



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 111 (as introduced 2-13-19)  
Sponsor: Senator Peter J. Lucido  
Committee: Judiciary and Public Safety

Date Completed: 7-29-20

## **CONTENT**

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

- **Require a report or allegation of fact of a violation of the Public Health Code to be submitted in an affidavit signed under penalty of perjury.**
- **Specify that a provision requiring the identity of a registrant or licensee making a report to remain confidential would apply except to the extent necessary for the proper functioning of the Department of Licensing and Regulatory Affairs (LARA).**
- **Require LARA, during an investigation of an alleged violation, to request that an applicant, licensee, registrant, or individual who was the subject of an investigation to provide the Department with an affidavit responding to the alleged violation.**
- **Allow the Attorney General or LARA to issue, instead of requiring them to apply to a court for, a subpoena requiring a person to appear before a hearings examiner in a contested case or before LARA in an investigation.**
- **Specify that disclosure of information relative to the care and treatment of patients or clients of certain health professionals would not be prohibited if it were made in an affidavit submitted by the subject of an investigation if the licensee reasonably believed it were necessary to disclose the information to comply with the affidavit requirement.**
- **Specify that certain provisions that generally prohibit the disclosure of information would not prohibit disclosure of information requested by LARA for the investigation of a health professional or individual.**

The bill would take effect 90 days after its effective date.

### Affidavit; Violation of Public Health Code

Under the Code, a licensee or registrant who has knowledge that another licensee or registrant has committed a violation under Section 16221 (any of the listed grounds for disciplinary action), Article 7 (Controlled Substances), or Article 8 (Pharmaceutical-Grade Cannabis) or a rule promulgated under Article 7 or Article 8 must report the conduct and the name of the subject of the report to LARA. In addition, a person or governmental entity that believes a violation of Article 15 (Occupations), Article 7, or Article 8 or a rule promulgated under those articles may submit an allegation of fact to LARA in writing. Under the bill, in either case, the information would have to be submitted as an affidavit. The affidavit would have to be signed under penalty of perjury. A person who willfully made a false statement in an affidavit would be guilty of perjury under Section 423 of the Michigan Penal Code. (Under Section 423 of the

Penal Code, in relevant part, a person who willfully makes a false declaration in a record that signed by a person and given under penalty of perjury is guilty of a felony punishable by up to 15 years' imprisonment.)

Unless the licensee or registrant making a report agrees in writing, the identity of a registrant or licensee making a report must remain confidential unless disciplinary proceedings are initiated against the subject of the report and the licensee or registrant making the report is required to testify. Under the bill, the confidentiality requirement would apply except to the extent necessary for the proper functioning of the Department. "Proper functioning of the Department" would include the disclosure of information, including information regarding a person who reports or submits an allegation to LARA, that LARA considers necessary for an applicant, licensee, registrant, or individual who is the subject of an investigation to fill out an affidavit (as the bill would require) or for the issuance of a subpoena.

The bill would require LARA, during an investigation of an alleged violation, to request that an applicant, licensee, registrant, or individual who was the subject of an investigation to provide the Department with an affidavit responding to the alleged violation. Within 21 days after the receiving LARA's request, the subject of the investigation must provide LARA with the affidavit. The affidavit would have to be signed under penalty of perjury by the applicant, licensee, registrant, or individual who was the subject of the investigation and if another individual assisted the subject of the investigation with the preparation of the affidavit, it would have to include the name and title of that individual. A person who willfully made a false statement in an affidavit would be guilty of perjury.

#### Subpoenas

Upon application by the Attorney General or a party to a contested case, the circuit court may issue a subpoena requiring a person to appear before a hearings examiner in a contested case or before LARA in an investigation and be examined with reference to a matter within the scope of that case or investigation and to produce books, papers, or documents pertaining to the case or investigation. Under the bill, LARA or the Department of the Attorney General could issue the subpoena.

If a person failed to comply with a subpoena issued as described above, the Attorney General acting on behalf of LARA could invoke the aid of the circuit court for Ingham County to require the attendance and testimony of witnesses and the production of books, papers, and documents. The court could issue an order to that effect. Failure to obey the order could be punished by the court as a contempt.

#### Health Disciplines; Privilege

Under the Code, information relative to the care and treatment of a dental patient, information regarding an individual to whom a licensee has provided marriage and family therapy, relations and communications between a licensed professional counselor or a limited licensed counselor and a client, information acquired from an individual consulting a psychologist in his or her professional capacity, or a communication made by a client to an individual licensed under Part 185 (Social Work) is privileged. Except as otherwise provided, individuals serving in those health professions may not be required to disclose that information. Under the bill, disclosure of information relative to the care and treatment of those patients or clients would not be prohibited if it were made in an affidavit submitted by the subject of an investigation if the licensee reasonably believed it was necessary to disclose the information to comply with the affidavit requirement.

## Patient Records; Destruction

Under Section 20175 of the Code, a health facility or agency must 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 of hospitalization. Unless a longer retention period is otherwise required under Federal or State laws or regulations or by generally accepted standards of medical practice, a health facility or agency must keep and retain each record for at least seven years from the date of service to which the record pertains. A health facility or agency may destroy a record that is less than seven years old only if the health facility or agency sends a written notice to the patient at his or her last known address informing him or her that the record is about to be destroyed, offering the patient the opportunity to request a copy of that record, and requesting the patient's written authorization to destroy the record; and the health facility or agency receives written authorization from the patient or his or her authorized representative agreeing to the destruction of the record.

The Code also specifies the appropriate method of destruction and sanctions for improper destruction of medical records. The Department may assess the health facility or agency with the costs it incurred to enforce these requirements. In addition to the sanctions set forth in Section 20165 (which allow LARA to deny, limit, suspend, or revoke a licensee's license or certification or to impose an administrative fine), a hospital that fails to comply with this subsection is subject to an administrative fine of \$10,000. A hospital must take precautions to assure that a patient's medical records are not wrongfully altered or destroyed. A hospital that fails to do so is subject to a \$10,000 administrative fine. The bill would eliminate the \$10,000 administrative fines specified above.

Under the bill, LARA could request and within 30 days of receiving the request a health facility or agency would have to provide LARA with any of the following for the purposes of an investigation of an individual or health professional employed by the health facility or agency:

- Unless otherwise prohibited by law, unredacted medical records requested by LARA.
- The individual's or health professional's complete personnel file,
- Any other information LARA considered necessary.

The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency, or an institution of higher education in this state that has colleges of osteopathic and human medicine, are confidential, shall be used only for the purposes provided in this article, are not public records, and are not subject to court subpoena.

The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency, or an institution of higher education in Michigan that has colleges of osteopathic and human medicine, are confidential, may be used only for the purposes provided in Article 17 (Facilities and Agencies), are not public records, and are not subject to court subpoena. Under the bill, this would not prohibit the disclosure of records, data, and knowledge requested by LARA for the investigation of a health professional or individual.

In addition to the sanctions set forth in Section 20165, a health facility or agency that violated Section 20175 would be subject to an administrative fine of \$10,000 for each violation. "Health professional" would mean an individual who was licensed or registered under Article 15.

## Confidentiality of Records; Part 215 (Hospitals)

The records, data, and knowledge collected for or by individuals or committees assigned a review function described in Article 17 are confidential and must be used only for the purposes provided in Article 17, are not be public records, and are not available for court subpoena. Under the bill, this provision would not prohibit the disclosure of records, data, and knowledge requested by LARA for the investigation of a health professional or individual.

MCL 333.16211 et al.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have a negative fiscal impact on the State and local government. Convictions for perjury under the bill would be felonies and could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown how many people would be prosecuted under the bill's provisions. The average cost to State government for felony probation supervision is approximately \$3,100 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$5,400 per prisoner per year. Any additional revenue from imposed fines would go to local libraries.

The affidavit requirement and other provisions in the bill could result in minor administrative cost increases for the Department of Licensing and Regulatory Affairs and the Department of the Attorney General. However, these costs likely would be covered by existing appropriations and staff.

Fiscal Analyst: Joe Carrasco  
Elizabeth Raczkowski

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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.