

# HOUSE BILL NO. 5072

September 28, 2023, Introduced by Reps. Thompson, Hoadley, Alexander, Bierlein, Meerman, DeBoyer, Maddock, Bruck, Johnsen, Smit, Fink, Jaime Greene, Markkanen, Cavitt, Rigas, Schmaltz, Roth and Kunse and referred to the Committee on Government Operations.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16213, 20175, and 20175a (MCL 333.16213, 333.20175, and 333.20175a), sections 16213 and 20175a as added and section 20175 as amended by 2006 PA 481.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 16213. (1) ~~An individual licensed under this article~~ **A**  
2 **licensee** shall keep and maintain a record for each patient for whom  
3 ~~he or she~~ **the licensee** has provided medical services, including a  
4 full and complete record of tests and examinations performed,

1 observations made, and treatments provided. Unless a longer  
2 retention period is otherwise required under federal or state laws  
3 or regulations or by generally accepted standards of medical  
4 practice, a licensee shall keep and retain each record for a  
5 minimum of 7 years from the date of service to which the record  
6 pertains. The records ~~shall~~**must** be maintained in such a manner as  
7 to protect their integrity, to ensure their confidentiality and  
8 proper use, and to ensure their accessibility and availability to  
9 each patient or ~~his or her~~**the patient's** authorized representative  
10 as required by law. A licensee may destroy a record that is less  
11 than 7 years old only if both of the following are satisfied:

12 (a) The licensee sends a written notice to the patient at the  
13 last known address of that patient informing the patient that the  
14 record is about to be destroyed, offering the patient the  
15 opportunity to request a copy of that record, and requesting the  
16 patient's written authorization to destroy the record.

17 (b) The licensee receives written authorization from the  
18 patient or ~~his or her~~**the patient's** authorized representative  
19 agreeing to the destruction of the record.

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

25 (3) If a licensee ~~or registrant~~ sells or closes ~~his or her~~**the**  
26 **licensee's** practice, retires from practice, or otherwise ceases to  
27 practice under this article, the licensee or the personal  
28 representative of the licensee, if the licensee is deceased, shall  
29 not abandon the records required under this section and shall send

1 a written notice to the department that specifies who will have  
 2 custody of the medical records and how a patient may request access  
 3 to or copies of ~~his or her~~ **the patient's** medical records and shall  
 4 do either of the following:

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

7 (i) A successor licensee.

8 (ii) If requested by the patient or ~~his or her~~ **the patient's**  
 9 authorized representative, to the patient or a specific health  
 10 facility or agency or other health care provider licensed under  
 11 article 15.

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

16 (b) In accordance with subsection (1), as long as the licensee  
 17 or the personal representative of the licensee, if the licensee is  
 18 deceased, sends a written notice to the last known address of each  
 19 patient for whom ~~he or she~~ **the licensee** has provided medical  
 20 services and receives written authorization from the patient or ~~his~~  
 21 ~~or her~~ **the patient's** authorized representative, destroy the records  
 22 required under subsection (1). The notice ~~shall~~ **must** provide the  
 23 patient with 30 days to request a copy of ~~his or her~~ **the patient's**  
 24 record or to designate where ~~he or she~~ **the patient** would like ~~his~~  
 25 ~~or her~~ **the patient's** medical records transferred and ~~shall~~ **must**  
 26 request from the patient within 30 days written authorization for  
 27 the destruction of ~~his or her~~ **the patient's** medical records. If the  
 28 patient fails to request a copy or transfer of ~~his or her~~ **the**  
 29 **patient's** medical records or to provide the licensee with written

1 authorization for the destruction, then the licensee or the  
2 personal representative of the licensee shall not destroy those  
3 records that are less than 7 years old but may destroy, in  
4 accordance with subsection (4), those that are 7 years old or  
5 older.

6 (4) Except as otherwise provided under this section or federal  
7 or state laws and regulations, records required to be maintained  
8 under subsection (1) may be destroyed or otherwise disposed of  
9 after being maintained for 7 years. If records maintained in  
10 accordance with this section are subsequently destroyed or  
11 otherwise disposed of, those records ~~shall~~**must** be shredded,  
12 incinerated, electronically deleted, or otherwise disposed of in a  
13 manner that ensures continued confidentiality of the patient's  
14 health care information and any other personal information relating  
15 to the patient. If records are **not** destroyed or otherwise disposed  
16 of as provided under this subsection, the department may take  
17 action, including, but not limited to, contracting for or making  
18 other arrangements to ensure that those records and any other  
19 confidential identifying information related to the patient are  
20 properly destroyed or disposed of to protect the confidentiality of  
21 patient's health care information and any other personal  
22 information relating to the patient. Before the department takes  
23 action in accordance with this subsection, the department, if able  
24 to identify the licensee responsible for the improper destruction  
25 or disposal of the medical records at issue, shall send a written  
26 notice to that licensee at ~~his or her~~**the licensee's** last known  
27 address or place of business on file with the department and  
28 provide the licensee with an opportunity to properly destroy or  
29 dispose of those medical records as required under this subsection

1 unless a delay in the proper destruction or disposal may compromise  
2 the patient's confidentiality. The department may assess the  
3 licensee with the costs incurred by the department to enforce this  
4 subsection.

5 **(5) If a licensee uses an off-site physical or virtual**  
6 **environment, including through a medical records company, to**  
7 **maintain the records required under subsection (1), the licensee**  
8 **shall ensure that the off-site physical or virtual environment is**  
9 **physically maintained in a province of Canada or a state.**

10 **(6)** ~~(5)~~ A person ~~who~~ **that** fails to comply with this section is  
11 subject to an administrative fine of not more than \$10,000.00 if  
12 the failure was the result of gross negligence or willful and  
13 wanton misconduct.

14 **(7)** ~~(6) Nothing in this~~ **This** section ~~shall~~ **must not** be  
15 construed to create or change the ownership rights to any medical  
16 records.

17 **(8)** ~~(7)~~ As used in this section:

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

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

27 (c) "Patient" means an individual who receives or has received  
28 health care from a health care provider or health facility or  
29 agency. Patient includes a guardian, if appointed, and a parent,

1 guardian, or person acting in loco parentis, if the individual is a  
2 minor, unless the minor lawfully obtained health care without the  
3 consent or notification of a parent, guardian, or other person  
4 acting in loco parentis, in which case the minor has the exclusive  
5 right to exercise the rights of a patient under this section with  
6 respect to ~~his or her~~ **the minor's** medical records relating to that  
7 care.

8       Sec. 20175. (1) A health facility or agency shall keep and  
9 maintain a record for each patient, including a full and complete  
10 record of tests and examinations performed, observations made,  
11 treatments provided, and in the case of a hospital, the purpose of  
12 hospitalization. Unless a longer retention period is otherwise  
13 required under federal or state laws or regulations or by generally  
14 accepted standards of medical practice, a health facility or agency  
15 shall keep and retain each record for a minimum of 7 years from the  
16 date of service to which the record pertains. A health facility or  
17 agency shall maintain the records in such a manner as to protect  
18 their integrity, to ensure their confidentiality and proper use,  
19 and to ensure their accessibility and availability to each patient  
20 or ~~his or her~~ **the patient's** authorized representative as required  
21 by law. A health facility or agency may destroy a record that is  
22 less than 7 years old only if both of the following are satisfied:

23       (a) The health facility or agency sends a written notice to  
24 the patient at the last known address of that patient informing the  
25 patient that the record is about to be destroyed, offering the  
26 patient the opportunity to request a copy of that record, and  
27 requesting the patient's written authorization to destroy the  
28 record.

29       (b) The health facility or agency receives written

1 authorization from the patient or ~~his or her~~ **the patient's**  
2 authorized representative agreeing to the destruction of the  
3 record. Except as otherwise provided under federal or state laws  
4 and regulations, records required to be maintained under this  
5 subsection may be destroyed or otherwise disposed of after being  
6 maintained for 7 years. If records maintained in accordance with  
7 this section are subsequently destroyed or otherwise disposed of,  
8 those records ~~shall~~ **must** be shredded, incinerated, electronically  
9 deleted, or otherwise disposed of in a manner that ensures  
10 continued confidentiality of the patient's health care information  
11 and any other personal information relating to the patient. If  
12 records are **not** destroyed or otherwise disposed of as provided  
13 under this subsection, the department may take action, including,  
14 but not limited to, contracting for or making other arrangements to  
15 ensure that those records and any other confidential identifying  
16 information related to the patient are properly destroyed or  
17 disposed of to protect the confidentiality of patient's health care  
18 information and any other personal information relating to the  
19 patient. Before the department takes action in accordance with this  
20 subsection, the department, if able to identify the health facility  
21 or agency responsible for the improper destruction or disposal of  
22 the medical records at issue, shall send a written notice to that  
23 health facility or agency at the last known address on file with  
24 the department and provide the health facility or agency with an  
25 opportunity to properly destroy or dispose of those medical records  
26 as required under this subsection unless a delay in the proper  
27 destruction or disposal may compromise the patient's  
28 confidentiality. The department may assess the health facility or  
29 agency with the costs incurred by the department to enforce this

1 subsection. In addition to the sanctions set forth in section  
2 20165, a hospital that fails to comply with this subsection is  
3 subject to an administrative fine of \$10,000.00.

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

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

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

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

19 (a) Disciplinary action taken by the health facility or agency  
20 against a health professional licensed or registered under article  
21 15 based on the licensee's or registrant's professional competence,  
22 disciplinary action that results in a change of employment status,  
23 or disciplinary action based on conduct that adversely affects the  
24 licensee's or registrant's clinical privileges for a period of more  
25 than 15 days. As used in this subdivision, "adversely affects"  
26 means the reduction, restriction, suspension, revocation, denial,  
27 or failure to renew the clinical privileges of a licensee or  
28 registrant by a health facility or agency.

29 (b) Restriction or acceptance of the surrender of the clinical



1 privileges of a licensee or registrant under either of the  
2 following circumstances:

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

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

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

13 (6) ~~Upon~~**On** request by another health facility or agency  
14 seeking a reference for purposes of changing or granting staff  
15 privileges, credentials, or employment, a health facility or agency  
16 that employs, contracts with, or grants privileges to health  
17 professionals licensed or registered under article 15 shall notify  
18 the requesting health facility or agency of any disciplinary or  
19 other action reportable under subsection (5) that it has taken  
20 against a health professional licensed or registered under article  
21 15 and employed by, under contract to, or granted privileges by the  
22 health facility or agency.

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

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

28 (b) A description of the disciplinary action taken.

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

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

3 (8) The records, data, and knowledge collected for or by  
4 individuals or committees assigned a professional review function  
5 in a health facility or agency, or an institution of higher  
6 education in this state that has colleges of osteopathic and human  
7 medicine, are confidential, ~~shall~~**must** be used only for the  
8 purposes provided in this article, are not public records, and are  
9 not subject to court subpoena.

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

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

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

25 (i) A successor health facility or agency.

26 (ii) If designated by the patient or ~~his or her~~**the patient's**  
27 authorized representative, to the patient or a specific health  
28 facility or agency or a health care provider licensed or registered  
29 under article 15.

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

5           (b) In accordance with section 20175(1), as long as the health  
6 facility or agency sends a written notice to the last known address  
7 of each patient for whom ~~he or she~~ **the health facility or agency**  
8 has provided medical services and receives written authorization  
9 from the patient or ~~his or her~~ **the patient's** authorized  
10 representative, destroy the records required under section  
11 20175(1). The notice ~~shall~~ **must** provide the patient with 30 days to  
12 request a copy of ~~his or her~~ **the patient's** record or to designate  
13 where ~~he or she~~ **the patient** would like ~~his or her~~ **the patient's**  
14 medical records transferred and ~~shall~~ **must** request from the patient  
15 within 30 days written authorization for the destruction of ~~his or~~  
16 ~~her~~ **the patient's** medical records. If the patient fails to request  
17 a copy or transfer of ~~his or her~~ **the patient's** medical records or  
18 to provide the health facility or agency with written authorization  
19 for the destruction, then the health facility or agency shall not  
20 destroy those records that are less than 7 years old but may  
21 destroy, in accordance with section 20175(1), those that are 7  
22 years old or older.

23           (3) **If a health facility or agency uses an off-site physical**  
24 **or virtual environment, including through a medical records**  
25 **company, to maintain the records required under section 20175(1),**  
26 **the health facility or agency shall ensure that the off-site**  
27 **physical or virtual environment is physically maintained in a**  
28 **province of Canada or a state.**

29           (4) ~~(3) Nothing in this~~ **This section shall** ~~must not~~ be

1 ~~conducted~~**construed** to create or change the ownership rights to any  
2 medical records.

3 (5) ~~(4)~~A person that fails to comply with this section is  
4 subject to an administrative fine of not more than \$10,000.00 if  
5 the failure was the result of gross negligence or willful and  
6 wanton misconduct.

7 (6) ~~(5)~~As used in this section **and section 20175:**

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

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

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