

HOUSE BILL No. 4449

March 13, 2007, Introduced by Reps. Gaffney, Hune, Hildenbrand, Wojno, Marleau, Accavitti and Ward and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16244, 21513, and 21515 (MCL 333.16244, 333.21513, and 333.21515), section 16244 as amended by 1993 PA 87 and section 21513 as amended by 2002 PA 125.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16244. (1) A person, including a state or county health
2 professional organization, a committee of the organization, or an
3 employee or officer of the organization furnishing information to,
4 or on behalf of, the organization, acting in good faith who makes a
5 report; assists in originating, investigating, or preparing a
6 report; or assists a board or task force, a disciplinary

1 subcommittee, a hearings examiner, the committee, or the department
2 in carrying out its duties under this article is immune from civil
3 or criminal liability including, but not limited to, liability in a
4 civil action for damages that might otherwise be incurred thereby
5 and is protected under the whistleblowers' protection act, ~~Act No.~~
6 ~~469 of the Public Acts of 1980, being sections 15.361 to 15.369 of~~
7 ~~the Michigan Compiled Laws 1980 PA 469, MCL 15.361 TO 15.369.~~ A
8 person making or assisting in making a report, or assisting a board
9 or task force, a hearings examiner, the committee, or the
10 department, is presumed to have acted in good faith. The immunity
11 from civil or criminal liability granted under this subsection
12 extends only to acts done pursuant to this article. ~~or section~~
13 ~~21513(e).~~

14 (2) The physician-patient privilege created in section 2157 of
15 the revised judicature act of 1961, ~~Act No. 236 of the Public Acts~~
16 ~~of 1961, being section 600.2157 of the Michigan Compiled Laws 1961~~
17 **PA 236, MCL 600.2157**, does not apply in an investigation or
18 proceeding by a board or task force, a disciplinary subcommittee, a
19 hearings examiner, the committee, or the department acting within
20 the scope of its authorization. Unless expressly waived by the
21 individual to whom the information pertains, the information
22 obtained is confidential and shall not be disclosed except to the
23 extent necessary for the proper functioning of a board or task
24 force, a disciplinary subcommittee, the committee, or the
25 department. Except as otherwise provided in this subsection, a
26 person shall not use or disseminate the information except pursuant
27 to a valid court order.

1 Sec. 21513. The owner, operator, and governing body of a
2 hospital licensed under this article:

3 (a) Are responsible for all phases of the operation of the
4 hospital, selection of the medical staff, and quality of care
5 rendered in the hospital.

6 (b) Shall cooperate with the department in the enforcement of
7 this part, and require that the physicians, dentists, and other
8 personnel working in the hospital who are required to be licensed
9 or registered are in fact currently licensed or registered.

10 (c) Shall assure that physicians and dentists admitted to
11 practice in the hospital are granted hospital privileges consistent
12 with their individual training, experience, and other
13 qualifications.

14 (d) Shall assure that physicians and dentists admitted to
15 practice in the hospital are organized into a medical staff to
16 enable an effective review of the professional practices in the
17 hospital for the purpose of reducing morbidity and mortality and
18 improving the care provided in the hospital for patients. The
19 review shall include the quality and necessity of the care provided
20 and the preventability of complications and deaths occurring in the
21 hospital.

22 (e) Shall not discriminate because of race, religion, color,
23 national origin, age, or sex in the operation of the hospital
24 including employment, patient admission and care, room assignment,
25 and professional or nonprofessional selection and training
26 programs, and shall not discriminate in the selection and
27 appointment of individuals to the physician staff of the hospital

1 or its training programs on the basis of licensure, ~~ex~~
2 registration, **OR SPECIALTY CERTIFICATION** or professional education,
3 **INTERNSHIP, RESIDENCY, OR OTHER TRAINING** as doctors of medicine,
4 osteopathic medicine and surgery, or podiatry.

5 (f) Shall assure that the hospital adheres to medical control
6 authority protocols according to section 20918.

7 (g) Shall assure that the hospital develops and maintains a
8 plan for biohazard detection and handling.

9 Sec. 21515. **(1)** The records, data, and knowledge collected for
10 or by individuals or committees assigned a review function
11 described in this article are confidential and shall be used only
12 for the purposes provided in this article, shall not be public
13 records, and shall not be available for court subpoena **EXCEPT AS**
14 **OTHERWISE PROVIDED UNDER THIS SECTION.**

15 **(2) A HEALTH CARE PROVIDER, ENTITY, OR PRACTITIONER MAY SEEK**
16 **JUDICIAL REVIEW OF A FINAL DETERMINATION, ORDER, OR DECISION MADE**
17 **BY AN INDIVIDUAL OR COMMITTEE ASSIGNED A REVIEW FUNCTION ON THE**
18 **GROUND THAT HIS OR HER SUBSTANTIVE OR PROCEDURAL OR ANY OTHER**
19 **LEGAL RIGHTS UNDER FEDERAL, STATE, OR COMMON LAW HAVE BEEN**
20 **VIOLATED. IF JUDICIAL REVIEW IS SOUGHT UNDER THIS SECTION, THEN ANY**
21 **RECORDS, DATA, KNOWLEDGE, OR OTHER INFORMATION COLLECTED FOR OR BY**
22 **INDIVIDUALS OR COMMITTEES ASSIGNED A REVIEW FUNCTION IS NOT EXEMPT**
23 **FROM SUBPOENA, DISCOVERY, OR INTRODUCTION INTO EVIDENCE IN AN**
24 **ACTION AS LONG AS THOSE RECORDS, DATA, KNOWLEDGE, OR INFORMATION**
25 **RELATE TO THE ALLEGED VIOLATION OF THE PETITIONER'S SUBSTANTIVE,**
26 **PROCEDURAL, OR OTHER LEGAL RIGHTS. RECORDS, DATA, KNOWLEDGE, OR**
27 **INFORMATION THAT MAY BE RELEASED UNDER THIS SUBSECTION MAY INCLUDE,**

1 BUT IS NOT LIMITED TO, RECORDS, DATA, KNOWLEDGE, OR INFORMATION
2 RELATED TO ANY OF THE FOLLOWING:

3 (A) MECHANISMS FOR THE SELECTION OF INDIVIDUALS OR COMMITTEES,
4 OR BOTH, THAT ARE ASSIGNED A REVIEW FUNCTION.

5 (B) QUALIFICATIONS, COMPETENCE, AND EXPERIENCE OF AN
6 INDIVIDUAL WHO IS SELECTED AND APPOINTED TO A REVIEW ENTITY
7 EXCLUDING ANY COMMON IDENTIFIERS OR OTHER INFORMATION THAT WOULD
8 MAKE IT POSSIBLE TO IDENTIFY THAT INDIVIDUAL IN ANY MANNER OR IN
9 ANY CIRCUMSTANCE.

10 (C) RULES OF ORDER UTILIZED BY THE REVIEW ENTITY.

11 (D) PROTOCOLS FOR THE IDENTIFICATION AND PROTECTION AGAINST
12 CONFLICTS OF INTEREST WITHIN THE PEER REVIEW PROCESS.

13 (E) AGENDAS AND MEETING MINUTES AS LONG AS ANY PATIENT
14 IDENTIFYING INFORMATION IS EXTRACTED.