

SENATE BILL NO. 680

November 09, 2023, Introduced by Senators KLINEFELT, CAVANAGH, HERTEL, SINGH, MOSS, GEISS, CHANG, POLEHANKI, MCCANN, IRWIN, BAYER and WOJNO and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 17752 and 20175 (MCL 333.17752 and 333.20175), section 17752 as amended by 2020 PA 4 and section 20175 as amended by 2023 PA 62, and by adding section 16221c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 16221c. A licensee's or registrant's participation in**
2 **good-faith compliance with the death with dignity act is not**
3 **grounds for the department to investigate under section 16221 or**

1 **for disciplinary action against the licensee or registrant under**
2 **section 16226.**

3 Sec. 17752. (1) A licensee or dispensing prescriber shall
4 preserve a prescription, or an equivalent record of the
5 prescription approved by the board, for not less than 5 years.

6 (2) A prescription or equivalent record on file in a pharmacy
7 is not a public record. A person having custody of or access to
8 prescriptions shall not disclose their contents or provide copies
9 without the patient's authorization, to any person except to any of
10 the following:

11 (a) The patient for whom the prescription was issued, or
12 another pharmacist acting on behalf of the patient.

13 (b) The authorized prescriber who issued the prescription, or
14 a licensed health professional who is currently treating the
15 patient.

16 (c) An agency or agent of government responsible for the
17 enforcement of laws relating to drugs and devices.

18 (d) A person authorized by a court order.

19 (e) A person engaged in research projects or studies with
20 protocols approved by the board.

21 **(f) The department of health and human services for purposes**
22 **of section 15 of the death with dignity act.**

23 (3) A pharmacist may refill a copy of a prescription from
24 another pharmacy if the original prescription has remaining
25 authorized refills, and the copy is issued according to the
26 following procedure:

27 (a) The pharmacist issuing a written or oral copy of a
28 prescription shall cancel the original prescription and record the
29 cancellation. The record of cancellation must include the date the

1 copy was issued, to whom issued, and the identification of the
2 pharmacist who issued the copy.

3 (b) The written or oral copy issued must be a duplicate of the
4 original prescription except that it must also include the
5 prescription number, the name of the pharmacy issuing the copy, the
6 date the copy was issued, and the number of authorized refills
7 remaining available to the patient.

8 (c) The pharmacist receiving a written or oral copy of the
9 prescription shall exercise reasonable diligence to determine
10 whether it is a valid copy, and having done so may treat the copy
11 as an original prescription.

12 (d) Except as described in this part, all other copies
13 furnished must be used for information purposes only and clearly
14 marked "for informational or reference purposes only".

15 (4) Subsection (3) does not apply to any of the following:

16 (a) Pharmacies that share a real-time, ~~on-line~~**online** database
17 or other equivalent means of communication.

18 (b) Pharmacies that transfer prescriptions pursuant to a
19 written contract for centralized prescription processing services
20 as provided under section 17753.

21 (c) A parent pharmacy if the parent pharmacy receives a copy
22 of a prescription from a remote pharmacy that it operates.

23 (d) A remote pharmacy if the remote pharmacy receives a copy
24 of a prescription from a parent pharmacy.

25 (5) For purposes of this section, "equivalent record of the
26 prescription approved by the board" or "equivalent record" includes
27 a digital image described in section 17751(1).

28 Sec. 20175. (1) A health facility or agency shall keep and
29 maintain a record for each patient, including a full and complete

1 record of tests and examinations performed, observations made,
2 treatments provided, and in the case of a hospital, the purpose of
3 hospitalization. If a medical service provided to a patient on or
4 after the effective date of the amendatory act that added this
5 sentence involves the vaginal or anal penetration of the patient, a
6 health facility or agency shall ensure that the patient's medical
7 record expressly states that vaginal or anal penetration was
8 performed unless the medical service meets any of the circumstances
9 described in subsection (2) (b) (i) (A), (B), (C), or (D).

10 (2) Unless a longer retention period is otherwise required
11 under federal or state laws or regulations or by generally accepted
12 standards of medical practice, a health facility or agency shall
13 keep and retain each record required under subsection (1) as
14 follows:

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

18 (b) For a minimum of 15 years from the date of service to
19 which the record pertains if the service is performed on or after
20 ~~the effective date of the amendatory act that added this~~
21 ~~subdivision~~ **October 10, 2023** and 1 of the following applies:

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

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

28 (B) A medical service that is necessary and associated with or
29 incident to a medical emergency. As used in this sub-subparagraph,

1 "medical emergency" means a circumstance that, in the good-faith
2 medical judgment of a health professional who is licensed under
3 article 15, creates an immediate threat of serious risk to the life
4 or physical health of the patient.

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

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

9 (ii) The patient has filed a complaint with the health facility
10 or agency alleging sexual misconduct by an individual who is
11 employed by, under contract to, or granted privileges by the health
12 facility or agency. As used in this subparagraph, "sexual
13 misconduct" means the conduct described in section 90, 136, 145a,
14 145b, 145c, 520b, 520c, 520d, 520e, or 520g of the Michigan penal
15 code, 1931 PA 328, MCL 750.90, 750.136, 750.145a, 750.145b,
16 750.145c, 750.520b, 750.520c, 750.520d, 750.520e, or 750.520g,
17 regardless of whether the conduct resulted in a criminal
18 conviction.

19 (3) A health facility or agency shall maintain the records
20 required under subsection (1) in such a manner as to protect their
21 integrity, to ensure their confidentiality and proper use, and to
22 ensure their accessibility and availability to each patient or the
23 patient's authorized representative as required by law.

24 (4) Except as otherwise provided in subsection (6), a health
25 facility or agency may destroy a record required under subsection
26 (1) that is less than 7 years old only if both of the following are
27 satisfied:

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

1 patient that the record is about to be destroyed, offering the
2 patient the opportunity to request a copy of that record, and
3 requesting the patient's written authorization to destroy the
4 record.

5 (b) The health facility or agency receives written
6 authorization from the patient or the patient's authorized
7 representative agreeing to the destruction of the record.

8 (5) Except as otherwise provided under federal or state laws
9 and regulations, records required to be maintained under subsection
10 (1), other than a record described in subsection (2) (b), may be
11 destroyed or otherwise disposed of after being maintained for 7
12 years, and records described in subsection (2) (b) may be destroyed
13 or otherwise disposed of after being maintained for 15 years. If
14 records maintained in accordance with this section are subsequently
15 destroyed or otherwise disposed of, those records must be shredded,
16 incinerated, electronically deleted, or otherwise disposed of in a
17 manner that ensures continued confidentiality of the patient's
18 health care information and any other personal information relating
19 to the patient. If records are not destroyed or otherwise disposed
20 of as provided under this subsection or subsection (4), the
21 department may take action, including, but not limited to,
22 contracting for or making other arrangements to ensure that those
23 records and any other confidential identifying information related
24 to the patient are properly destroyed or disposed of to protect the
25 confidentiality of patient's health care information and any other
26 personal information relating to the patient. Before the department
27 takes action in accordance with this subsection, the department, if
28 able to identify the health facility or agency responsible for the
29 improper destruction or disposal of the medical records at issue,

1 shall send a written notice to that health facility or agency at
2 the last known address on file with the department and provide the
3 health facility or agency with an opportunity to properly destroy
4 or dispose of those medical records as required under this
5 subsection or subsection (4), unless a delay in the proper
6 destruction or disposal may compromise the patient's
7 confidentiality. The department may assess the health facility or
8 agency with the costs incurred by the department to enforce this
9 subsection. In addition to the sanctions set forth in section
10 20165, a hospital that fails to comply with this subsection or
11 subsection (4) is subject to an administrative fine of \$10,000.00.

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

14 (7) A hospital shall take precautions to ensure that the
15 records required under subsection (1) are not wrongfully altered or
16 destroyed. A hospital that fails to comply with this subsection is
17 subject to an administrative fine of \$10,000.00.

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

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

25 (10) ~~A~~ **Except as otherwise provided in section 19 of the death**
26 **with dignity act,** a health facility or agency that employs,
27 contracts with, or grants privileges to a health professional
28 licensed or registered under article 15 shall report the following
29 to the department not more than 30 days after it occurs:

1 (a) Disciplinary action taken by the health facility or agency
2 against a health professional licensed or registered under article
3 15 based on the licensee's or registrant's professional competence,
4 disciplinary action that results in a change of employment status,
5 or disciplinary action based on conduct that adversely affects the
6 licensee's or registrant's clinical privileges for a period of more
7 than 15 days. As used in this subdivision, "adversely affects"
8 means the reduction, restriction, suspension, revocation, denial,
9 or failure to renew the clinical privileges of a licensee or
10 registrant by a health facility or agency.

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

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

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

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

24 (11) Upon request by another health facility or agency seeking
25 a reference for purposes of changing or granting staff privileges,
26 credentials, or employment, a health facility or agency that
27 employs, contracts with, or grants privileges to health
28 professionals licensed or registered under article 15 shall notify
29 the requesting health facility or agency of any disciplinary or

1 other action reportable under subsection (10) that it has taken
2 against a health professional licensed or registered under article
3 15 and employed by, under contract to, or granted privileges by the
4 health facility or agency.

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

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

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

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

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

14 (13) The records, data, and knowledge collected for or by
15 individuals or committees assigned a professional review function
16 in a health facility or agency, or an institution of higher
17 education in this state that has colleges of osteopathic and human
18 medicine, are confidential, must be used only for the purposes
19 provided in this article, are not public records, and are not
20 subject to court subpoena.

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

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

25 Enacting section 2. This amendatory act does not take effect
26 unless Senate Bill No. 681 of the 102nd Legislature is enacted into
27 law.