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Senate Bill 465 (as introduced 5-5-05)
Sponsor: Senator Gilda Z. Jacobs
Committee: Health Policy

Date Completed: 4-17-06

CONTENT

The bill would amend the Public Health Code to do the following:

- Require an individual licensed or registered under the Code to maintain a record for each patient (as currently required of a health facility or agency).**
- Require the records maintained by a health facility or agency, or a licensee or registrant, to be kept for at least 10 years, or longer if required by law.**
- Require an individual or a health facility or agency that was unable to comply with the record maintenance requirements to contract with another provider or entity to do so.**
- Require an individual or a health facility or agency, upon ceasing to practice or operate, to notify patients and transfer medical records as specified.**
- Allow an individual, facility, or agency to destroy or dispose of medical records after 10 years, and prescribe procedures for doing so.**
- Establish a \$10,000 administrative fine for a person who failed to comply with the record maintenance and disposal requirements.**
- Require an applicant for licensure or registration to give the Department of Community Health (DCH) the name of the entity responsible for maintaining his or her patients' medical records.**

The Code requires a health facility or agency to keep and maintain a record for each patient, including a full and complete record of tests and examinations performed, observations made, treatments provided, and, in the case of a hospital, the purpose for hospitalization. A hospital that fails to comply with this requirement is subject to an administrative fine of \$10,000.

The bill would require an individual registered or licensed under Article 16 (Occupations) of the Code also to keep and maintain a record for each patient for whom he or she had provided professional services, including a full and complete record of tests and examinations performed, observations made, and treatments provided.

The records of a health facility or agency, or a licensee or registrant, would have to be kept and maintained for at least 10 years from the last date of service provided to the patient, or longer if otherwise required under any other Federal or State law or regulation. The records would have to be maintained in a manner that protected their integrity, ensured their confidentiality and proper use, and ensured their accessibility and availability to each patient or his or her authorized representative as required by law.

If a licensee or registrant, or a health facility or agency were unable to comply with the record-keeping requirements, the person, facility, or agency, would have to employ or contract with another health care provider, health facility or agency, or medical records company to protect, maintain, and provide access to the records.

If a licensee or registrant sold or closed his or her practice, or otherwise ceased to practice under Article 16, he or she or, if the licensee or registrant were deceased, his or her personal representative, could not abandon the required records. A health facility or agency that closed or otherwise ceased operation also could not abandon the records required to be maintained. The licensee, registrant, or personal representative, or the health facility or agency, would have to send a written notice to the last known address of each patient for whom he or she had provided professional services, giving the patient an opportunity to designate where he or she would like his or her records transferred and specifying who would retain custody of the records and how the patient could request access to them if he or she did not designate otherwise.

The licensee, registrant, or personal representative, or the health facility or agency, also would have to transfer the records to any of the following:

- A successor licensee or registrant, or successor health facility or agency.
- A specific health facility or agency or other licensed or registered health care provider, if requested or designated by the patient or his or her authorized representative.
- A health care provider, health care facility or agency, or medical records company with which the licensee or registrant, or the health facility or agency, had contracted to protect, maintain, and provide access to the records.

Except as otherwise provided under Federal or State laws and regulations, records required to be maintained under the Code or the bill could be destroyed or otherwise disposed of after being maintained for 10 years. If the records subsequently were destroyed or otherwise disposed of, they would have to be shredded, incinerated, electronically deleted, or otherwise disposed of in a manner that ensured continued confidentiality of the patient's health care information and any other personal information.

If records were destroyed or otherwise disposed of in accordance with the bill, the DCH could take action, including contracting for or making other arrangements to ensure that the records and any other confidential identifying information related to the patient properly were destroyed or disposed of to protect the confidentiality of the patient's health care and personal information. The DCH could assess the licensee or registrant, or the health facility or agency, with the costs the Department incurred to enforce these requirements.

A person who failed to comply with the requirements for record maintenance, transfer, or disposal would be subject to a \$10,000 administrative fine.

Additionally, an applicant for licensure or registration, and, beginning with the license renewal cycle after the bill took effect, an applicant for a renewal license or registration would have to give the DCH, on a form provided by the Department, the name of the health care provider, health facility or agency, medical records company, or other person who was responsible for protecting, maintaining, and providing access to his or her medical records.

The Code requires DCH employees and officers to respect the confidentiality of patient clinical records, and prohibits them from divulging or disclosing the contents of records in a manner that identifies an individual except pursuant to a court order. Under the bill, a DCH employee or officer also could divulge or disclose the contents of records as otherwise authorized by law.

(Under the bill, "medical records company" would mean a person who contracted for or agreed to protect, maintain, and provide access to medical records for a health care provider or health facility or agency in accordance with Section 16213 (which the bill would add) or Section 20175 (which the bill would amend).

"Patient" would mean an individual who received health care from a health care provider or health facility or agency. The term would include a guardian, if appointed; and a parent, guardian, or person acting in loco parentis, if the individual were a minor, unless the minor obtained health care lawfully without the consent or notification of a parent, guardian, or person acting in loco parentis. In that case, the minor would have the exclusive right to exercise the rights of a patient under the bill with respect to his or her medical records relating to that care.)

MCL 333.16177 et al.

Legislative Analyst: Julie Koval

FISCAL IMPACT

State-operated hospital facilities currently retain patient records for a period of 20 years after an individual is discharged. This practice makes it unlikely that the record retention requirements included in this bill would increase costs for State health facilities. Locally operated health facilities that currently do not retain patient information for 10 years would see an increase in the cost of maintaining health records if this legislation were enacted.

The bill would permit the Department of Community Health to take steps to ensure that medical records were destroyed in a fashion that protected patient confidentiality. The bill would permit the Department to impose fees on health facilities and professionals to cover the cost of overseeing this process. The Department also could see an increase in revenue from the \$10,000 fine included in the bill that could be imposed on health providers who did not adhere to the proposed medical record requirements.

Fiscal Analyst: David Fosdick

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.