

Act No. 481
Public Acts of 2006
Approved by the Governor
December 19, 2006
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**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

**Introduced by Senators Jacobs, Basham, Switalski, Clark-Coleman, Barcia, Olshove, Hammerstrom,
Leland, Cherry, Thomas, Patterson, Gilbert, Cropsey, Prusi, Brater, Schauer and Stamas**

ENROLLED SENATE BILL No. 465

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 16177 and 20175 (MCL 333.16177 and 333.20175), section 16177 as amended by 1998 PA 332 and section 20175 as amended by 2000 PA 319, and by adding sections 16213 and 20175a.

The People of the State of Michigan enact:

Sec. 16177. (1) An individual applying for licensure or registration under this article shall do so on a form provided by the department. The department shall require each applicant to include on the application form his or her social security number. The department shall not display an applicant's social security number on his or her license or registration. If the facts set forth in the application meet the requirements of the board or task force and this article for licensure or registration, the board or task force shall grant a license or registration to the applicant. A board or task force may require the applicant to take an examination to determine if the applicant meets the qualifications for licensure or registration. The examination shall include subjects determined by the board or task force to be essential to the safe and competent practice of the health profession, the appropriate use of a title, or both. Passing scores or the procedure used to determine passing scores shall be established before an examination is administered.

(2) In addition to the information required under subsection (1), an applicant for licensure or registration or a licensee or registrant applying for renewal shall include on a form provided by the department all of the following information, if applicable:

(a) A felony conviction.

(b) A misdemeanor conviction punishable by imprisonment for a maximum term of 2 years or a misdemeanor conviction involving the illegal delivery, possession, or use of alcohol or a controlled substance.

(c) Sanctions imposed against the applicant by a similar licensure, registration, certification, or disciplinary board of another state or country.

(3) In addition to the information required under subsections (1) and (2), a physician, osteopathic physician, dentist, or podiatrist applying for licensure or renewal under this article shall report to the department on a form provided by the department the name of each hospital with which he or she is employed or under contract, and each hospital in which he or she is allowed to practice.

(4) In addition to the information required under subsections (1), (2), and (3), an applicant for licensure and, beginning the license renewal cycle after the effective date of the amendatory act that added section 16213, a licensee applying for renewal shall provide the department, on the application or the license renewal form, with an affidavit stating that he or she has a written policy for protecting, maintaining, and providing access to his or her medical records in accordance with section 16213 and for complying with section 16213 in the event that he or she sells or closes his or her practice, retires from practice, or otherwise ceases to practice under this article. The applicant or licensee shall make the written policy available to the department upon request.

(5) A requirement under this section to include a social security number on an application does not apply to an applicant who demonstrates he or she is exempt under law from obtaining a social security number or to an applicant who for religious convictions is exempt under law from disclosure of his or her social security number under these circumstances. The department shall inform the applicant of this possible exemption.

Sec. 16213. (1) An individual licensed under this article shall keep and maintain a record for each patient for whom he or she has provided medical services, including a full and complete record of tests and examinations performed, observations made, and treatments provided. Unless a longer retention period is otherwise required under federal or state laws or regulations or by generally accepted standards of medical practice, a licensee shall keep and retain each record for a minimum of 7 years from the date of service to which the record pertains. The records shall be maintained in such a manner as to protect their integrity, to ensure their confidentiality and proper use, and to ensure their accessibility and availability to each patient or his or her authorized representative as required by law. A licensee may destroy a record that is less than 7 years old only if both of the following are satisfied:

(a) The licensee sends a written notice to the patient at the last known address of that patient informing the patient 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.

(b) The licensee receives written authorization from the patient or his or her authorized representative agreeing to the destruction of the record.

(2) If a licensee is unable to comply with this section, the licensee shall employ or contract, arrange, or enter into an agreement with another health care provider, a health facility or agency, or a medical records company to protect, maintain, and provide access to those records required under subsection (1).

(3) If a licensee or registrant sells or closes his or her practice, retires from practice, or otherwise ceases to practice under this article, the licensee or the personal representative of the licensee, if the licensee is deceased, shall not abandon the records required under this section and shall send a written notice to the department that specifies who will have custody of the medical records and how a patient may request access to or copies of his or her medical records and shall do either of the following:

(a) Transfer the records required under subsection (1) to any of the following:

(i) A successor licensee.

(ii) If requested by the patient or his or her authorized representative, to the patient or a specific health facility or agency or other health care provider licensed under article 15.

(iii) A health care provider, a health facility or agency, or a medical records company with which the licensee had contracted or entered into an agreement to protect, maintain, and provide access to those records required under subsection (1).

(b) In accordance with subsection (1), as long as the licensee or the personal representative of the licensee, if the licensee is deceased, sends a written notice to the last known address of each patient for whom he or she has provided medical services and receives written authorization from the patient or his or her authorized representative, destroy the records required under subsection (1). The notice shall provide the patient with 30 days to request a copy of his or her record or to designate where he or she would like his or her medical records transferred and shall request from the

patient within 30 days written authorization for the destruction of his or her medical records. If the patient fails to request a copy or transfer of his or her medical records or to provide the licensee with written authorization for the destruction, then the licensee or the personal representative of the licensee shall not destroy those records that are less than 7 years old but may destroy, in accordance with subsection (4), those that are 7 years old or older.

(4) Except as otherwise provided under this section or federal or state laws and regulations, records required to be maintained under subsection (1) may be destroyed or otherwise disposed of after being maintained for 7 years. If records maintained in accordance with this section are subsequently destroyed or otherwise disposed of, those records shall be shredded, incinerated, electronically deleted, or otherwise disposed of in a manner that ensures continued confidentiality of the patient's health care information and any other personal information relating to the patient. If records are destroyed or otherwise disposed of as provided under this subsection, the department may take action including, but not limited to, contracting for or making other arrangements to ensure that those records and any other confidential identifying information related to the patient are properly destroyed or disposed of to protect the confidentiality of patient's health care information and any other personal information relating to the patient. Before the department takes action in accordance with this subsection, the department, if able to identify the licensee responsible for the improper destruction or disposal of the medical records at issue, shall send a written notice to that licensee at his or her last known address or place of business on file with the department and provide the licensee with an opportunity to properly destroy or dispose of those medical records as required under this subsection unless a delay in the proper destruction or disposal may compromise the patient's confidentiality. The department may assess the licensee with the costs incurred by the department to enforce this subsection.

(5) A person who fails to comply with this section is subject to an administrative fine of not more than \$10,000.00 if the failure was the result of gross negligence or willful and wanton misconduct.

(6) Nothing in this section shall be construed to create or change the ownership rights to any medical records.

(7) As used in this section:

(a) "Medical record" or "record" means information, oral or recorded in any form or medium, that pertains to a patient's health care, medical history, diagnosis, prognosis, or medical condition and that is maintained by a licensee in the process of providing medical services.

(b) "Medical records company" means a person who contracts for or agrees to protect, maintain, and provide access to medical records for a health care provider or health facility or agency in accordance with this section.

(c) "Patient" means an individual who receives or has received health care from a health care provider or health facility or agency. Patient includes a guardian, if appointed, and a parent, guardian, or person acting in loco parentis, if the individual is a minor, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting in loco parentis, in which case the minor has the exclusive right to exercise the rights of a patient under this section with respect to his or her medical records relating to that care.

Sec. 20175. (1) A health facility or agency shall 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 shall keep and retain each record for a minimum of 7 years from the date of service to which the record pertains. A health facility or agency shall maintain the records in such a manner as to protect their integrity, to ensure their confidentiality and proper use, and to ensure their accessibility and availability to each patient or his or her authorized representative as required by law. A health facility or agency may destroy a record that is less than 7 years old only if both of the following are satisfied:

(a) The health facility or agency sends a written notice to the patient at the last known address of that patient informing the patient 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.

(b) The health facility or agency receives written authorization from the patient or his or her authorized representative agreeing to the destruction of the record. Except as otherwise provided under federal or state laws and regulations, records required to be maintained under this subsection may be destroyed or otherwise disposed of after being maintained for 7 years. If records maintained in accordance with this section are subsequently destroyed or otherwise disposed of, those records shall be shredded, incinerated, electronically deleted, or otherwise disposed of in a manner that ensures continued confidentiality of the patient's health care information and any other personal information relating to the patient. If records are destroyed or otherwise disposed of as provided under this subsection, the department may take action including, but not limited to, contracting for or making other arrangements to ensure that those records and any other confidential identifying information related to the patient are properly destroyed or disposed of to protect the confidentiality of patient's health care information and any other personal information relating to the patient. Before the department takes action in accordance with this subsection, the department, if able to identify the health facility or agency responsible for the improper destruction or disposal of the medical records at issue, shall send a written notice to that health facility or agency at the last known address on file with the department and provide

the health facility or agency with an opportunity to properly destroy or dispose of those medical records as required under this subsection unless a delay in the proper destruction or disposal may compromise the patient's confidentiality. The department may assess the health facility or agency with the costs incurred by the department to enforce this subsection. In addition to the sanctions set forth in section 20165, a hospital that fails to comply with this subsection is subject to an administrative fine of \$10,000.00.

(2) A hospital shall take precautions to assure that the records required by subsection (1) are not wrongfully altered or destroyed. A hospital that fails to comply with this subsection is subject to an administrative fine of \$10,000.00.

(3) Unless otherwise provided by law, the licensing and certification records required by this article are public records.

(4) Departmental officers and employees shall respect the confidentiality of patient clinical records and shall not divulge or disclose the contents of records in a manner that identifies an individual except pursuant to court order or as otherwise authorized by law.

(5) A health facility or agency that employs, contracts with, or grants privileges to a health professional licensed or registered under article 15 shall report the following to the department not more than 30 days after it occurs:

(a) Disciplinary action taken by the health facility or agency against a health professional licensed or registered under article 15 based on the licensee's or registrant's professional competence, disciplinary action that results in a change of employment status, or disciplinary action based on conduct that adversely affects the licensee's or registrant's clinical privileges for a period of more than 15 days. As used in this subdivision, "adversely affects" means the reduction, restriction, suspension, revocation, denial, or failure to renew the clinical privileges of a licensee or registrant by a health facility or agency.

(b) Restriction or acceptance of the surrender of the clinical privileges of a licensee or registrant under either of the following circumstances:

(i) The licensee or registrant is under investigation by the health facility or agency.

(ii) There is an agreement in which the health facility or agency agrees not to conduct an investigation into the licensee's or registrant's alleged professional incompetence or improper professional conduct.

(c) A case in which a health professional resigns or terminates a contract or whose contract is not renewed instead of the health facility taking disciplinary action against the health professional.

(6) Upon request by another health facility or agency seeking a reference for purposes of changing or granting staff privileges, credentials, or employment, a health facility or agency that employs, contracts with, or grants privileges to health professionals licensed or registered under article 15 shall notify the requesting health facility or agency of any disciplinary or other action reportable under subsection (5) that it has taken against a health professional licensed or registered under article 15 and employed by, under contract to, or granted privileges by the health facility or agency.

(7) For the purpose of reporting disciplinary actions under this section, a health facility or agency shall include only the following in the information provided:

(a) The name of the licensee or registrant against whom disciplinary action has been taken.

(b) A description of the disciplinary action taken.

(c) The specific grounds for the disciplinary action taken.

(d) The date of the incident that is the basis for the disciplinary action.

(8) 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.

Sec. 20175a. (1) If a health facility or agency is unable to comply with section 20175, the health facility or agency shall employ or contract, arrange, or enter into an agreement with another health facility or agency or a medical records company to protect, maintain, and provide access to those records required under section 20175(1).

(2) If a health facility or agency closes or otherwise ceases operation, the health facility or agency shall not abandon the records required to be maintained under section 20175(1) and shall send a written notice to the department that specifies who will have custody of the medical records and how a patient may request access to or copies of his or her medical records and shall do either of the following:

(a) Transfer the records required under section 20175(1) to any of the following:

(i) A successor health facility or agency.

(ii) If designated by the patient or his or her authorized representative, to the patient or a specific health facility or agency or a health care provider licensed or registered under article 15.

(iii) A health facility or agency or a medical records company with which the health facility or agency had contracted or entered into an agreement to protect, maintain, and provide access to those records required under section 20175(1).

(b) In accordance with section 20175(1), as long as the health facility or agency sends a written notice to the last known address of each patient for whom he or she has provided medical services and receives written authorization from the patient or his or her authorized representative, destroy the records required under section 20175(1). The notice shall provide the patient with 30 days to request a copy of his or her record or to designate where he or she would like his or her medical records transferred and shall request from the patient within 30 days written authorization for the destruction of his or her medical records. If the patient fails to request a copy or transfer of his or her medical records or to provide the health facility or agency with written authorization for the destruction, then the health facility or agency shall not destroy those records that are less than 7 years old but may destroy, in accordance with section 20175(1), those that are 7 years old or older.

(3) Nothing in this section shall be conducted to create or change the ownership rights to any medical records.

(4) A person that fails to comply with this section is subject to an administrative fine of not more than \$10,000.00 if the failure was the result of gross negligence or willful and wanton misconduct.

(5) As used in this section:

(a) "Medical record" or "record" means information, oral or recorded in any form or medium, that pertains to a patient's health care, medical history, diagnosis, prognosis, or medical condition and that is maintained by a licensee in the process of providing medical services.

(b) "Medical records company" means a person who contracts for or agrees to protect, maintain, and provide access to medical records for a health facility or agency in accordance with section 20175.

(c) "Patient" means an individual who receives or has received health care from a health care provider or health facility or agency. Patient includes a guardian, if appointed, and a parent, guardian, or person acting in loco parentis, if the individual is a minor, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting in loco parentis, in which case the minor has the exclusive right to exercise the rights of a patient under this section with respect to his or her medical records relating to that care.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor