department of labor.

9 (c) "Guardian" means an individual who is appointed under
10 section 5306 of the estates and protected individuals code, 1998
11 PA 386, MCL 700.5306, to the extent that the scope of the
12 guardianship includes the authority to act on the individual's
13 behalf with regard to his or her health care. Guardian includes
14 an individual who is appointed as the guardian of a minor under
15 section 5202 or 5204 of the estates and protected individuals
16 code, 1998 PA 386, MCL 700.5202 and 700.5204, or under the mental
17 health code, 1974 PA 258, MCL 330.1001 to 330.2106, to the extent
18 that the scope of the guardianship includes the authority to act
19 on the individual's behalf with regard to his or her health
20 care.

21 (d) "Health care" means any care, service, or procedure
22 provided by a health care provider or health facility to
23 diagnose, treat, or maintain a patient's physical condition, or
24 that affects the structure or a function of the human body.

25 (e) "Health care provider" means a person who is licensed or
26 registered or otherwise authorized under article 15 of the public
27 health code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide

1 health care in the ordinary course of business or practice of a
2 health profession. Health care provider does not include a
3 person who provides health care solely through the sale or
4 dispensing of drugs or medical devices or a psychiatrist,
5 psychologist, social worker, or professional counselor who
6 provides only mental health services.

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

11 (g) "Maintain", as related to medical records, means to hold,
12 possess, preserve, retain, store, or control medical records.

13 (h) "Medicaid" means that term as defined in section 2701 of
14 the public health code, 1978 PA 368, MCL 333.2701.

15 (i) "Medical record" means information oral or recorded in
16 any form or medium that pertains to a patient's health care,
17 medical history, diagnosis, prognosis, or medical condition and
18 that is maintained by a health care provider or health facility
19 in the process of the patient's health.

20 (j) "Medical records company" means a person who stores,
21 locates, or copies medical records for a health care provider or
22 health facility under a contract or agreement with that health
23 care provider or health facility and charges a fee for providing
24 medical records to a patient or his or her authorized
25 representative for that health care provider or health facility.

26 (k) "Medically indigent individual" means that term as
27 defined under section 106 of the social welfare act, 1939 PA 280,

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1 MCL 400.106.

2 (l) "Medicare" means that term as defined in section 2701 of
3 the public health code, 1978 PA 368, MCL 333.2701.

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

7 (n) "Patient" means an individual who receives or has
8 received health care from a health care provider or health
9 facility. Patient includes a guardian, if appointed, and a
10 parent, guardian, or person acting in loco parentis, if the
11 individual is a minor, unless the minor lawfully obtained health
12 care without the consent or notification of a parent, guardian,
13 or other person acting in loco parentis, in which case the minor
14 has the exclusive right to exercise the rights of a patient under
15 this act with respect to those medical records relating to that
16 care.

17 (o) "Person" means an individual, corporation, estate, trust,
18 partnership, association, joint venture, government, governmental
19 subdivision or agency, or other legal or commercial entity.

20 (p) "Personal representative" means that term as defined in
21 section 1106 of the estates and protected individuals code, 1998
22 PA 386, MCL 700.1106.

23 (q) "Third party payer" means a public or private health care
24 payment or benefits program <<

25 >> including, but not limited
26 to, all of the following:

27 (i) A health insurer.

1 (ii) A nonprofit health care corporation.

2 (iii) A health maintenance organization.

3 (iv) A preferred provider organization.

4 (v) A nonprofit dental care corporation.

5 (vi) Medicaid or medicare.

6 Sec. 5. (1) Except as otherwise provided by law or
7 regulation, a patient or his or her authorized representative has
8 the right to examine or obtain the patient's medical record.

9 (2) An individual authorized under subsection (1) who wishes
10 to examine or obtain a copy of the patient's medical record shall
11 submit a written request that is signed and dated by that
12 individual not more than 60 days before being submitted to the
13 health care provider or health facility that maintains the
14 medical record that is the subject of the request. Upon receipt
15 of a request under this subsection, a health care provider or
16 health facility shall, as promptly as required under the
17 circumstances, but not later than 30 days after receipt of the
18 request or if the medical record is not maintained or accessible
19 on-site not later than 60 days after receipt of the request, do 1
20 or more of the following:

21 (a) Make the medical record available for inspection or
22 copying, or both, at the health care provider's or health
23 facility's business location during regular business hours or
24 provide a copy of all or part of the medical record, as requested
25 by the patient or his or her authorized representative.

26 (b) If the health care provider or health facility has
27 contracted with another person or medical records company to

1 maintain the health care provider's or health facility's medical
2 records, the health care provider or health facility shall
3 transmit a request made under this subsection to the person or
4 medical records company maintaining the medical records. The
5 health care provider or health facility shall retrieve the
6 medical record from the person or medical records company
7 maintaining the medical records and comply with subdivision (a)
8 or shall require the person or medical records company that
9 maintains that medical record to comply with subdivision (a).

10 (c) Inform the patient or his or her authorized
11 representative if the medical record does not exist or cannot be
12 found.

13 (d) If the health care provider or health facility to which
14 the request is directed does not maintain the medical record
15 requested and does not have a contract with another person or
16 medical records company as described in subdivision (b), so
17 inform the patient or his or her authorized representative and
18 provide the name and address, if known, of the health care
19 provider or health facility that maintains the medical records.

20 (e) If the health care provider or health facility determines
21 that disclosure of the requested medical record is likely to have
22 an adverse effect on the patient, the health care provider or
23 health facility shall provide a clear statement supporting that
24 determination and provide the medical record to another health
25 care provider, health facility, or legal counsel designated by
26 the patient or his or her authorized representative.

27 (f) If the health care provider or health facility receives a

1 request for a medical record that was obtained from someone other
2 than a health care provider or health facility under a
3 confidentiality agreement, the health care provider or health
4 facility may deny access to that medical record if access to that
5 medical record would be reasonably likely to reveal the source of
6 the information. If the health care provider or health facility
7 denies access under this subdivision, it shall provide the
8 patient or his or her authorized representative with a written
9 denial.

10 (g) The health care provider, health facility, or medical
11 records company shall take reasonable steps to verify the
12 identity of the person making the request to examine or obtain a
13 copy of the patient's medical record.

14 (3) If the health care provider, health facility, or medical
15 records company is unable to take action as required under
16 subsection (2) and the health care provider, health facility, or
17 medical records company provides the patient with a written
18 statement indicating the reasons for its delay within the
19 required time period, the health care provider, health facility,
20 or medical records company may extend the response time for no
21 more than 30 days. A health care provider, health facility, or
22 medical records company may only extend the response time once
23 per request under this subsection.

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

27 Sec. 9. (1) Except as otherwise provided in this section,

1 if a patient or his or her authorized representative makes a
2 request for a copy of all or part of his or her medical record
3 under section 5, the health care provider, health facility, or
4 medical records company to which the request is directed may
5 charge the patient or his or her authorized representative a fee
6 that is not more than the following amounts:

7 (a) An initial fee of \$20.00 per request for a copy of the
8 record.

9 (b) Paper copies as follows:

10 (i) One dollar per page for the first 20 pages.

11 (ii) Fifty cents per page for pages 21 through 50.

12 (iii) Twenty cents for pages 51 and over.

13 (c) If the medical record is in some form or medium other
14 than paper, the actual cost of preparing a duplicate.

15 (d) Any postage or shipping costs incurred by the health care
16 provider, health facility, or medical records company in
17 providing the copies.

18 (e) Any actual costs incurred by the health care provider,
19 health facility, or medical records company in retrieving medical
20 records that are 7 years old or older and not maintained or
21 accessible on-site.

22 (2) A health care provider, health facility, or medical
23 records company may refuse to retrieve or copy all or part of a
24 medical record for a patient or his or her authorized
25 representative until the applicable fee is paid.

26 (3) A health care provider, health facility, or medical
27 records company shall not charge a fee for retrieving, copying,

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1 or mailing all or part of a medical record other than a fee
2 allowed under subsection (1). Except as otherwise provided in
3 subsection (4), a health care provider, health facility, or
4 medical records company shall waive all fees for a medically
5 indigent individual. The health care provider, health facility,
6 or medical records company may require the patient or his or her
7 authorized representative to provide proof that the patient is a
8 recipient of assistance as described in this subsection.

9 (4) A medically indigent individual that receives copies of
10 medical records at no charge under subsection (3) is limited to 1
11 set of copies per health care provider, health facility, or
12 medical records company. Any additional requests for the same
13 records from the same health care provider, health facility, or
14 medical records company shall be subject to the fee provisions
15 under subsection (1).

16 (5) Notwithstanding subsection (1), a health care provider,
17 health facility, or medical records company shall not charge a
18 patient an initial fee for his or her medical record.

19 (6) Beginning 2 years after the effective date of this act,
20 the department of community health shall adjust on an annual
21 basis the fees prescribed by subsection (1) by an amount
22 determined by the state treasurer to reflect the cumulative
23 annual percentage change in the Detroit consumer price index.

24 Sec. 11. This act does not apply to copies of medical
25 records provided to a third party payer <<, insurer as defined in section
106 of the insurance code of 1956, 1956 PA 218, MCL 500.106, or self-
funded plan>>.