

Act No. 594
Public Acts of 1996
Approved by the Governor
January 21, 1997
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senators Shugars, Gougeon, North, Emmons, Schuette, McManus, Koivisto, Bennett, Rogers, Geake, Steil, Van Regenmorter, Hoffman, Bullard and Stille

ENROLLED SENATE BILL No. 1102

AN ACT to amend sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "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 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 penalties and remedies; to provide for sanctions for violations of this act and local ordinances; 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," as amended by Act No. 273 of the Public Acts of 1996, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add part 56a.

The People of the State of Michigan enact:

Section 1. Sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 273 of the Public Acts of 1996, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws, are amended and part 56a is added to read as follows:

Part 56A. Terminal Illness

Sec. 5651. This part shall be known and may be cited as the "Michigan dignified death act".

Sec. 5652. (1) The legislature finds all of the following:

(a) That patients face a unique set of circumstances and decisions once they have been diagnosed as having a terminal illness.

(b) That published studies indicate that terminally ill patients fear that in end-of-life situations they could receive unwanted aggressive medical treatment.

(c) That terminally ill patients are often unaware of their legal rights, particularly with regard to controlling end-of-life decisions.

(d) That the free flow of information among health care providers, patients, and patients' families can give patients and their families a sense of control over their lives, ease the stress involved in coping with a terminal illness, and

provide needed guidance to all involved in determining the appropriate variety and degree of medical intervention to be used.

(2) In affirmation of the tradition in this state recognizing the integrity of patients and their desire for a humane and dignified death, the Michigan legislature enacts the "Michigan dignified death act". In doing so, the legislature recognizes that a well-considered body of common law exists detailing the relationship between health care providers and their patients. This act is not intended to abrogate any part of that law. This act is intended to increase terminally ill patients' awareness of their right to make decisions to receive, continue, discontinue, or refuse medical treatment. It is hoped that by doing so, the legislature will encourage better communication between terminally ill patients and health care providers to ensure that a terminally ill patient's final days are meaningful and dignified.

Sec. 5653. (1) As used in this part:

(a) "Health facility" means a health facility or agency licensed under article 17.

(b) "Medical treatment" means a treatment including, but not limited to, palliative care treatment, or a procedure, medication, surgery, diagnostic test, or hospice plan of care that may be ordered, provided, or withheld or withdrawn by a health professional or a health facility under generally accepted standards of medical practice and that is not prohibited by law. As used in this part, "hospice" means hospice as defined in section 20106 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws.

(c) "Patient" means an individual who is under the care of a physician.

(d) "Patient advocate" means that term as defined in section 496 of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.496 of the Michigan Compiled Laws.

(e) "Patient Surrogate" means the parent or legal guardian of a patient who is a minor or a member of the immediate family, the next of kin, or the legal guardian of a patient who has a condition other than minority that prevents the patient from giving consent to medical treatment.

(f) "Physician" means that term as defined in section 17001 or 17501.

(g) "Terminal illness" means a disease or condition due to which, in the opinion of a physician, a patient's death is anticipated within 6 months after the date of the physician's opinion.

(2) Article 1 contains general definitions and principles of construction applicable to all articles in this code.

Sec. 5654. (1) A physician who is recommending medical treatment for terminal illness to a patient who has been diagnosed as having a terminal illness shall do all of the following:

(a) Orally inform the patient, the patient's patient surrogate, or, if the patient has designated a patient advocate and is unable to participate in medical treatment decisions, the patient advocate acting on behalf of the patient in accordance with section 496 of Act No. 642 of the Public Acts of 1978 about the recommended medical treatment for the terminal illness and about alternatives to the recommended medical treatment for the terminal illness.

(b) Orally inform the patient, patient surrogate, or patient advocate about the advantages, disadvantages, and risks of the recommended medical treatment and of each alternative medical treatment described in subdivision (a) and about the procedures involved in the recommended and each alternative medical treatment.

(2) A physician's duty to inform a patient, patient surrogate, or patient advocate under subsection (1) does not require the disclosure of information beyond that required by the applicable standard of practice.

(3) Subsection (1) does not limit or modify the information required to be disclosed under sections 5133(2) and 17013(1).

Sec. 5655. In addition to the requirements of section 5654, beginning 120 days after the effective date of the amendatory act that added this part, a physician who is recommending medical treatment for terminal illness to a patient who has been diagnosed as having a terminal illness shall, both orally and in writing, inform the patient, the patient's patient surrogate, or, if the patient has designated a patient advocate and is unable to participate in medical treatment decisions, the patient advocate, of all of the following:

(a) If the patient has not designated a patient advocate, that the patient has the option of designating a patient advocate to make medical treatment decisions for the patient in the event the patient is not able to participate in his or her medical treatment decisions because of his or her medical condition.

(b) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, has the right to make an informed decision regarding receiving, continuing, discontinuing, and refusing medical treatment for the patient's terminal illness.

(c) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, may choose palliative care treatment including, but not limited to, hospice care and pain management.

Sec. 5656. (1) Within 60 days after the effective date of the amendatory act that added this part, the department of community health shall develop and publish a standardized, written summary that contains all of the information required under section 5655.

(2) The department shall develop the standardized, written summary in consultation with appropriate professional and other organizations. The department shall draft the summary in nontechnical terms that a patient, patient surrogate, or patient advocate can easily understand.

(3) The department shall make the standardized, written summary described in subsection (1) available to physicians through the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery created in article 15. The Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall notify in writing each physician subject to this part of the requirements of this part and the availability of the standardized, written summary within 10 days after the summary is published.

Sec. 5657. (1) If a physician gives a copy of the standardized, written summary made available under section 5656 to a terminally ill patient, to the patient's patient surrogate, or to the patient's patient advocate, the physician is in full compliance with the requirements of section 5655.

(2) A physician may make available to a terminally ill patient, to the patient's patient surrogate, or to the patient's patient advocate a form indicating that the patient, patient surrogate, or patient advocate has been given a copy of the standardized, written summary described in section 5656 and received the oral information required under section 5654. If a physician makes such a form available to a terminally ill patient, to the patient's patient surrogate, or to the patient's patient advocate, the physician shall request that the patient, patient's patient surrogate, or patient advocate sign the form and shall place a copy of the signed form in the patient's medical record.

(3) A patient, a patient's patient surrogate, or a patient advocate who signs a form under subsection (2) is barred from subsequently bringing a civil, or administrative action against the physician for providing the information orally and in writing under section 5655 based on failure to obtain informed consent.

Sec. 5658. A physician who, as part of a medical treatment plan for a terminally ill patient, prescribes for the terminally ill patient a controlled substance that is included in schedules 2 to 5 under part 72 and that is a narcotic drug is immune from administrative and civil liability based on prescribing the controlled substance if the prescription is given in good faith and with the intention to treat a patient with a terminal illness or alleviate the patient's pain, or both, and all of the following are met:

- (a) The prescription is for a legitimate legal and professionally recognized therapeutic purpose.
- (b) Prescribing the controlled substance is within the scope of practice of the physician.
- (c) The physician holds a valid license under article 7 to prescribe controlled substances.

Sec. 5659. A life insurer, a health insurer, or a health care payment or benefits plan shall not do 1 or more of the following because a terminally ill patient, the patient's patient surrogate, or the patient's patient advocate has made a decision to refuse or discontinue a medical treatment as a result of information received as required under this part:

- (a) Refuse to provide or continue coverage or benefits to the terminally ill patient within the scope and level of coverage or benefits of an existing policy, certificate, or contract.
- (b) Limit the amount of coverage or benefits available to a terminally ill patient within the scope and level of coverage or benefits of an existing policy, certificate, or contract.
- (c) Charge the terminally ill patient a different rate for coverage or benefits under an existing policy, certificate, or contract.
- (d) Consider the terms of an existing policy, certificate, or contract to have been breached or modified.
- (e) Invoke a suicide or intentional death exemption or exclusion in a policy, certificate, or contract covering the terminally ill patient.

Sec. 5660. This part does not do the following:

- (a) Impair or supersede a legal right a parent, patient, advocate, legal guardian, or other individual may have to consent to or refuse medical treatment on behalf of another.
- (b) Create a presumption about a terminally ill patient's desire to receive or refuse medical treatment, regardless of the ability of the patient to participate in medical treatment decisions.
- (c) Limit the ability of a court making a determination about a terminally ill patient's medical treatment decisions to take into consideration all of the following state interests:
 - (i) The preservation of life.
 - (ii) The prevention of suicide.

(iii) The protection of innocent third parties.

(iv) The preservation of the integrity of the medical profession.

(d) Condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia.

Sec. 5661. (1) An individual shall not, by fraud, cause or attempt to cause a patient, patient surrogate, or patient advocate to make a medical treatment decision that results in the death of the patient with the intent to benefit financially from the outcome of the medical treatment decision. As used in this subsection, "fraud" means a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, that deceives and is intended to deceive another so that he or she acts upon it to his or her legal injury.

(2) An individual who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

(a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition which impairs, or may impair, the ability to safely and skillfully practice the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence.

(ii) Subject to sections 16165 to 16170a, substance abuse as defined in section 6107.

(iii) Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

(iv) Declaration of mental incompetence by a court of competent jurisdiction.

(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony. A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under sections 520a to 520l of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520l of the Michigan Compiled Laws. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.492a of the Michigan Compiled Laws. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(c) Prohibited acts, consisting of 1 or more of the following:

(i) Fraud or deceit in obtaining or renewing a license or registration.

(ii) Permitting the license or registration to be used by an unauthorized person.

(iii) Practice outside the scope of a license.

(iv) Obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in section 7104 or a drug as defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

(d) Unethical business practices, consisting of 1 or more of the following:

(i) False or misleading advertising.

(ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.

(iii) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.

(e) Unprofessional conduct, consisting of 1 or more of the following:

(i) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.

(ii) Betrayal of a professional confidence.

(iii) Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.

(iv) Directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

(f) Failure to report a change of name or mailing address within 30 days after the change occurs.

(g) A violation, or aiding or abetting in a violation, of this article or of a rule promulgated under this article.

(h) Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under this article or article 7, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222 or 16223.

(i) Failure to pay an installment of an assessment levied pursuant to section 2504 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.2504 of the Michigan Compiled Laws, within 60 days after notice by the appropriate board.

(j) A violation of section 17013 or 17513.

(k) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.

(l) A violation of section 17015 or 17515.

(m) A violation of section 17016 or 17516.

(n) A violation of section 5654 or 5655.

Sec. 16226. (1) After finding the existence of 1 or more of the grounds for disciplinary subcommittee action listed in section 16221, a disciplinary subcommittee shall impose 1 or more of the following sanctions for each violation:

Violations of Section 16221

Sanctions

Subdivision (a), (b)(ii), (b)(iv), (b)(vi), or (b)(vii)	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (b)(viii)	Revocation or denial.
Subdivision (b)(i), (b)(iii), (b)(v), (b)(ix), (b)(x), or (b)(xi)	Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.
Subdivision (c)(i)	Denial, revocation, suspension, probation, limitation, community service, or fine.
Subdivision (c)(ii)	Denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c)(iii)	Probation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c)(iv) or (d)(ii)	Fine, probation, denial, suspension, revocation, community service, or restitution.
Subdivision (d)(i) or (d)(ii)	Reprimand, fine, probation, community service, denial, or restitution.
Subdivision (e)(i)	Reprimand, fine, probation, limitation, suspension, community service, denial, or restitution.
Subdivision (e)(ii) or (h)	Reprimand, probation, suspension, restitution, community service, denial, or fine.
Subdivision (e)(iii) or (e)(iv)	Reprimand, fine, probation, suspension, revocation, limitation, community service, denial, or restitution.
Subdivision (f)	Reprimand or fine.
Subdivision (g)	Reprimand, probation, denial, suspension, revocation, limitation, restitution, community service, or fine.
Subdivision (i)	Suspension or fine.
Subdivision (j) or (n)	Reprimand or fine.
Subdivision (k)	Reprimand, denial, or limitation.
Subdivision (l)	Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine.
Subdivision (m)	Revocation or denial.

(2) Determination of sanctions for violations under this section shall be made by a disciplinary subcommittee. If, during judicial review, the court of appeals determines that a final decision or order of a disciplinary subcommittee prejudices substantial rights of the petitioner for 1 or more of the grounds listed in section 106 of the administrative procedures act of 1969, being section 24.306 of Michigan Compiled Laws, and holds that the final decision or order is unlawful and is to be set aside, the court shall state on the record the reasons for the holding and may remand the case to the disciplinary subcommittee for further consideration.

(3) A disciplinary subcommittee may impose a fine of up to, but not exceeding, \$250,000.00 for a violation of section 16221(a) or (b).

(4) A disciplinary subcommittee may require a licensee or registrant or an applicant for licensure or registration who has violated this article or article 7 or a rule promulgated under this article or article 7 to satisfactorily complete an educational program, a training program, or a treatment program, a mental, physical, or professional competence examination, or a combination of those programs and examinations.

This act did not receive immediate effect and will take effect 90 days after final adjournment of the Legislature.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.

