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PATIENTS' ACCESS TO THEIR HEALTH CARE INFORMATION

House Bill 5478

Sponsor: Rep. Liz Brater

Committee: Constitutional Law and Ethics

Complete to 8-17-00

A SUMMARY OF HOUSE BILL 5478 AS INTRODUCED 3-7-00

The bill would create a new act, the “health care information act,” to regulate access to and disclosure of patients’ health care information. In general, the bill would give patients and their agents statutory access to their health care information, and to allow patients to grant access to this information. Health care providers and facilities would have to keep records of when they made patients’ records available to someone upon request, and would be prohibited from asking the purpose of the request for records. The bill also would set maximum copying, retrieval, and mailing fees that health care providers or facilities could charge for retrieving, copying, and mailing requested medical records, and would allow patients to bring their own copying equipment and pay only a retrieval fee. Health care providers and facilities that kept patients’ records would have to create and post a “notice of information practices” that was accessible to patients. The Department of Consumer and Industry Services would impose administrative fines for violations, and the department or someone requesting medical records could seek injunctive relief in cases of violations of the bill’s provisions. In addition, patients could bring civil actions for damages against health care providers or health facilities.

The bill is described in more detail below.

Health care providers, facilities, information. The bill would define “health care” to mean any care, service, or procedure provided by a health care provider or health facility. (“Health care provider” would mean anyone licensed under Article 15 of the Public Health Code to provide health care in the ordinary course of business or the practice of a health profession, other than mental health care providers – psychiatrists, psychologists, social workers, or professional counselors – who provided only mental health services, or persons who provided health care solely through the sale or dispensing of drugs or medical devices. “Health facility” would mean a health facility or agency licensed under Article 17 of the Public Health Code, or any other organized entity where a health care provider provided health care to patients).

“Health care information” would mean information recorded in a form or medium that identified or could readily be associated with the identity of a patient and related to the patient’s health care, but would not include mental health records. “Health care information” would include, but not be limited to, medical histories, medical records, medical reports, medical summaries, medical diagnoses and prognoses, medical treatment and medication ordered and given, other health care-related notes and entries, and x-rays and other imaging records. “Health care information” would *not* include:

- ordinary business records pertaining to patients’ accounts;

- nursing or physician audits;
- Department of Community Health (DCH) or Department of Consumer and Industry Services (DCIS) evaluations (and other audit activities) of health facilities and health professionals, respectively, and professional practice review documents disclosed under Public Act 270 of 1967 (which governs the release of information for medical research and education);
- other evaluations or reviews used only for “in-service” education or quality assurance programs or required for accreditation of participation in federally funded programs;
- evaluations done by a department within a health facility for administrative purposes; or
- reports, records and data governed under the general provisions (Part 51) of Article 5 of the Public Health Code (which deals with the prevention and control of diseases and disabilities, including communicable diseases, HIV infection, and “venereal diseases”), or confidential substance abuse treatment records governed under sections 6111 to 6113 of the code.

Patients’ right to access to their health care information. The bill would specify that an adult patient – as well as his or her guardian, patient advocate, conservator, or any other legal representative – or the parent or guardian of an unemancipated child younger than 18 (a “minor”) who was a patient, would have the right to access the patient’s health care information. This right of access would include, but not be limited to, the right to inspect and to copy (at reasonable times) health care information generated by the health care provider or health facility that had provided the health care to the patient.

(The bill would define “patient” to mean an individual – including, but not limited to, a deceased individual – who received or had received health care. “Guardian,” “patient advocate,” and “personal representative” would be defined as in the Estates and Protected Individuals Act, formerly the Revised Probate Code.)

A patient (or his or her legal representative) or the parent or legal guardian of a child could grant the right of access to:

- a third party payer;
- a health care provider, or health facility other than the one that maintained the patient’s health care information (“maintaining” health care information would mean holding, possessing, preserving, retaining, storing, or controlling it); or
- another person with whom the individual had entered into a contract or who had a common law right to access to the individual’s health care information.

(The bill would define “third party payer” to mean a public or private health care payment or benefits program that was created, authorized, or licensed under Michigan law, including but not

limited to health insurers, nonprofit health care corporations, health maintenance organizations, preferred provider organizations, nonprofit dental care corporations, and Medicaid or Medicare.)

Exercising the right to access to health care information. An individual or other person described above could exercise their right of access to the health care information by making a request, either orally or in writing, to the health care provider or health facility that maintained the requested health care information. The health care provider or facility would be required to respond “as promptly as required under the circumstances,” but in any case within 15 business days after receiving the request. The health care provider or facility would be required to provide – or to get and provide – the requested information, or to notify the patient or patient’s agent if the information didn’t exist or couldn’t be found. If the health care provider weren’t available during the 15 business day period, upon becoming available he or she would be required to immediately notify the patient or patient’s agent of the provider’s availability, and then complete the request in compliance with the bill’s provisions within 15 business days after becoming available.

More specifically, when health care providers or facilities that maintained health care information received a request for the information, they would have to do one or more of the following:

- Make the health care information available for inspection or copying, or both, at their business location during regular business hours *or* provide a copy of all or part of the health care information requested by the patient or the patient’s agent. (A “patient’s agent” would mean an individual or other person – including a corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity – described in the right to access provisions who was not the patient.) After making the health care information available, the health care provider or facility would be required to make a permanent notation in the original health care information indicating the date it was made available and the name and address of the person who inspected or copied the health care information.

- If the health care provider or facility had contracted with another person to maintain the provider’s or facility’s health care information, the provider or facility would be required to transmit a request for health care information to whomever maintained the information, retrieve that information, and then make it available for inspection and copying as above.

- Inform the person requesting the health care information if it did not exist or could not be found.

- If the provider or facility neither had the requested information nor contracted with someone else to keep it, inform the person requesting the information of that fact and provide that person with the name and address, if known, of the health care provider or facility that did maintain the requested information. Then, the provider or facility that did maintain the information would be required to make it available for inspection and copying, as above.

The bill also would prohibit health care providers or health facilities that received requests for health care information from inquiring as to the purpose of the request.

Fees, waivers. The bill would allow, and cap, fees for the retrieval, copying, and mailing of requested health care information, and would prohibit health care providers or facilities from charging fees other than those allowed in the bill. Health care providers and facilities would be prohibited from charging any fees at all if the person requesting the health care information were receiving assistance from a state or federal program that provided medical assistance or other financial assistance based on disability or income status. (In such cases, however, the provider or facility could require the person making the request to provide satisfactory proof that the patient were a recipient of such assistance.) A patient or patient's agent also could bring his or her own copying equipment to the health care provider's or facility's premises and pay only the \$5 retrieval fee.

Except for imaging documents (or if the person requesting the information brought their own copying equipment), a health care provider or facility would be allowed to charge someone requesting information (a) a retrieval fee of not more than \$5; (b) a copying fee of not more than 7 cents per one side of a letter- or legal-sized page, if the provider or facility copied the requested information for the person requesting it; and (c) the actual postage incurred for mailing the requested information.

The limit of 7 cents per page would not apply to copies of X-rays, electroencephalogram tracings, or other imaging documents. In these cases, the health care provider or facility could charge the actual cost of copying.

Notice of information practices. A health care provider or facility that maintained a patient's health care information would be required to create a "notice of information practices" and post it in a conspicuous place that was accessible by patients. The notice would have to contain substantially the following language: "*NOTICE: We keep a record of the health care we provide you. You may ask us to see and copy that record. The cost to you of copying that record is 7 cents per page plus a retrieval fee of not more than \$5.00 per request. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at _____.*"

Violations. The Department of Consumer and Industry Services (DCIS) would be required to impose administrative sanctions on health care providers and health care facilities who violated the bill in the same manner as the department imposes administrative sanctions on health professionals under Article 15 and health facilities under Article 17 of the Public Health Code. The department would be limited to imposing only reprimands, restitution, or fines of up to \$500 per violation on health care providers, and fines of up to \$500 per violation on health facilities.

Injunctive relief. The Department of Consumer and Industry Services or an individual making a request for health care information under the bill could seek injunctive relief through the attorney general or the prosecuting attorney for the county in which the violation of the bill occurred. The

circuit court in which a petition for injunctive relief were filed under the bill could restrain and enjoin a violation of the bill or compel compliance with the bill's requirements.

Damages. A patient or patient's agent could bring a civil action for damages against a health care provider or a health facility for a violation of the bill. The court could award actual damages or \$250, whichever were greater, along with reasonable attorney fees.

Analyst: S. Ekstrom

■ 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.