

Act No. 62
Public Acts of 2023
Approved by the Governor
July 11, 2023
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July 12, 2023
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Senators Hauck, Geiss, Chang, Lauwers, Bellino, Bayer, Shink, Wojno, McCann,
Cavanagh and Polehanki

ENROLLED SENATE BILL No. 71

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 16213, 20175, 20175a, and 20199 (MCL 333.16213, 333.20175, 333.20175a, and 333.20199), sections 16213 and 20175a as added and section 20175 as amended by 2006 PA 481, and by adding sections 16213a, 16429, 17029, 17529, 17829, 17909, and 20175b.

The People of the State of Michigan enact:

Sec. 16213. (1) A licensee shall keep and maintain a record for each patient for whom the licensee has provided medical services, including a full and complete record of tests and examinations performed, observations made, and treatments provided. If a medical service provided to a patient on or after the effective date of the amendatory act that added this sentence involves the vaginal or anal penetration of the patient, a licensee shall expressly state in the patient’s record that vaginal or anal penetration was performed unless the medical service meets any of the circumstances described in subsection (2)(b)(i), (ii), (iii), or (iv).

(2) 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 required under subsection (1) as follows:

(a) Except as otherwise provided in subdivision (b), for a minimum of 7 years from the date of service to which the record pertains.

(b) If the record is for a medical service performed on or after the effective date of the amendatory act that added this subdivision that involves the vaginal or anal penetration of a patient, for a minimum of 15 years from the date of service to which the record pertains. This subdivision does not apply to a record for any of the following:

(i) A medical service that primarily relates to the patient's urological, gastrointestinal, reproductive, gynecological, or sexual health.

(ii) A medical service that is necessary and associated with or incident to a medical emergency. As used in this subparagraph, "medical emergency" means a circumstance that, in the licensee's good-faith medical judgment, creates an immediate threat of serious risk to the life or physical health of the patient.

(iii) A medical service performed for the purpose of rectally administering a drug or medicine.

(iv) A medical service performed to measure a patient's temperature.

(3) The records required under subsection (1) must 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 the patient's authorized representative as required by law.

(4) Except as otherwise provided in subsection (7), a licensee may destroy a record required under subsection (1) 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 the patient's authorized representative agreeing to the destruction of the record.

(5) 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).

(6) If a licensee or registrant sells or closes the licensee's or registrant's 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 the patient's 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 the patient's 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) Except as otherwise provided in subsection (7), and in accordance with subsections (1) to (4), 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 the licensee has provided medical services and receives written authorization from the patient or the patient's authorized representative, destroy the records required under subsection (1). The notice must provide the patient with 30 days to request a copy of the patient's records or to designate where the patient would like the patient's medical records transferred and must request from the patient within 30 days written authorization for the destruction of the patient's medical records. Except as otherwise provided in subsection (7), if the patient fails to request a copy or transfer of the patient's 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 (8), those that are 7 years old or older.

(7) A licensee or the personal representative of a licensee, if the licensee is deceased, shall only destroy a record described in subsection (2)(b) in accordance with subsection (8).

(8) Except as otherwise provided under this section or federal or state laws and regulations, records required to be maintained under subsection (1), other than a record described in subsection (2)(b), may be destroyed or otherwise disposed of after being maintained for 7 years and records described in subsection (2)(b) may be destroyed or otherwise disposed of after being maintained for 15 years. If records maintained in accordance with this section are subsequently destroyed or otherwise disposed of, those records must 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 not 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 the licensee's 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.

(9) Except as otherwise provided in section 16213a, 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.

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

(11) 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 the minor's medical records relating to that care.

Sec. 16213a. (1) Except as otherwise provided in subsections (2) and (3), a person that violates section 16213(1) regarding the documentation of a medical service involving vaginal or anal penetration in a patient's medical record is subject to an administrative fine or guilty of a crime as follows:

(a) For a first violation, an administrative fine of not more than \$1,000.00.

(b) For a second violation, an administrative fine of not more than \$2,500.00.

(c) For a third or subsequent violation, a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than \$5,000.00, or both.

(2) A person that violates section 16213(1) regarding the documentation of a medical service involving vaginal or anal penetration in a patient's medical record is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of \$5,000.00, or both, if the violation was the result of gross negligence.

(3) A person that intentionally violates section 16213(1) regarding the documentation of a medical service involving vaginal or anal penetration in a patient's medical record is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$7,500.00, or both.

(4) This section does not limit any other sanction or additional action a disciplinary subcommittee is authorized to impose or take.

Sec. 16429. The department may promulgate rules that provide guidance to licensees on generally accepted standards of practice for services involving vaginal or anal penetration, including internal pelvic floor treatments. If the department promulgates rules under this section, the department shall consult with appropriate professional associations and other interested stakeholders.

Sec. 17029. The department may promulgate rules that provide guidance to licensees on generally accepted standards of medical practice for medical services involving vaginal or anal penetration, including internal pelvic floor treatments but excluding medical services that primarily relate to a patient's urological, gastrointestinal, reproductive, gynecological, or sexual health, that are performed to measure a patient's temperature, or that are performed for the purpose of rectally administering a drug or medicine. If the department promulgates rules under this section, the department shall consult with appropriate professional associations and other interested stakeholders.

Sec. 17529. The department may promulgate rules that provide guidance to licensees on generally accepted standards of medical practice for medical services involving vaginal or anal penetration, including internal pelvic floor treatments but excluding medical services that primarily relate to a patient's urological, gastrointestinal, reproductive, gynecological, or sexual health, that are performed to measure a patient's temperature, or that are performed for the purpose of rectally administering a drug or medicine. If the department promulgates rules under this section, the department shall consult with appropriate professional associations and other interested stakeholders.

Sec. 17829. The department may promulgate rules that provide guidance to licensees on generally accepted standards of practice for services involving vaginal or anal penetration, including internal pelvic floor treatments. If the department promulgates rules under this section, the department shall consult with appropriate professional associations and other interested stakeholders.

Sec. 17909. The department may promulgate rules that provide guidance to licensees on generally accepted standards of practice for services involving vaginal or anal penetration, including internal pelvic floor treatments. If the department promulgates rules under this section, the department shall consult with appropriate professional associations and other interested stakeholders.

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. If a medical service provided to a patient on or after the effective date of the amendatory act that added this sentence involves the vaginal or anal penetration of the patient, a health facility or agency shall ensure that the patient's medical record expressly states that vaginal or anal penetration was performed unless the medical service meets any of the circumstances described in subsection (2)(b)(i)(A), (B), (C), or (D).

(2) 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 required under subsection (1) as follows:

(a) Except as otherwise provided in subdivision (b), for a minimum of 7 years from the date of service to which the record pertains.

(b) For a minimum of 15 years from the date of service to which the record pertains if the service is performed on or after the effective date of the amendatory act that added this subdivision and 1 of the following applies:

(i) The record includes a medical service involving the vaginal or anal penetration of a patient. This subparagraph does not apply to a record for any of the following:

(A) A medical service that primarily relates to the patient's urological, gastrointestinal, reproductive, gynecological, or sexual health.

(B) A medical service that is necessary and associated with or incident to a medical emergency. As used in this sub-subparagraph, "medical emergency" means a circumstance that, in the good-faith medical judgment of a health professional who is licensed under article 15, creates an immediate threat of serious risk to the life or physical health of the patient.

(C) A medical service performed for the purpose of rectally administering a drug or medicine.

(D) A medical service performed to measure a patient's temperature.

(ii) The patient has filed a complaint with the health facility or agency alleging sexual misconduct by an individual who is employed by, under contract to, or granted privileges by the health facility or agency. As used in this subparagraph, "sexual misconduct" means the conduct described in section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.90, 750.136, 750.145a, 750.145b, 750.145c, 750.520b, 750.520c, 750.520d, 750.520e, or 750.520g, regardless of whether the conduct resulted in a criminal conviction.

(3) A health facility or agency shall maintain the records required under subsection (1) 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 the patient's authorized representative as required by law.

(4) Except as otherwise provided in subsection (6), a health facility or agency may destroy a record required under subsection (1) 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 the patient's authorized representative agreeing to the destruction of the record.

(5) Except as otherwise provided under federal or state laws and regulations, records required to be maintained under subsection (1), other than a record described in subsection (2)(b), may be destroyed or otherwise disposed of after being maintained for 7 years, and records described in subsection (2)(b) may be destroyed or otherwise disposed of after being maintained for 15 years. If records maintained in accordance with this section are subsequently destroyed or otherwise disposed of, those records must 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 not destroyed or otherwise disposed of as provided under this subsection or subsection (4), 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 or subsection (4), 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 or subsection (4) is subject to an administrative fine of \$10,000.00.

(6) A health facility or agency shall only destroy a record described in subsection (2)(b) in accordance with subsection (5).

(7) A hospital shall take precautions to ensure that the records required under 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.

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

(9) 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.

(10) 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 or agency taking disciplinary action against the health professional.

(11) 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 (10) 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.

(12) 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.

(13) 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, must be used only for the purposes provided in this article, are not public records, and are not subject to court subpoena.

(14) This section does not apply to a health facility or agency that is a health maintenance organization.

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 the patient's 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 the patient's 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) Except as otherwise provided in section 20175(6) and in accordance with section 20175(1) to (5), as long as the health facility or agency sends a written notice to the last known address of each patient for whom the health facility or agency has provided medical services and receives written authorization from the patient or the patient's authorized representative, destroy the records required under section 20175(1). The notice must provide the patient with 30 days to request a copy of the patient's records or to designate where the patient would like the patient's medical records transferred and must request from the patient within 30 days written authorization for the destruction of the patient's medical records. Except as otherwise provided in section 20175(6), if the patient fails to request a copy or transfer of the patient's 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) to (5), those that are 7 years old or older.

(3) Nothing in this section shall be construed 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 the minor's medical records relating to that care.

(6) This section does not apply to a health facility or agency that is a health maintenance organization.

Sec. 20175b. (1) Except as otherwise provided in subsections (2) and (3), a person that violates section 20175(1) regarding the documentation of a medical service involving vaginal or anal penetration in a patient's medical record is subject to an administrative fine or guilty of a crime as follows:

(a) For a first violation, an administrative fine of not more than \$2,500.00.

(b) For a second violation, an administrative fine of not more than \$5,000.00.

(c) For a third or subsequent violation, a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than \$7,500.00, or both.

(2) A person that violates section 20175(1) regarding the documentation of a medical service involving vaginal or anal penetration in a patient's medical record is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of \$10,000.00, or both, if the violation was the result of gross negligence.

(3) A person that intentionally violates section 20175(1) regarding the documentation of a medical service involving vaginal or anal penetration in a patient's medical record is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both.

(4) This section does not limit any other sanction the department is authorized to impose under section 20165.

Sec. 20199. (1) Except as otherwise provided in subsection (2) or this article, a person that violates this article or a rule promulgated or an order issued under this article is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 for each day the violation continues or, in case of a violation of sections 20551 to 20554, a fine of not more than \$1,000.00 for each occurrence.

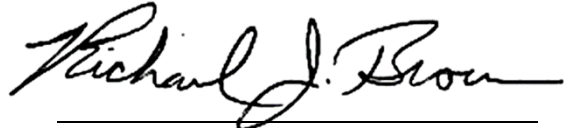
(2) A person that violates sections 20181 to 20184 is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$2,000.00, or both.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor