

HOUSE BILL No. 6088

July 21, 2004, Introduced by Reps. Adamini, Ward and Gaffney and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 5131 and 20201 (MCL 333.5131 and 333.20201),
section 5131 as amended by 1997 PA 57 and section 20201 as
amended by 2001 PA 240.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5131. (1) All reports, records, and data pertaining to
2 testing, care, treatment, reporting, and research, and
3 information pertaining to partner notification under
4 section 5114a, that are associated with the serious communicable
5 diseases or infections of HIV infection and acquired
6 immunodeficiency syndrome are confidential. A person shall
7 release reports, records, data, and information described in this
8 subsection only pursuant to this section **or as otherwise**
9 **permitted or required under the health insurance portability and**

1 accountability act of 1996, Public Law 104-191, or regulations
2 promulgated under that act, 45 CFR parts 160 and 164.

3 (2) Except as otherwise provided by law, the test results of
4 a test for HIV infection or acquired immunodeficiency syndrome
5 and the fact that such a test was ordered is information that is
6 subject to section 2157 of the revised judicature act of 1961,
7 1961 PA 236, MCL 600.2157.

8 (3) The disclosure of information pertaining to HIV infection
9 or acquired immunodeficiency syndrome in response to a court
10 order and subpoena is limited to only the following cases and is
11 subject to all of the following restrictions:

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

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

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

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

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

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

25 (iii) Include ~~such~~ other measures as considered necessary
26 by the court to limit disclosure for the protection of the
27 patient.

1 (4) A person who releases information pertaining to HIV
2 infection or acquired immunodeficiency syndrome to a legislative
3 body shall not identify in the information a specific individual
4 who was tested or is being treated for HIV infection or acquired
5 immunodeficiency syndrome.

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

8 (a) Information pertaining to an individual who is HIV
9 infected or has been diagnosed as having acquired
10 immunodeficiency syndrome, if the information is disclosed to the
11 department, a local health department, or other health care
12 provider for 1 or more of the following purposes:

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

14 (ii) To prevent further transmission of HIV.

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

16 (b) Information pertaining to an individual who is HIV
17 infected or has been diagnosed as having acquired
18 immunodeficiency syndrome, if the information is disclosed by a
19 physician or local health officer to an individual who is known
20 by the physician or local health officer to be a contact of the
21 individual who is HIV infected or has been diagnosed as having
22 acquired immunodeficiency syndrome, if the physician or local
23 health officer determines that the disclosure of the information
24 is necessary to prevent a reasonably foreseeable risk of further
25 transmission of HIV. This subdivision imposes an affirmative
26 duty upon a physician or local health officer to disclose
27 information pertaining to an individual who is HIV infected or

1 has been diagnosed as having acquired immunodeficiency syndrome
2 to an individual who is known by the physician or local health
3 officer to be a contact of the individual who is HIV infected or
4 has been diagnosed as having acquired immunodeficiency syndrome.
5 A physician or local health officer may discharge the affirmative
6 duty imposed under this subdivision by referring the individual
7 who is HIV infected or has been diagnosed as having acquired
8 immunodeficiency syndrome to the appropriate local health
9 department for assistance with partner notification under section
10 5114a. The physician or local health officer shall include as
11 part of the referral the name and, if available, address and
12 telephone number of each individual known by the physician or
13 local health officer to be a contact of the individual who is HIV
14 infected or has been diagnosed as having acquired
15 immunodeficiency syndrome.

16 (c) Information pertaining to an individual who is HIV
17 infected or has been diagnosed as having acquired
18 immunodeficiency syndrome, if the information is disclosed by an
19 authorized representative of the department or by a local health
20 officer to an employee of a school district, and if the
21 department representative or local health officer determines that
22 the disclosure is necessary to prevent a reasonably foreseeable
23 risk of transmission of HIV to pupils in the school district. An
24 employee of a school district to whom information is disclosed
25 under this subdivision is subject to subsection (1).

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

1 immunodeficiency syndrome, if the disclosure is expressly
2 authorized in writing by the individual. This subdivision
3 applies only if the written authorization is specific to HIV
4 infection or acquired immunodeficiency syndrome. If the
5 individual is a minor or incapacitated, the written authorization
6 may be executed by the parent or legal guardian of the
7 individual.

8 (e) Information disclosed under section 5114, 5114a, 5119(3),
9 5129, 5204, or 20191 or information disclosed as required by rule
10 promulgated under section 5111(1)(b) or (i).

11 (f) Information pertaining to an individual who is HIV
12 infected or has been diagnosed as having acquired
13 immunodeficiency syndrome, if the information is part of a report
14 required under the child protection law, 1975 PA 238, MCL 722.621
15 to ~~722.636~~ **722.638**.

16 (g) Information pertaining to an individual who is HIV
17 infected or has been diagnosed as having acquired
18 immunodeficiency syndrome, if the information is disclosed by the
19 ~~department of social services~~ **family independence agency**, the
20 department of ~~mental~~ **community** health, the probate court, or a
21 child placing agency in order to care for a minor and to place
22 the minor with a child care organization licensed under 1973 PA
23 116, MCL 722.111 to 722.128. The person disclosing the
24 information shall disclose it only to the director of the child
25 care organization or, if the child care organization is a private
26 home, to the individual who holds the license for the child care
27 organization. An individual to whom information is disclosed

1 under this subdivision is subject to subsection (1). As used in
2 this subdivision, "child care organization" and "child placing
3 agency" mean those terms as defined in section 1 of 1973 PA 116,
4 MCL 722.111.

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

10 (7) A person who discloses information under subsection (5)
11 shall not include in the disclosure information that identifies
12 the individual to whom the information pertains, unless the
13 identifying information is determined by the person making the
14 disclosure to be reasonably necessary to prevent a foreseeable
15 risk of transmission of HIV **or the identifying information is**
16 **required to be disclosed under the health insurance portability**
17 **and accountability act of 1996, Public Law 104-191, or**
18 **regulations promulgated under that act, 45 CFR parts 160 and**
19 **164.** This subsection does not apply to information disclosed
20 under subsection (5)(d), (f), or (g).

21 (8) A person who violates this section is guilty of a
22 misdemeanor, punishable by imprisonment for not more than 1 year
23 or a fine of not more than \$5,000.00, or both, and is liable in a
24 civil action for actual damages or \$1,000.00, whichever is
25 greater, and costs and reasonable attorney fees. This subsection
26 also applies to the employer of a person who violates this
27 section, unless the employer had in effect at the time of the

1 violation reasonable precautions designed to prevent the
2 violation.

3 Sec. 20201. (1) A health facility or agency that provides
4 services directly to patients or residents and is licensed under
5 this article shall adopt a policy describing the rights and
6 responsibilities of patients or residents admitted to the health
7 facility or agency. Except for a licensed health maintenance
8 organization which shall comply with chapter 35 of the insurance
9 code of 1956, 1956 PA 218, MCL 500.3501 to 500.3580, the policy
10 shall be posted at a public place in the health facility or
11 agency and shall be provided to each member of the health
12 facility or agency staff. Patients or residents shall be treated
13 in accordance with the policy.

14 (2) The policy describing the rights and responsibilities of
15 patients or residents required under subsection (1) shall
16 include, as a minimum, all of the following:

17 (a) A patient or resident shall not be denied appropriate
18 care on the basis of race, religion, color, national origin, sex,
19 age, disability, marital status, sexual preference, or source of
20 payment.

21 (b) An individual who is or has been a patient or resident is
22 entitled to inspect, or receive for a reasonable fee, a copy of
23 his or her medical record upon request. ~~—A— Except as otherwise~~
24 ~~permitted or required under the health insurance portability and~~
25 ~~accountability act of 1996, Public Law 104-191, or regulations~~
26 ~~promulgated under that act, 45 CFR parts 160 and 164, a third~~
27 party shall not be given a copy of the patient's or resident's

1 medical record without prior authorization of the patient or
2 resident.

3 (c) A patient or resident is entitled to confidential
4 treatment of personal and medical records, and may refuse their
5 release to a person outside the health facility or agency except
6 as required because of a transfer to another health care
7 facility, ~~or~~ as required by law or third party payment
8 contract, **or as required under the health insurance portability**
9 **and accountability act of 1996, Public Law 104-191, or**
10 **regulations promulgated under that act, 45 CFR parts 160 and**
11 **164.**

12 (d) A patient or resident is entitled to privacy, to the
13 extent feasible, in treatment and in caring for personal needs
14 with consideration, respect, and full recognition of his or her
15 dignity and individuality.

16 (e) A patient or resident is entitled to receive adequate and
17 appropriate care, and to receive, from the appropriate individual
18 within the health facility or agency, information about his or
19 her medical condition, proposed course of treatment, and
20 prospects for recovery, in terms that the patient or resident can
21 understand, unless medically contraindicated as documented by the
22 attending physician in the medical record.

23 (f) A patient or resident is entitled to refuse treatment to
24 the extent provided by law and to be informed of the consequences
25 of that refusal. If a refusal of treatment prevents a health
26 facility or agency or its staff from providing appropriate care
27 according to ethical and professional standards, the relationship

1 with the patient or resident may be terminated upon reasonable
2 notice.

3 (g) A patient or resident is entitled to exercise his or her
4 rights as a patient or resident and as a citizen, and to this end
5 may present grievances or recommend changes in policies and
6 services on behalf of himself or herself or others to the health
7 facility or agency staff, to governmental officials, or to
8 another person of his or her choice within or outside the health
9 facility or agency, free from restraint, interference, coercion,
10 discrimination, or reprisal. A patient or resident is entitled
11 to information about the health facility's or agency's policies
12 and procedures for initiation, review, and resolution of patient
13 or resident complaints.

14 (h) A patient or resident is entitled to information
15 concerning an experimental procedure proposed as a part of his or
16 her care and has the right to refuse to participate in the
17 experimental procedure without jeopardizing his or her continuing
18 care.

19 (i) A patient or resident is entitled to receive and examine
20 an explanation of his or her bill regardless of the source of
21 payment and to receive, upon request, information relating to
22 financial assistance available through the health facility or
23 agency.

24 (j) A patient or resident is entitled to know who is
25 responsible for and who is providing his or her direct care, is
26 entitled to receive information concerning his or her continuing
27 health needs and alternatives for meeting those needs, and to be

1 involved in his or her discharge planning, if appropriate.

2 (k) A patient or resident is entitled to associate and have
3 private communications and consultations with his or her
4 physician, attorney, or any other person of his or her choice and
5 to send and receive personal mail unopened on the same day it is
6 received at the health facility or agency, unless medically
7 contraindicated as documented by the attending physician in the
8 medical record. A patient's or resident's civil and religious
9 liberties, including the right to independent personal decisions
10 and the right to knowledge of available choices, shall not be
11 infringed and the health facility or agency shall encourage and
12 assist in the fullest possible exercise of these rights. A
13 patient or resident may meet with, and participate in, the
14 activities of social, religious, and community groups at his or
15 her discretion, unless medically contraindicated as documented by
16 the attending physician in the medical record.

17 (l) A patient or resident is entitled to be free from mental
18 and physical abuse and from physical and chemical restraints,
19 except those restraints authorized in writing by the attending
20 physician for a specified and limited time or as are necessitated
21 by an emergency to protect the patient or resident from injury to
22 self or others, in which case the restraint may only be applied
23 by a qualified professional who shall set forth in writing the
24 circumstances requiring the use of restraints and who shall
25 promptly report the action to the attending physician. In case
26 of a chemical restraint, a physician shall be consulted within 24
27 hours after the commencement of the chemical restraint.

1 (m) A patient or resident is entitled to be free from
2 performing services for the health facility or agency that are
3 not included for therapeutic purposes in the plan of care.

4 (n) A patient or resident is entitled to information about
5 the health facility or agency rules and regulations affecting
6 patient or resident care and conduct.

7 (o) A patient or resident is entitled to adequate and
8 appropriate pain and symptom management as a basic and essential
9 element of his or her medical treatment.

10 (3) The following additional requirements for the policy
11 described in subsection (2) apply to licensees under parts 213
12 and 217:

13 (a) The policy shall be provided to each nursing home patient
14 or home for the aged resident upon admission, and the staff of
15 the facility shall be trained and involved in the implementation
16 of the policy.

17 (b) Each nursing home patient may associate and communicate
18 privately with persons of his or her choice. Reasonable, regular
19 visiting hours, which shall be not less than 8 hours per day, and
20 which shall take into consideration the special circumstances of
21 each visitor, shall be established for patients to receive
22 visitors. A patient may be visited by the patient's attorney or
23 by representatives of the departments named in section 20156,
24 during other than established visiting hours. Reasonable privacy
25 shall be afforded for visitation of a patient who shares a room
26 with another patient. Each patient shall have reasonable access
27 to a telephone. A married nursing home patient or home for the

1 aged resident is entitled to meet privately with his or her
2 spouse in a room that assures privacy. If both spouses are
3 residents in the same facility, they are entitled to share a room
4 unless medically contraindicated and documented by the attending
5 physician in the medical record.

6 (c) A nursing home patient or home for the aged resident is
7 entitled to retain and use personal clothing and possessions as
8 space permits, unless to do so would infringe upon the rights of
9 other patients or residents, or unless medically contraindicated
10 as documented by the attending physician in the medical record.
11 Each nursing home patient or home for the aged resident shall be
12 provided with reasonable space. At the request of a patient, a
13 nursing home shall provide for the safekeeping of personal
14 effects, funds, and other property of a patient in accordance
15 with section 21767, except that a nursing home is not required to
16 provide for the safekeeping of a property that would impose an
17 unreasonable burden on the nursing home.

18 (d) A nursing home patient or home for the aged resident is
19 entitled to the opportunity to participate in the planning of his
20 or her medical treatment. A nursing home patient shall be fully
21 informed by the attending physician of the patient's medical
22 condition unless medically contraindicated as documented by a
23 physician in the medical record. Each nursing home patient shall
24 be afforded the opportunity to discharge himself or herself from
25 the nursing home.

26 (e) A home for the aged resident may be transferred or
27 discharged only for medical reasons, for his or her welfare or

1 that of other residents, or for nonpayment of his or her stay,
2 except as provided by title XVIII or title XIX. A nursing home
3 patient may be transferred or discharged only as provided in
4 sections 21773 to 21777. A nursing home patient or home for the
5 aged resident is entitled to be given reasonable advance notice
6 to ensure orderly transfer or discharge. Those actions shall be
7 documented in the medical record.

8 (f) A nursing home patient or home for the aged resident is
9 entitled to be fully informed before or at the time of admission
10 and during stay of services available in the facility, and of the
11 related charges including any charges for services not covered
12 under title XVIII, or not covered by the facility's basic per
13 diem rate. The statement of services provided by the facility
14 shall be in writing and shall include those required to be
15 offered on an as-needed basis.

16 (g) A nursing home patient or home for the aged resident is
17 entitled to manage his or her own financial affairs, or to have
18 at least a quarterly accounting of personal financial
19 transactions undertaken in his or her behalf by the facility
20 during a period of time the patient or resident has delegated
21 those responsibilities to the facility. In addition, a patient
22 or resident is entitled to receive each month from the facility
23 an itemized statement setting forth the services paid for by or
24 on behalf of the patient and the services rendered by the
25 facility. The admission of a patient to a nursing home does not
26 confer on the nursing home or its owner, administrator,
27 employees, or representatives the authority to manage, use, or

1 dispose of a patient's property.

2 (h) A nursing home patient or a person authorized by the
3 patient in writing may inspect and copy the patient's personal
4 and medical records. The records shall be made available for
5 inspection and copying by the nursing home within a reasonable
6 time, not exceeding 1 week, after the receipt of a written
7 request.

8 (i) If a nursing home patient desires treatment by a licensed
9 member of the healing arts, the treatment shall be made available
10 unless it is medically contraindicated, and the medical
11 contraindication is justified in the patient's medical record by
12 the attending physician.

13 (j) A nursing home patient has the right to have his or her
14 parents, if a minor, or his or her spouse, next of kin, or
15 patient's representative, if an adult, stay at the facility 24
16 hours a day if the patient is considered terminally ill by the
17 physician responsible for the patient's care.

18 (k) Each nursing home patient shall be provided with meals
19 that meet the recommended dietary allowances for that patient's
20 age and sex and that may be modified according to special dietary
21 needs or ability to chew.

22 (l) Each nursing home patient has the right to receive
23 representatives of approved organizations as provided in section
24 21763.

25 (4) A nursing home, its owner, administrator, employee, or
26 representative shall not discharge, harass, or retaliate or
27 discriminate against a patient because the patient has exercised

1 a right protected under this section.

2 (5) In the case of a nursing home patient, the rights
3 enumerated in subsection (2)(c), (g), and (k) and subsection
4 (3)(d), (g), and (h) may be exercised by the patient's
5 representative.

6 (6) A nursing home patient or home for the aged resident is
7 entitled to be fully informed, as evidenced by the patient's or
8 resident's written acknowledgment, before or at the time of
9 admission and during stay, of the policy required by this
10 section. The policy shall provide that if a patient or resident
11 is adjudicated incompetent and not restored to legal capacity,
12 the rights and responsibilities set forth in this section shall
13 be exercised by a person designated by the patient or resident.
14 The health facility or agency shall provide proper forms for the
15 patient or resident to provide for the designation of this person
16 at the time of admission.

17 (7) This section does not prohibit a health facility or
18 agency from establishing and recognizing additional patients'
19 rights.

20 (8) As used in this section:

21 (a) "Patient's representative" means that term as defined in
22 section 21703.

23 (b) "Title XVIII" means title XVIII of the social security
24 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b,~~
25 ~~1395b-2, 1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5,~~
26 ~~1395j to 1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to~~
27 ~~1395w-28, 1395x to 1395yy, and 1395bbb to 1395ggg~~ 42 USC 1395 to

1 1395hhh.

2 (c) "Title XIX" means title XIX of the social security act,
3 ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to~~
4 ~~1396r-6, and 1396r-8~~ 42 USC 1396 to 1396v.