

HOUSE BILL No. 4294

February 23, 1999, Introduced by Reps. Brater, DeHart, Baird, Hale, Quarles, Hansen, Woodward, Schermesser, Martinez, Jacobs, Dennis, Schauer, Scott, Spade, Jellema, Pappageorge, Bogardus, Cherry, Mans, Stallworth, Tesanovich, Price and LaForge and referred to the Committee on Health Policy.

A bill to provide for and to regulate access to and disclosure of health care information; to prescribe the powers and duties of certain state agencies and departments; to prescribe administrative sanctions; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "health care information act".

3 Sec. 3. As used in this act:

4 (a) "Business day" means a day other than a Saturday, a
5 Sunday, or a holiday recognized and observed by the state or fed-
6 eral government.

7 (b) "Guardian", until April 1, 2000, means an individual who
8 is appointed as a full guardian of a legally incapacitated person
9 under section 444 of the revised probate code, 1978 PA 642,
10 MCL 700.444, and on and after April 1, 2000, means an individual

1 who is appointed as a full guardian of a legally incapacitated
2 person under section 5306 of the estates and protected individu-
3 als code, 1998 PA 386, MCL 700.5306. Guardian, until April 1,
4 2000, also includes an individual who is appointed as the guard-
5 ian of a minor under section 422 or 424 of the revised probate
6 code, 1978 PA 642, MCL 700.422 and 700.424, and on and after
7 April 1, 2000, includes an individual who is appointed as the
8 guardian of a minor under section 5202 or 5204 of the estates and
9 protected individuals code, 1998 PA 386, MCL 700.5202 and
10 700.5204.

11 (c) "Health care" means any care, service, or procedure pro-
12 vided by a health care provider or health facility to diagnose,
13 treat, or maintain a patient's physical condition, or that
14 affects the structure or a function of the human body.

15 (d) "Health care information" means information recorded in
16 a form or medium that identifies or can readily be associated
17 with the identity of a patient and relates to the patient's
18 health care. Health care information includes, but is not
19 limited to, medical histories, medical records, medical reports,
20 medical summaries, medical diagnoses and prognoses, medical
21 treatment and medication ordered and given, notes, entries, and
22 x-rays and other imaging records. Health care information does
23 not include 1 or more of the following:

24 (i) Ordinary business records pertaining to patients'
25 accounts.

26 (ii) Nursing audits.

- 1 (iii) Physician audits.
- 2 (iv) Evaluations done by the department of community health
3 or the department of consumer and industry services.
- 4 (v) Other audit activities conducted by the department of
5 community health or the department of consumer and industry serv-
6 ices pursuant to administrative rules.
- 7 (vi) Professional practice review documents disclosed under
8 1967 PA 270, MCL 331.531 to 331.533.
- 9 (vii) Evaluations or reviews, other than those listed in
10 subparagraphs (ii) to (vi), used only for in-service education or
11 quality assurance programs or required for accreditation or par-
12 ticipation in federally funded programs.
- 13 (viii) Mental health records.
- 14 (ix) Evaluations done by a department within a health facil-
15 ity for administrative purposes.
- 16 (x) Reports, records, and data governed under part 51 of the
17 public health code, 1978 PA 368, MCL 333.5101 to 333.5133.
- 18 (xi) Records governed under sections 6111 to 6113 of the
19 public health code, 1978 PA 368, MCL 333.6111 to 333.6113.
- 20 (e) "Health care provider" means a person who is licensed or
21 registered or otherwise authorized under article 15 of the public
22 health code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide
23 health care in the ordinary course of business or practice of a
24 health profession. Health care provider does not include a
25 person who provides health care solely through the sale or dis-
26 pensing of drugs or medical devices or a psychiatrist,

1 psychologist, social worker, or professional counselor who
2 provides only mental health services.

3 (f) "Health facility" means a health facility or agency
4 licensed under article 17 of the public health code, 1978 PA 368,
5 MCL 333.20101 to 333.22260, or any other organized entity where a
6 health care provider provides health care to patients.

7 (g) "Maintain", as related to health care information, means
8 to hold, possess, preserve, retain, store, or control health care
9 information.

10 (h) "Minor" means an individual who is less than 18 years of
11 age, but does not include an individual who is emancipated under
12 section 4 of 1968 PA 293, MCL 722.4.

13 (i) "Patient" means an individual, including, but not
14 limited to, a deceased individual, who receives or has received
15 health care.

16 (j) "Patient advocate", until April 1, 2000, means an indi-
17 vidual designated to make medical treatment decisions under sec-
18 tion 496 of the revised probate code, 1978 PA 642, MCL 700.496,
19 and on and after April 1, 2000, means an individual designated to
20 make medical treatment decisions under section 5506 of the
21 estates and protected individuals code, 1998 PA 386,
22 MCL 700.5506.

23 (k) "Patient's agent" means an individual or other person
24 described in section 5(1) and (2) who is not the patient.

25 (l) "Person" means an individual, corporation, estate,
26 trust, partnership, association, joint venture, government,

1 governmental subdivision or agency, or other legal or commercial
2 entity.

3 (m) "Personal representative", until April 1, 2000, means
4 that term as defined in section 9 of the revised probate code,
5 1978 PA 642, MCL 700.9, and on and after April 1, 2000, means
6 that term as defined in section 1106 of the estates and protected
7 individuals code, 1998 PA 386, MCL 700.1106.

8 (n) "Third party payer" means a public or private health
9 care payment or benefits program that is created, authorized, or
10 licensed under the laws of this state, including, but not limited
11 to, all of the following:

- 12 (i) A health insurer.
- 13 (ii) A nonprofit health care corporation.
- 14 (iii) A health maintenance organization.
- 15 (iv) A preferred provider organization.
- 16 (v) A nonprofit dental care corporation.
- 17 (vi) Medicaid or medicare.

18 Sec. 5. (1) An adult patient, his or her guardian, his or
19 her patient advocate or conservator, any other legal representa-
20 tive of the adult patient, or the parent or guardian of a patient
21 who is a minor has the right to access the adult patient's or
22 minor patient's health care information. The right of access
23 described in this subsection includes, but is not limited to, the
24 right to inspect and to copy at reasonable times health care
25 information generated by the health care provider or health
26 facility that provided the health care to the patient.

1 (2) An individual described in subsection (1) may grant the
2 right of access described in subsection (1) to a third party
3 payer or other person with whom the individual enters into a con-
4 tract or who has a common law right to access to the individual's
5 health care information.

6 (3) An individual or other person described in subsections
7 (1) or (2) may exercise the right of access granted in subsection
8 (1) by making a request either orally or in writing to the health
9 care provider or health facility that maintains the health care
10 information that is the subject of the request. Upon receipt of
11 a request under this subsection, a health care provider or health
12 facility shall, as promptly as required under the circumstances,
13 but not later than 15 business days after receipt of the request,
14 do 1 or more of the following:

15 (a) Make the health care information available for inspec-
16 tion or copying, or both, at the health care provider's or health
17 facility's business location during regular business hours or
18 provide a copy of all or part of the health care information, as
19 requested by the patient or patient's agent.

20 (b) If the health care provider or health facility has con-
21 tracted with another person to maintain the health care
22 provider's or health facility's health care information, the
23 health care provider or health facility shall transmit a request
24 made under this subsection to the person maintaining the health
25 care information. The health care provider or health facility
26 shall retrieve the health care information from the person

1 maintaining the health care information, and shall then comply
2 with subdivision (a).

3 (c) Inform the patient or the patient's agent if the health
4 care information does not exist or cannot be found.

5 (d) If the health care provider or health facility to which
6 the request is directed does not maintain the health care infor-
7 mation requested and does not have a contract with another person
8 as described in subdivision (b), so inform the patient or the
9 patient's agent and provide the name and address, if known, of
10 the health care provider or health facility that maintains the
11 health care information.

12 (e) If the health care provider is unavailable during the
13 period of 15 business days, upon becoming available, immediately
14 notify the patient or the patient's agent of the health care
15 provider's availability and complete the request within 15 busi-
16 ness days after becoming available.

17 Sec. 7. A health care provider or health facility that
18 receives a request for health care information under section 5
19 shall not inquire as to the purpose of the request.

20 Sec. 9. (1) Except as otherwise provided in subsections (3)
21 to (5), if a patient or the patient's agent makes a request for
22 health care information under section 5, the health care provider
23 or health facility to which the request is directed may charge
24 the patient or the patient's agent 1 or more of the following:

25 (a) A retrieval fee not to exceed \$5.00 per request.

26 (b) Subject to subsection (3), if the health care provider
27 or health facility copies the health care information for the

1 patient or the patient's agent, a copying fee of not more than 7
2 cents per 1 side of a letter- or legal-sized page.

3 (c) If the health care provider or health facility mails the
4 health care information to the patient or the patient's agent,
5 the actual postage incurred.

6 (2) A health care provider or health facility may charge a
7 fee under subsection (1) only for that part of the health care
8 information actually retrieved or copied, or both. A health care
9 provider or health facility may refuse to retrieve or copy health
10 care information for a patient or patient's agent until the
11 applicable fee is paid.

12 (3) The 7-cent-per-page limit set forth in subsection (1)(b)
13 does not apply to copies of x-rays, electroencephalogram trac-
14 ings, or other imaging records. A health care provider or health
15 facility may charge the actual cost of copying health care infor-
16 mation described in this subsection.

17 (4) A health care provider or health facility shall not
18 charge a fee for retrieving, copying, or mailing health care
19 information other than a fee allowed under subsection (1). A
20 health care provider or health facility shall waive all fees for
21 a patient who is a recipient of assistance from a state or fed-
22 eral program that provides medical assistance or other financial
23 assistance based on disability or income status. The health care
24 provider or health facility may require the patient or the
25 patient's agent to provide satisfactory proof that the patient is
26 a recipient of assistance as described in this subsection.

1 (5) A patient or the patient's agent may supply his or her
2 own copying equipment on the premises of the health care provider
3 or health facility and pay only the retrieval fee allowed under
4 subsection (1)(a).

5 Sec. 11. (1) A health care provider or health facility that
6 maintains a patient's health care information shall create a
7 notice of information practices that contains substantially the
8 following language:

9 "NOTICE

10 We keep a record of the health care we provide you. You may
11 ask us to see and copy that record. The cost to you of copying
12 that record is 7 cents per page plus a retrieval fee of not more
13 than \$5.00 per request. We will not disclose your record to
14 others unless you direct us to do so or unless the law authorizes
15 or compels us to do so. You may see your record or get more
16 information about it at _____."

17 (2) A health care provider or health facility shall post a
18 copy of the notice of information practices required under sub-
19 section (1) in a conspicuous place that is accessible by
20 patients.

21 Sec. 13. (1) The department of consumer and industry serv-
22 ices shall impose administrative sanctions on a health care pro-
23 vider who violates this act in the same manner as administrative
24 sanctions are imposed on health professionals under article 15 of
25 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.
26 The department shall impose only a reprimand, restitution, or a

1 fine of not more than \$500.00 per violation under this
2 subsection.

3 (2) The department of consumer and industry services shall
4 impose administrative sanctions on a health facility that vio-
5 lates this act in the same manner as administrative sanctions are
6 imposed on licensed health facilities and agencies under article
7 17 of the public health code, 1978 PA 368, MCL 333.20101 to
8 333.22260. The department shall impose only a fine of not more
9 than \$500.00 per violation under this subsection.

10 (3) The department or an individual making a request for
11 health care information under this act may seek injunctive relief
12 through the attorney general or the prosecuting attorney for the
13 county in which a violation of this act occurs. The circuit
14 court in which a petition is filed under this subsection may
15 restrain and enjoin a violation of this act or may compel compli-
16 ance with this act.

17 (4) A patient or a patient's agent may bring a civil action
18 for damages against a health care provider or a health facility
19 for a violation of this act. The court may award actual damages
20 or \$250.00, whichever is greater, along with reasonable attorney
21 fees and costs.