

HOUSE BILL No. 4736

May 1, 1989, Introduced by Reps. Bennane, DeMars, Rocca, Leland, Pridnia, Gnodtke, Krause, Dunaskiss, Bandstra, Muxlow, Law, Hertel, Gubow, Palamara, Profit and Stallworth and referred to the Committee on Public Health.

A bill to provide for and to regulate the disclosure of health care information; and to prescribe penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

DEFINITIONS

Sec. 101. This act shall be known and may be cited as the "uniform health care information act".

Sec. 102. As used in this act:

(a) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the health care provider to determine compliance with 1 or more of the following:

(i) Statutory, regulatory, fiscal, medical, or scientific standards.

1 (ii) A private or public program of payments to a health
2 care provider.

3 (iii) Requirements for licensing, accreditation, or
4 certification.

5 (b) "Directory information" means information disclosing the
6 presence and the general health condition of a particular patient
7 who is an inpatient in a health care facility or who is currently
8 receiving emergency health care in a health care facility.

9 (c) "General health condition" means the patient's health
10 status described in 1 or more of the following terms or in terms
11 denoting similar conditions:

12 (i) Critical.

13 (ii) Poor.

14 (iii) Fair.

15 (iv) Good.

16 (v) Excellent.

17 (d) "Health care" means any care, service, or procedure pro-
18 vided by a health care provider to diagnose, treat, or maintain a
19 patient's physical or mental condition, or that affects the
20 structure or any function of the human body.

21 (e) "Health care facility" means a health facility or agency
22 licensed under article 17 of the public health code, Act No. 368
23 of the Public Acts of 1978, being sections 333.20101 to 333.22260
24 of the Michigan Compiled Laws, or any other place where a health
25 care provider provides health care to patients.

26 (f) "Health care information" means any information, whether
27 oral or recorded in any form or medium, that identifies or can

1 readily be associated with the identity of a patient and relates
2 to the patient's health care, and includes any record of disclo-
3 sures of health care information.

4 (g) "Health care provider" means a person who is licensed or
5 otherwise authorized under article 15 of Act No. 368 of the
6 Public Acts of 1978, being sections 333.16101 to 333.18838 of the
7 Michigan Compiled Laws, to provide health care in the ordinary
8 course of business or practice of a health profession. Health
9 care provider does not include a person who provides health care
10 solely through the sale or dispensing of drugs or medical
11 devices.

12 (h) "Institutional review board" means any board, committee,
13 or other group formally designated by an institution, or autho-
14 rized under federal or state law, to review, approve the initia-
15 tion of, or conduct periodic review of research programs to
16 assure the protection of the rights and welfare of human research
17 subjects.

18 (i) "Maintain", as related to health care information, means
19 to hold, possess, preserve, retain, store, or control that
20 information.

21 (j) "Patient" means an individual who receives or has
22 received health care. The term includes a deceased individual
23 who has received health care.

24 (k) "Person" means an individual, corporation, business
25 trust, estate, trust, partnership, association, joint venture,
26 government, governmental subdivision or agency, or any other
27 legal or commercial entity.

ARTICLE 2

DISCLOSURE OF HEALTH CARE INFORMATION

1 Sec. 201. (1) Except as otherwise provided in section 204,
2 a health care provider, an individual who assists a health care
3 provider in the delivery of health care, or an agent and employee
4 of a health care provider shall not disclose health care informa-
5 tion about a patient to any other person without the patient's
6 written authorization. A disclosure of health care information
7 made under a patient's written authorization shall conform to the
8 authorization.

9 (2) A health care provider shall maintain, in conjunction
10 with a patient's recorded health care information, a record of
11 each person who has received or examined, in whole or in part,
12 the recorded health care information during the next preceding 3
13 years. The record of disclosure shall include the name, address,
14 and institutional affiliation, if any, of each person receiving
15 or examining the recorded health care information, the date of
16 the receipt or examination, and, to the extent practicable, a
17 description of the information disclosed. This subsection does
18 not apply to a person who has examined the recorded health care
19 information pursuant to section 204(1).

20 Sec. 202. (1) A patient may authorize a health care pro-
21 vider to disclose the patient's health care information. Subject
22 to subsection (2), a health care provider shall honor an authori-
23 zation and, if requested, provide a copy of the recorded health
24 care information, unless the health care provider denies the
25 patient access to health care information under section 302.

1 (2) A health care provider may charge a reasonable fee, not
2 to exceed the health care provider's actual cost for providing
3 the health care information, and may refuse to honor a disclosure
4 authorization until the fee is paid.

5 (3) A disclosure authorization to a health care provider
6 shall meet all of the following requirements:

7 (a) Be in writing, dated, and signed by the patient.

8 (b) Identify the nature of the information to be disclosed.

9 (c) Identify the person to whom the information is to be
10 disclosed.

11 (4) Except as otherwise provided by this act, the signing of
12 a disclosure authorization by a patient is not a waiver of any
13 rights a patient has under other statutes, the rules of evidence,
14 or common law.

15 (5) A health care provider shall retain each disclosure
16 authorization or revocation in conjunction with any health care
17 information from which disclosures are made.

18 (6) Except for authorizations to provide information to
19 third party health care payers, a disclosure authorization shall
20 not permit the release of health care information relating to
21 health care received by the patient more than 6 months after the
22 disclosure authorization was signed.

23 (7) A disclosure authorization in effect on the effective
24 date of this act shall remain valid for 30 months after the
25 effective date of this act, unless an earlier date is specified
26 or it is revoked under section 203. Health care information
27 disclosed under such an authorization is otherwise subject to

1 this act. A disclosure authorization written after the effective
2 date of this act becomes invalid after the expiration date con-
3 tained in the disclosure authorization. An expiration date con-
4 tained in a disclosure authorization shall not be more than 30
5 months after the date the disclosure authorization is signed by
6 the patient. If the disclosure authorization does not contain an
7 expiration date, the disclosure authorization shall expire upon
8 the expiration of 6 months after the date it is signed.

9 Sec. 203. (1) A patient may revoke a disclosure authoriza-
10 tion to a health care provider at any time unless disclosure is
11 required to effectuate payments for health care that has been
12 provided by the health care provider, or other substantial action
13 has been taken by the health care provider in reliance on the
14 disclosure authorization.

15 (2) A health care provider may make a disclosure of health
16 care information based upon a good faith reliance on a disclosure
17 authorization if the health care provider does not have notice of
18 the revocation of the disclosure authorization at the time the
19 disclosure is made.

20 Sec. 204. (1) A health care provider may disclose health
21 care information about a patient without the patient's authoriza-
22 tion to the extent a recipient of the information needs to know
23 the health care information, if the disclosure is 1 or more of
24 the following:

25 (a) To a person who is providing health care to the patient
26 at the time the disclosure is made.

1 (b) To a person who requires the health care information for
2 health care education, or to provide planning, quality assurance,
3 peer review, or administrative, legal, financial, or actuarial
4 services to the health care provider, or for assisting the health
5 care provider in the delivery of health care, and the health care
6 provider reasonably believes both of the following:

7 (i) That the person to whom the disclosure is made will not
8 use or disclose the health care information for any other
9 purpose.

10 (ii) That the person to whom the disclosure is made will
11 take appropriate steps to protect the health care information.

12 (c) To any other health care provider who has previously
13 provided health care to the patient, to the extent necessary to
14 provide health care to the patient, unless the patient has
15 instructed the health care provider either verbally or in writing
16 not to make the disclosure.

17 (d) To any person if the health care provider reasonably
18 believes that disclosure to that person will avoid or minimize an
19 imminent danger to the health or safety of the patient or any
20 other individual.

21 (e) To immediate family members of the patient, or any other
22 individual with whom the patient is known by the health care pro-
23 vider to have a close personal relationship, if made in accord-
24 ance with good medical or other professional practice, unless the
25 patient has instructed the health care provider, either verbally
26 or in writing, not to make the disclosure.

1 (f) To a health care provider who is the successor in
2 interest to the health care provider maintaining the health care
3 information.

4 (g) For use in a research project by an institutional review
5 board and meets all of the following requirements:

6 (i) Is of sufficient importance to outweigh the intrusion
7 into the privacy of the patient that would result from the
8 disclosure.

9 (ii) Is impracticable without the use or disclosure of the
10 health care information in a form that identifies an individual
11 patient.

12 (iii) Contains reasonable safeguards to protect the health
13 care information from redisclosure.

14 (iv) Contains reasonable safeguards to protect against iden-
15 tifying, directly or indirectly, any patient in any report of the
16 research project.

17 (v) Contains procedures to remove or destroy at the earliest
18 opportunity, consistent with the purposes of the project, health
19 care information that would enable the patient to be identified,
20 unless an institutional review board authorizes retention of
21 identifying information for purposes of another research
22 project.

23 (h) To a person who obtains the health care information for
24 purposes of an audit, if that person agrees in writing to both of
25 the following:

1 (i) Remove or destroy, at the earliest opportunity
2 consistent with the purpose of the audit, health care information
3 that would enable the patient to be identified.

4 (ii) Not to disclose the health care information further,
5 except to accomplish the audit or report unlawful or improper
6 conduct involving fraud in payment for health care by a health
7 care provider or patient, or other unlawful conduct by the health
8 care provider.

9 (i) To an official of a state correctional facility or
10 county jail in which the patient is detained.

11 (2) A health care provider may disclose health care informa-
12 tion about a patient without the patient's authorization if the
13 disclosure is 1 or more of the following:

14 (a) Directory information, unless the patient has instructed
15 the health care provider, either verbally or in writing, not to
16 make the disclosure.

17 (b) To federal, state, or local public health authorities,
18 to the extent the health care provider is required by law to
19 report health care information or if needed to protect the public
20 health.

21 (c) To federal, state, or local law enforcement authorities
22 to the extent required by law.

23 (d) Pursuant to compulsory process in accordance with
24 section 205.

25 Sec. 205. (1) Health care information shall not be dis-
26 closed by a health care provider pursuant to compulsory legal
27 process or discovery in any judicial, legislative, or

1 administrative proceeding unless 1 or more of the following
2 apply:

3 (a) The patient has consented in writing to the release of
4 the health care information in response to compulsory process or
5 a discovery request.

6 (b) The patient has knowingly waived the right to claim con-
7 fidentiality for the health care information sought.

8 (c) The patient is a party to the proceeding and has placed
9 his or her physical or mental condition in issue.

10 (d) The patient's physical or mental condition is relevant
11 to the execution or witnessing of a will.

12 (e) The physical or mental condition of a deceased patient
13 is placed in issue by any person claiming or defending through or
14 as a beneficiary of the patient.

15 (f) A patient's health care information is to be used in the
16 patient's commitment proceeding.

17 (g) The health care information is for use in any law
18 enforcement proceeding or investigation in which a health care
19 provider is the subject or a party, except that health care
20 information obtained under this subdivision shall not be used in
21 any proceeding against the patient, unless the matter relates to
22 payment for the patient's health care, or unless authorized under
23 subdivision (i).

24 (h) The health care information is relevant to a proceeding
25 brought under article 8.

26 (i) A court has determined that particular health care
27 information is subject to compulsory legal process or discovery

1 because the party seeking the information has demonstrated that
2 access to the interest outweighs the patient's privacy interest.

3 (2) Unless the court, for good cause shown, determines that
4 the notification should be waived or modified, if health care
5 information is sought under subsection (1)(b), (d), or (e) or in
6 a civil proceeding or investigation under subsection (1)(i), the
7 person seeking discovery or compulsory process shall mail a
8 notice by first-class mail to the patient or the patient's attor-
9 ney of record of the compulsory process or discovery request not
10 less than 10 days before presenting the certificate required
11 under subsection (3) to the health care provider.

12 (3) Service of compulsory process or discovery requests upon
13 a health care provider shall be accompanied by a written certifi-
14 cation, signed by the person seeking to obtain health care infor-
15 mation, or his or her authorized representative, identifying at
16 least 1 subdivision of subsection (1) under which compulsory pro-
17 cess or discovery is being sought. The certificate shall also
18 state, in the case of information sought under subsection (1)(b),
19 (d), or (e), or in a civil proceeding under subsection (1)(i),
20 that the requirements of subsection (2) for notice have been
21 met. A person may sign the certification only if the person rea-
22 sonably believes that the subdivision of subsection (1) identi-
23 fied in the certification provides an appropriate basis for the
24 use of discovery or compulsory process. Unless otherwise ordered
25 by the court, the health care provider shall maintain a copy of
26 the process and the written certification as a permanent part of
27 the patient's health care information.

1 (4) Production of health care information under this
2 section, in and of itself, does not constitute a waiver of any
3 privilege, objection, or defense existing under other law or rule
4 of evidence or procedure.

5 ARTICLE 3

6 EXAMINATION AND COPYING OF RECORD

7 Sec. 301. (1) Upon receipt of a written request from a
8 patient to examine or copy all or part of the patient's recorded
9 health care information, a health care provider, as promptly as
10 required under the circumstances, but not later than 10 days
11 after receipt of the written request, shall do 1 or more of the
12 following, as appropriate:

13 (a) Make the information available for examination during
14 regular business hours and provide a copy, if requested, to the
15 patient.

16 (b) Inform the patient if the information does not exist or
17 cannot be found.

18 (c) If the health care provider to whom the written request
19 is directed does not maintain a record of the information, inform
20 the patient and provide the name and address, if known, of the
21 health care provider who maintains the record.

22 (d) If the information is in use or unusual circumstances
23 have delayed handling the request, inform the patient and specify
24 in writing the reasons for the delay and the earliest date, not
25 later than 21 days after receiving the request, when the informa-
26 tion will be available for examination or copying or when the
27 request will be otherwise disposed of.

1 (e) Deny the request, in whole or in part, under section 302
2 and inform the patient of the denial.

3 (2) Upon request, the health care provider shall provide an
4 explanation of any code or abbreviation used in the health care
5 information. If a record of the particular health care informa-
6 tion requested is not maintained by the health care provider in
7 the requested form, the health care provider is not required to
8 create a new record or reformulate an existing record to make the
9 health care information available in the requested form. The
10 health care provider may charge a reasonable fee, not to exceed
11 the health care provider's actual cost, for providing the health
12 care information and is not required to permit examination or
13 copying until the fee is paid.

14 Sec. 302. (1) A health care provider may deny a request for
15 health care information under section 301 if the health care pro-
16 vider reasonably concludes that 1 or more of the following
17 apply:

18 (a) Knowledge of the health care information would be inju-
19 rious to the health of the patient making the request.

20 (b) Knowledge of the health care information could reason-
21 ably be expected to lead to identification by the patient of an
22 individual who provided the information in confidence and under
23 circumstances in which confidentiality was appropriate.

24 (c) Knowledge of the health care information could reason-
25 ably be expected to cause danger to the life or safety of any
26 individual.

1 (d) The health care information was compiled and is used
2 solely for litigation, quality assurance, peer review, or
3 administrative purposes.

4 (e) Access to the health care information is otherwise pro-
5 hibited by law.

6 (2) If a health care provider denies a request for health
7 care information under this section, the health care provider, to
8 the extent possible, shall segregate health care information for
9 which access has been denied under subsection (1) from informa-
10 tion for which access cannot be denied and permit the patient to
11 examine or copy the disclosable information.

12 (3) If a health care provider denies a patient's request for
13 health care information, in whole or in part, under
14 subsection (1)(a) or (c), the health care provider shall permit
15 examination and copying of the record by another health care pro-
16 vider who is selected by the patient to treat the patient for the
17 same condition as the health care provider denying the request.
18 The health care provider denying the request shall inform the
19 patient of the patient's right to select another health care pro-
20 vider under this subsection.

21 ARTICLE 4

22 CORRECTION AND AMENDMENT OF RECORD

23 Sec. 401. (1) For purposes of accuracy or completeness, a
24 patient may request in writing that a health care provider cor-
25 rect or amend a record of the patient's health care information
26 kept by the health care provider to which a patient has access
27 under section 301.

1 (2) As promptly as required under the circumstances, but not
2 later than 10 days after receiving a request from a patient to
3 correct or amend a record of the patient's health care informa-
4 tion kept by the health care provider, the health care provider
5 shall do 1 or more of the following , as appropriate:

6 (a) Make the requested correction or amendment and inform
7 the patient of the action and of the patient's right to have the
8 correction or amendment sent to previous recipients of the health
9 care information in question.

10 (b) Inform the patient if the record no longer exists or
11 cannot be found.

12 (c) If the health care provider does not maintain the
13 record, inform the patient and provide the patient with the name
14 and address, if known, of the person who maintains the record.

15 (d) If the record is in use or unusual circumstances have
16 delayed the handling of the correction or amendment request,
17 inform the patient and specify in writing the earliest date, not
18 later than 21 days after receiving the request, when the correc-
19 tion or amendment will be made or when the request will otherwise
20 be disposed of.

21 (e) Inform the patient in writing of the health care
22 provider's refusal to correct or amend the record as requested,
23 the reason for the refusal, and the patient's right to add a
24 statement of disagreement and to have that statement sent to pre-
25 vious recipients of the disputed health care information.

1 Sec. 402. (1) In making a correction or amendment under
2 this section, the health care provider shall do both of the
3 following:

4 (a) Add the amending information as a part of the health
5 record.

6 (b) Mark the challenged entries as corrected or amended
7 entries and indicate the place in the record where the corrected
8 or amended information is located, in a manner practicable under
9 the circumstances.

10 (2) If the health care provider maintaining the record of
11 the patient's health care information refuses to make the
12 patient's requested correction or amendment, the health care pro-
13 vider shall do both of the following:

14 (a) Permit the patient to file, as a part of the record of
15 the patient's health care information, a concise statement of the
16 correction or amendment requested and the reasons for the correc-
17 tion or amendment.

18 (b) Mark the challenged entry to indicate that the patient
19 claims the entry is inaccurate or incomplete and indicate the
20 place in the record where the statement of disagreement is
21 located, in a manner practicable under the circumstances.

22 Sec. 403. (1) A health care provider, upon request of a
23 patient, shall take reasonable steps to provide copies of cor-
24 rected or amended information or of a statement of disagreement
25 to all persons designated by the patient who are identified in
26 the health care information as having examined or received copies
27 of the information sought to be corrected or amended.

1 (2) A health care provider may charge the patient a
2 reasonable fee, not exceeding the health care provider's actual
3 cost, for distributing corrected or amended information or the
4 statement of disagreement, unless the health care provider's
5 error necessitated the correction or amendment.

6 ARTICLE 5

7 NOTICE OF INFORMATION PRACTICES

8 Sec. 501. (1) A health care provider who provides health
9 care at a health care facility operated by the health care pro-
10 vider and who maintains a record of a patient's health care
11 information shall create a notice of information practices that
12 contains substantially the following language:

13 NOTICE

14 "We keep a record of the health care services we provide
15 you. You may ask us to see and copy that record. You
16 may also ask us to correct that record. We will not
17 disclose your record to others unless you direct us to
18 do so or unless the law authorizes or compels us to do
19 so. You may see your record or get more information
20 about it at _____."

21 (2) The health care provider shall post a copy of the notice
22 of information practices required under subsection (1) in a con-
23 spicuous place in the health care facility and, upon request,
24 provide patients or prospective patients with a copy of the
25 notice.

ARTICLE 6

PERSONS AUTHORIZED TO ACT FOR PATIENT

1 Sec. 601. (1) A person authorized to consent to health care
2 for another may exercise the rights of that person under this act
3 to the extent necessary to effectuate the terms or purposes of
4 the grant of authority. If the patient is a minor and is autho-
5 rized to consent to health care without parental consent under
6 the laws of this state, only the minor may exercise the rights of
7 a patient under this act as to information pertaining to health
8 care to which the minor lawfully consented.

9 (2) A person authorized to act for a patient under this act
10 shall act in good faith to represent the best interests of the
11 patient.

12 Sec. 602. A personal representative of a deceased patient
13 may exercise all of the deceased patient's rights under this
14 act. If there is no personal representative, or upon discharge
15 of the personal representative, a deceased patient's rights under
16 this act may be exercised by persons who are authorized by law to
17 act for the deceased patient.

ARTICLE 7

SECURITY SAFEGUARDS AND RECORD RETENTION

18 Sec. 701. A health care provider shall effect reasonable
19 safeguards for the security of all health care information main-
20 tained by the health care provider.

21 Sec. 702. A health care provider shall maintain a record of
22 existing health care information for at least 1 year following
23 receipt of an authorization to disclose that health care

1 information under section 203, and during the pendency of a
2 request for examination and copying under section 301 or a
3 request for correction or amendment under section 401.

4 ARTICLE 8

5 CIVIL REMEDIES AND CRIMINAL SANCTIONS

6 Sec. 801. (1) A person who willfully discloses health care
7 information in violation of this act, and who knew or should have
8 known that the disclosure was prohibited, is guilty of a misde-
9 meanor, punishable by a fine of not more than \$10,000.00, or
10 imprisonment for not more than 1 year, or both.

11 (2) A person who, by means of bribery, theft, or misrepre-
12 sentation of identity, purpose of use, or entitlement to the
13 information, or trespass examines or obtains, in violation of
14 this act, health care information maintained by a health care
15 provider, is guilty of a misdemeanor, punishable by a fine of not
16 more than \$10,000.00, or imprisonment for not more than 1 year,
17 or both.

18 (3) A person who, knowing that a certification under
19 section 205(3) or a disclosure authorization under section 202 is
20 false, willfully presents the certification or disclosure autho-
21 rization to a health care provider, is guilty of a misdemeanor,
22 punishable by a fine of not more than \$10,000.00, or imprisonment
23 for not more than 1 year, or both.

24 Sec. 802. The attorney general or a county prosecutor may
25 maintain a civil action to enforce this act. The court may order
26 any relief authorized under section 803.

1 Sec. 803. (1) A person aggrieved by a violation of this act
2 may maintain a civil action as provided in this section.

3 (2) The court may order a health care provider or other
4 person to comply with this act and may order any other appropri-
5 ate relief.

6 (3) A health care provider who relies in good faith upon a
7 certification, pursuant to section 205(3), is not liable for dis-
8 closures made in reliance on that certification.

9 (4) In an action by a patient alleging that health care
10 information was improperly withheld under article 3, the burden
11 of proof is on the health care provider to establish that the
12 information was properly withheld.

13 (5) If the court determines that there is a violation of
14 this act, the aggrieved person is entitled to recover damages for
15 pecuniary losses sustained as a result of the violation, and, in
16 addition, if the violation results from willful or grossly negli-
17 gent conduct, the aggrieved person may recover exemplary damages
18 of not more than \$5,000.00, exclusive of any pecuniary loss.

19 (6) If a plaintiff prevails, the court may assess reasonable
20 attorney's fees and all other expenses reasonably incurred in the
21 litigation.