

HEALTH INFORMATION PRIVACY

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Senate Bill 465
Sponsor: Sen. Gilda Z. Jacobs

Senate Bill 467
Sponsor: Sen. Tom George

Senate Bill 466
Sponsor: Sen. Bruce Patterson

Senate Bill 468
Sponsor: Sen. Deborah Cherry

House Committee: Health Policy
Senate Committee: Health Policy

Complete to 5-15-06

A SUMMARY OF SENATE BILLS 465-468 AS PASSED BY THE SENATE 4-27-06

Taken as a whole, the bills would amend various acts to provide patient confidentiality regarding the maintenance and disclosure of medical records and certain health information.

Senate Bill 465 would amend the Public Health Code (MCL 333.16177 et al.) to do the following:

- Require an individual licensed under the code to keep and maintain a record for each patient (as currently required of a health facility or agency).
- Require the records maintained by a licensee or health facility or agency to be kept for at least seven years, unless a longer period of time is required under federal or state laws or regulations or by generally accepted standards of medical practice. However, a record that had been kept less than seven years could be destroyed if the licensee or health facility or agency followed procedures specified in the bill.
- Provide a mechanism by which a licensee or health facility or agency could dispose of patient health records older than seven years.
- Require a licensee, facility, or agency that was unable to comply with the record maintenance requirements to contract with another provider to do so.
- Require a licensee, facility, or agency, upon ceasing to practice or operate, to notify patients and the department and to either transfer or destroy the records as provided.
- Require an applicant for licensure or license renewal to include an affidavit concerning his or her written policy for the maintenance of patient medical records and the proper transfer or disposal of those records if he or she ceases to practice or closes the practice as specified in the bill.

- Allow the DCH to assess a licensee or health facility or agency with the costs incurred by the department to enforce provisions regarding the proper disposal of patient records.
- Subject a licensee or health facility or agency who fails to comply with the bill's provisions to an administrative fine of not more than \$10,000 if the failure was the result of gross negligence or willful and wanton misconduct.
- Define, for purposes of the bill's provisions, the terms "medical record", "medical records company", and "patient".

Senate Bill 466 would amend the Social Welfare Act (MCL 400.111b) to increase from six to seven years the length of time that a provider must retain a record of the services, supplies, or equipment provided to a person enrolled in the Medicaid program. The bill would also require a provider to protect, maintain, retain, and dispose of patient medical records and other individually identifying information in accordance with the act, any other applicable state or federal law, and the most recent provider agreement. Furthermore, the bill would prescribe standards for the disposal of a patient's records or identifying information. If unable to enforce compliance with these provisions, the Department of Community Health could enter into a contract or make other arrangements to ensure that patient records and individually identifying information are disposed of in such a way as to protect the confidentiality of the patient's health care information and personal information. The department could assess costs associated with the disposal against the provider.

Senate Bill 467 would amend the informed consent provisions for genetic testing contained in the Public Health Code (333.16221 et al.). In general, the bill would prohibit disclosure that a test has been ordered or conducted or the results of the test for purposes other than treatment, payment, or health care operations as provided under the federal HIPPA provisions without first obtaining written authorization from the test subject. In addition, the bill would specify the wording of a notice that must be included on a disclosure form, require additional notification that Michigan law restricts further disclosure of genetic testing and information without a separate authorization from the test subject, prohibit public disclosure of information derived from genetic tests used in the identification of living or deceased missing persons, allow administrative sanctions to be imposed on licensees (M.D.s and D.O.s) who violate the bill's provisions regarding the disclosure of genetic testing information, and define relevant terms.

Senate Bill 468 would amend the Freedom of Information Act (MCL 15.243). The act allows a public body to exempt from disclosure as a public record certain information and documents, i.e., information of a personal nature if public disclosure of that information would constitute a clearly unwarranted invasion of an individual's privacy. The bill would also include protected health information as defined under federal law, 45 CFR 160.103.

FISCAL IMPACT:

Senate Bill 465 as passed by the Senate has fiscal implications for the Department of Community Health (DCH). The bill requires that DCH receive new documentation from health professions and health facility licensees, and licensees who cease to practice, regarding a policy and plan of medical records retention and management. DCH also is responsible for enforcement and may assume temporary management of medical records under certain situations. The bill allows DCH to assess fines of up to \$10,000 to cover DCH enforcement costs or to penalize for noncompliance. These responsibilities may require additional staffing and related costs.

Medical providers may have additional costs to meet the bill's 7-year minimum retention period requirement if they currently retain medical records for a shorter period. This may have an impact on state costs for medical care if this bill results in an increase in provider charges.

Senate Bill 466 adds requirements for Medicaid providers related to the confidential retention and disposal of patient medical records. It also allows the Department of Human Services (DHS) to take actions to enforce these requirements. Finally, the bill allows the DHS to contract for any services needed to ensure compliance with these new provisions if the department determines it can not enforce compliance itself.

Since the enforcement language is permissive and does not specifically require DHS actions, the bill would have an indeterminate fiscal impact. The DHS indicates that it currently regulates Adult Foster Care and Homes for the Aged that receive Medicaid funding for services. While current rules already require providers to maintain the confidentiality of patient records, there is no system in place to ensure patient records are disposed of in a manner consistent with the bill. Further, the bill covers Medicaid providers not directly regulated by the DHS. If the DHS determined that such a system or that the contracting allowed by the bill was needed, this would increase costs to the state. Information is not currently available to evaluate these potential costs.

Senate Bills 467 and 468 would have no fiscal implications for state agencies or local units of government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.