House
Legislative
Analysis
Section

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HEALTH CARE INFORMATION ACT

House Bill 4749 as passed by the House
Second Analysis (8-11-94)

Sponsor: Rep. Michael J. Bennane
Committee: Public Health

THE APPARENT PROBLEM:

From a patient's point of view, two problems have existed with regard to medical records: sometimes patients have been refused access to their own medical records, and sometimes access to a patient's medical record is allowed (without the patient's knowledge) to those who should not necessarily have access. As an article in The Washington Monthly observed, "In dozens of states, patients are denied the critical, personal details in their medical records. Yet insurance companies, law enforcement officials, medical professionals, intelligence agencies, and others have easy access to these records -- usually without the patients' knowledge. As a result of this injustice, some people have been denied jobs, demoted, or given inadequate medical care. Worse, these actions have been taken on the basis of medical records that -- without any input from the patient -- are often misleading and sometimes inaccurate."

In Michigan, specifically, a 1978 attorney general's opinion (OAG 5125, May 30, 1978) held that "[in] the absence of an agreement to the contrary, the physician and the hospital own the records of a patient generated and maintained by them," though (with the exception of mental patients, whose right of access is controlled by the Mental Health Code) "a patient has a right of access to and a right to receive copies of information concerning his or her diagnosis or treatment made by a physician or hospital."

Legislation has been introduced that would establish in statute patients' rights to their medical records.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code (MCL 333.16221 et al.) to establish that the information contained in a patient's medical records could be examined and copied by the patient and to set penalties for health care providers and facilities who failed to comply with requests for such access.

Right of access. The bill would say that information contained in a patient's medical record could be examined and copied by the patient or his or her agent. (A patient's "agent" would be his or her personal representative, designated patient advocate, or legal guardian, or, in the case of children, parents.)

However, a patient's agent couldn't examine or copy the patient's medical record under either of the following circumstances: (a) the information had been made confidential by law and did not have to be disclosed to the patient's agent; or (b) the patient was a minor when he or she had been treated and was legally able to consent to the health care independently of his or her parents or legal guardian.

A "medical record" would include medical histories, records, reports, summaries, diagnoses and prognoses, treatment and medication ordered and given, notes, entries, and X-rays and other imaging records, but wouldn't include mental health records (as described and made confidential under the Mental Health Code). However, "mental health record" would not include information on the physical health of the patient acquired in the course of providing mental health services to patients.

Requests for records. When a patient (or his or her agent) requested access to, or a copy of, his or her medical record, the licensed or registered health professional or health facility would have up to 30 business days to respond in one of three ways:

(1) letting the patient examine his or her medical record during regular business hours and providing, upon request, a copy of all or part of the record;

(2) telling the patient if the record couldn't be found or doesn't exist; or

(3) telling the patient where the record was kept if it wasn't kept by the practitioner or facility to whom the request was made.

Health professionals who weren't available during this 30-day period would have to immediately notify the patient upon their return, and would have 30 days to complete the request.

Currently, under the health code, hospitals with short-term nursing care programs are required to make a patient's personal and medical records available for inspection and copying within seven days of a patient's request (or upon the request of someone authorized in writing by the patient). The bill would strike these provisions and instead reference the proposed requirements.

Property rights. The bill would establish in statute that the information contained in a patient's medical record was his or her property, though the actual physical record kept by the health professional or facility would be the property of that professional or facility.

Copying fees. Health care professionals and facilities could charge patients a retrieval fee (which wasn't more than the actual cost of retrieval) and up to 20 cents per page copied. (The 20-cent maximum could be adjusted annually by the director of the Department of Public Health based on a change in the Detroit consumer price index.) Charges for copies of X-rays, electro-encephalograms, and other imaging records could be for the actual cost of copying. Copies wouldn't have to be made until the patient had paid the relevant fees.

Penalties. Violations of the bill's requirements would be grounds for disciplinary action by a health professional disciplinary subcommittee, which could reprimand and fine a violator up to $1,000. Health facilities who violated the bill's requirements also could be reprimanded and fined up to $1,000 in addition to facing licensing actions.

Request forms. The bill would require the Department of Public Health to develop a model request form and make it available upon request to health professionals, health facilities, and other individuals.

Other provisions. The bill would explicitly include patients in nursing homes and residents in homes for the aged in its provisions.

FISCAL IMPLICATIONS:

Fiscal information is not available, though the bill would require the Department of Public Health to develop and make available a model request form for medical records. (8-17-94)

ARGUMENTS:

For:

It just makes sense to guarantee patients access to their medical records. In an era in which people are increasingly more well-informed and sophisticated about their health care, it seems odd that patients still do not legally have access to their own medical records. After all, these records are composed of information about the patient that is provided by the patient to a health care provider who is paid by the patient or his or her health insurer. Most courts have ruled, moreover, that while the doctor owns the physical record itself, the patient has an interest in, and a right to, the information in those records. It is time that Michigan law reflected these realities.

The bill not only would guarantee patients access to, and the right to copies of, their medical records, by establishing the possibility of a fine for noncompliance, the bill gives health care providers an incentive to comply with their patients' requests. Also, by putting a 30-day time limit on answering such requests, the bill gives people a definite period of time which they could use in planning, say, a move.

Against:

Medical records are the property of the physician, created for his or her use and not for the eyes of the patient. Giving patients access to their medical records can be detrimental to both patients and doctors. If patients see their records, it will increase their anxiety and make them less likely to comply with their physicians' orders. In addition, giving patients access to their medical records will increase malpractice lawsuits. The litigious climate that prevails between doctors and patients would be fueled, to the detriment both of patients (by decreasing available health care) and doctors alike.

Response:

Medical records may once have been created for the physician or hospital and not for the eyes of the

patient, but with the changes in people's attitudes toward medical care and their increasing sophistication about their rights and responsibilities as users of the health care system, this attitude is now long outdated. As informed consumers, if nothing else, patients should be guaranteed access to their medical records.

With regard to causing higher patient anxiety and higher levels of patient noncompliance, studies have shown just the opposite. Certainly there may be cases where telling patients details of their illnesses would be more dangerous than not telling them, but that is why every patient access law that has been proposed or enacted leaves ample room for appeal. But in both the public and private sectors, patient access has proven beneficial. The federal Privacy Act of 1974 gave patients access to records at federally-run hospitals, and administrators at these hospitals have found few of the problems predicted by doctors -- even in the area of psychiatric care. Another study at a Vermont health care center, in which 100 patients were given copies of their own records, found that 84 percent were more careful about taking medicine prescribed for them, and 97 percent worried less about their health care. The time is long since past in which patients should be asked to blindly trust while their health care providers magically heal. The curious, well-informed patient has no need of out-moded paternalistic attitudes, and health care should move on to giving patients the right to participate knowledgeably in their own care.

Finally, it needs to be pointed out that malpractice suits have risen despite the current restrictions on patients' access to their records. It could even be argued that if doctors became more open with patients, an informed relationship would emerge that would lead to fewer, not more, malpractice claims. But even if it didn't, the only time open records would lead to a successful malpractice suit would be when there was something in the record that indicated negligence.

The time has come to put into statute people's right to their own medical records.

Against:

The bill, while a good beginning, should also include provisions that would allow patients to correct misinformation in their medical records and should restrict access by third parties. In dozens of states, patients are denied the critical, personal details in their medical records. Yet insurance companies, law enforcement officials, medical professionals, intelligence agencies, and others have easy access to these records -- usually without the patients' knowledge. Lawyers can obtain subpoenas for medical records, police can simply walk into local hospitals and demand them, and insurance companies can withhold payment for their clients' medical treatment until they've read them. Such easy access has led to abuse. Some people have been denied jobs, demoted, or given inadequate medical care. Worse, these actions have been taken on the basis of medical records that -- without any input from the patient -- are often misleading and sometimes inaccurate.

Response:

While it might be desirable to address the issues of third-party access to medical records and the correction of inaccurate records, the bill would make a major advance in patients' rights just by guaranteeing in law people's right to see and copy their own medical records.

POSITIONS:

The Michigan Hospital Association supports the bill. (8-23-94)