



HOUSE BILL No. 5478

March 7, 2000, Introduced by Reps. Brater, Wojno, Hale, Martinez, Dennis, Garza, Baird, Jellema, Pappageorge, Price, Quarles, Schauer, Neumann, Basham, Schermesser, Prusi, Scott and Jacobs and referred to the Committee on Constitutional Law and Ethics.

A bill to provide for and to regulate access to and disclosure of health care information; to prescribe the powers and duties of certain state agencies and departments; to prescribe administrative sanctions; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "health care information act".

3 Sec. 3. As used in this act:

4 (a) "Business day" means a day other than a Saturday, a
5 Sunday, or a holiday recognized and observed by the state or fed-
6 eral government.

7 (b) "Guardian", until April 1, 2000, means an individual who
8 is appointed as a full guardian of a legally incapacitated person
9 under section 444 of the revised probate code, 1978 PA 642,
10 MCL 700.444, and on and after April 1, 2000, means an individual

1 who is appointed as a full guardian of a legally incapacitated
2 person under section 5306 of the estates and protected individu-
3 als code, 1998 PA 386, MCL 700.5306. Guardian, until April 1,
4 2000, also includes an individual who is appointed as the guard-
5 ian of a minor under section 422 or 424 of the revised probate
6 code, 1978 PA 642, MCL 700.422 and 700.424, and on and after
7 April 1, 2000, includes an individual who is appointed as the
8 guardian of a minor under section 5202 or 5204 of the estates and
9 protected individuals code, 1998 PA 386, MCL 700.5202 and
10 700.5204.

11 (c) "Health care" means any care, service, or procedure pro-
12 vided by a health care provider or health facility to diagnose,
13 treat, or maintain a patient's physical condition, or that
14 affects the structure or a function of the human body.

15 (d) "Health care information" means information recorded in
16 a form or medium that identifies or can readily be associated
17 with the identity of a patient and relates to the patient's
18 health care. Health care information includes, but is not
19 limited to, medical histories, medical records, medical reports,
20 medical summaries, medical diagnoses and prognoses, medical
21 treatment and medication ordered and given, other health
22 care-related notes and entries, and x-rays and other imaging
23 records. Health care information does not include 1 or more of
24 the following:

25 (i) Ordinary business records pertaining to patients'
26 accounts.

- 1 (ii) Nursing audits.
- 2 (iii) Physician audits.
- 3 (iv) Evaluations done by the department of community health
4 or the department of consumer and industry services.
- 5 (v) Other audit activities conducted by the department of
6 community health or the department of consumer and industry serv-
7 ices pursuant to administrative rules.
- 8 (vi) Professional practice review documents disclosed under
9 1967 PA 270, MCL 331.531 to 331.533.
- 10 (vii) Evaluations or reviews, other than those listed in
11 subparagraphs (ii) to (vi), used only for in-service education or
12 quality assurance programs or required for accreditation or par-
13 ticipation in federally funded programs.
- 14 (viii) Mental health records.
- 15 (ix) Evaluations done by a department within a health facil-
16 ity for administrative purposes.
- 17 (x) Reports, records, and data governed under part 51 of the
18 public health code, 1978 PA 368, MCL 333.5101 to 333.5133.
- 19 (xi) Records governed under sections 6111 to 6113 of the
20 public health code, 1978 PA 368, MCL 333.6111 to 333.6113.
- 21 (e) "Health care provider" means a person who is licensed or
22 registered or otherwise authorized under article 15 of the public
23 health code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide
24 health care in the ordinary course of business or practice of a
25 health profession. Health care provider does not include a
26 person who provides health care solely through the sale or
27 dispensing of drugs or medical devices or a psychiatrist,

1 psychologist, social worker, or professional counselor who
2 provides only mental health services.

3 (f) "Health facility" means a health facility or agency
4 licensed under article 17 of the public health code, 1978 PA 368,
5 MCL 333.20101 to 333.22260, or any other organized entity where a
6 health care provider provides health care to patients.

7 (g) "Maintain", as related to health care information, means
8 to hold, possess, preserve, retain, store, or control health care
9 information.

10 (h) "Minor" means an individual who is less than 18 years of
11 age, but does not include an individual who is emancipated under
12 section 4 of 1968 PA 293, MCL 722.4.

13 (i) "Patient" means an individual, including, but not
14 limited to, a deceased individual, who receives or has received
15 health care.

16 (j) "Patient advocate", until April 1, 2000, means an indi-
17 vidual designated to make medical treatment decisions under sec-
18 tion 496 of the revised probate code, 1978 PA 642, MCL 700.496,
19 and on and after April 1, 2000, means an individual designated to
20 make medical treatment decisions under section 5506 of the
21 estates and protected individuals code, 1998 PA 386,
22 MCL 700.5506.

23 (k) "Patient's agent" means an individual or other person
24 described in section 5(1) and (2) who is not the patient.

25 (l) "Person" means an individual, corporation, estate,
26 trust, partnership, association, joint venture, government,

1 governmental subdivision or agency, or other legal or commercial
2 entity.

3 (m) "Personal representative", until April 1, 2000, means
4 that term as defined in section 9 of the revised probate code,
5 1978 PA 642, MCL 700.9, and on and after April 1, 2000, means
6 that term as defined in section 1106 of the estates and protected
7 individuals code, 1998 PA 386, MCL 700.1106.

8 (n) "Third party payer" means a public or private health
9 care payment or benefits program that is created, authorized, or
10 licensed under the laws of this state, including, but not limited
11 to, all of the following:

- 12 (i) A health insurer.
- 13 (ii) A nonprofit health care corporation.
- 14 (iii) A health maintenance organization.
- 15 (iv) A preferred provider organization.
- 16 (v) A nonprofit dental care corporation.
- 17 (vi) Medicaid or medicare.

18 Sec. 5. (1) An adult patient, his or her guardian, his or
19 her patient advocate or conservator, any other legal representa-
20 tive of the adult patient, or the parent or guardian of a patient
21 who is a minor has the right to access the adult patient's or
22 minor patient's health care information. The right of access
23 described in this subsection includes, but is not limited to, the
24 right to inspect and to copy at reasonable times health care
25 information generated by the health care provider or health
26 facility that provided the health care to the patient.

1 (2) An individual described in subsection (1) may grant the
2 right of access described in subsection (1) to a third party
3 payer, to a health care provider or health facility other than
4 the health care provider or health facility that maintains the
5 patient's health care information, or to another person with whom
6 the individual enters into a contract or who has a common law
7 right to access to the individual's health care information.

8 (3) An individual or other person described in subsections
9 (1) or (2) may exercise the right of access granted in subsection
10 (1) or (2) by making a request either orally or in writing to the
11 health care provider or health facility that maintains the health
12 care information that is the subject of the request. Upon
13 receipt of a request under this subsection, a health care pro-
14 vider or health facility shall, as promptly as required under the
15 circumstances, but not later than 15 business days after receipt
16 of the request, do 1 or more of the following:

17 (a) Make the health care information available for inspec-
18 tion or copying, or both, at the health care provider's or health
19 facility's business location during regular business hours or
20 provide a copy of all or part of the health care information, as
21 requested by the patient or patient's agent. After making the
22 health care information available under this subdivision, the
23 health care provider or health facility shall make a permanent
24 notation in the original health care information indicating the
25 date it was made available and the name and address of the person
26 who inspected or copied the health care information.

1 (b) If the health care provider or health facility has
2 contracted with another person to maintain the health care
3 provider's or health facility's health care information, the
4 health care provider or health facility shall transmit a request
5 made under this subsection to the person maintaining the health
6 care information. The health care provider or health facility
7 shall retrieve the health care information from the person main-
8 taining the health care information, and shall then comply with
9 subdivision (a).

10 (c) Inform the patient or the patient's agent if the health
11 care information does not exist or cannot be found.

12 (d) If the health care provider or health facility to which
13 the request is directed does not maintain the health care infor-
14 mation requested and does not have a contract with another person
15 as described in subdivision (b), so inform the patient or the
16 patient's agent and provide the name and address, if known, of
17 the health care provider or health facility that maintains the
18 health care information. The health care provider or health
19 facility that maintains the health care information shall comply
20 with subdivision (a).

21 (e) If the health care provider is unavailable during the
22 period of 15 business days, upon becoming available, immediately
23 notify the patient or the patient's agent of the health care
24 provider's availability and complete the request in compliance
25 with subdivision (a) within 15 business days after becoming
26 available.

1 Sec. 7. A health care provider or health facility that
2 receives a request for health care information under section 5
3 shall not inquire as to the purpose of the request.

4 Sec. 9. (1) Except as otherwise provided in subsections (3)
5 to (5), if a patient or the patient's agent makes a request for
6 health care information under section 5, the health care provider
7 or health facility to which the request is directed may charge
8 the patient or the patient's agent 1 or more of the following:

9 (a) A retrieval fee not to exceed \$5.00 per request.

10 (b) Subject to subsection (3), if the health care provider
11 or health facility copies the health care information for the
12 patient or the patient's agent, a copying fee of not more than 7
13 cents per 1 side of a letter- or legal-sized page.

14 (c) If the health care provider or health facility mails the
15 health care information to the patient or the patient's agent,
16 the actual postage incurred.

17 (2) A health care provider or health facility may charge a
18 fee under subsection (1) only for that part of the health care
19 information actually retrieved or copied, or both. A health care
20 provider or health facility may refuse to retrieve or copy health
21 care information for a patient or patient's agent until the
22 applicable fee is paid.

23 (3) The 7-cent-per-page limit set forth in subsection (1)(b)
24 does not apply to copies of x-rays, electroencephalogram trac-
25 ings, or other imaging records. A health care provider or health
26 facility may charge the actual cost of copying health care
27 information described in this subsection.

1 (4) A health care provider or health facility shall not
2 charge a fee for retrieving, copying, or mailing health care
3 information other than a fee allowed under subsection (1). A
4 health care provider or health facility shall waive all fees for
5 a patient who is a recipient of assistance from a state or fed-
6 eral program that provides medical assistance or other financial
7 assistance based on disability or income status. The health care
8 provider or health facility may require the patient or the
9 patient's agent to provide satisfactory proof that the patient is
10 a recipient of assistance as described in this subsection.

11 (5) A patient or the patient's agent may supply his or her
12 own copying equipment on the premises of the health care provider
13 or health facility and pay only the retrieval fee allowed under
14 subsection (1)(a).

15 Sec. 11. (1) A health care provider or health facility that
16 maintains a patient's health care information shall create a
17 notice of information practices that contains substantially the
18 following language:

19

"NOTICE

20 We keep a record of the health care we provide you. You may
21 ask us to see and copy that record. The cost to you of copying
22 that record is 7 cents per page plus a retrieval fee of not more
23 than \$5.00 per request. We will not disclose your record to
24 others unless you direct us to do so or unless the law authorizes
25 or compels us to do so. You may see your record or get more
26 information about it at _____."

1 (2) A health care provider or health facility shall post a
2 copy of the notice of information practices required under
3 subsection (1) in a conspicuous place that is accessible by
4 patients.

5 Sec. 13. (1) The department of consumer and industry serv-
6 ices shall impose administrative sanctions on a health care pro-
7 vider who violates this act in the same manner as administrative
8 sanctions are imposed on health professionals under article 15 of
9 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.
10 The department shall impose only a reprimand, restitution, or a
11 fine of not more than \$500.00 per violation under this
12 subsection.

13 (2) The department of consumer and industry services shall
14 impose administrative sanctions on a health facility that vio-
15 lates this act in the same manner as administrative sanctions are
16 imposed on licensed health facilities and agencies under article
17 17 of the public health code, 1978 PA 368, MCL 333.20101 to
18 333.22260. The department shall impose only a fine of not more
19 than \$500.00 per violation under this subsection.

20 (3) The department or an individual making a request for
21 health care information under this act may seek injunctive relief
22 through the attorney general or the prosecuting attorney for the
23 county in which a violation of this act occurs. The circuit
24 court in which a petition is filed under this subsection may
25 restrain and enjoin a violation of this act or may compel compli-
26 ance with this act.

1 (4) A patient or a patient's agent may bring a civil action
2 for damages against a health care provider or a health facility
3 for a violation of this act. The court may award actual damages
4 or \$250.00, whichever is greater, along with reasonable attorney
5 fees and costs.