

HOUSE BILL No. 4366

March 3, 1999, Introduced by Reps. Stallworth, Thomas, Schauer, Daniels, Vaughn, Garza and Scott and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding sections 2919, 2921, 2923,
2925, and 2927.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 SEC. 2919. (1) EACH DATA PLAN SHALL INCLUDE POLICIES AND
2 PROCEDURES ON CONFIDENTIALITY AND ACCESS TO THE DATA COLLECTED
3 FOR ENTRY INTO THE DATABASE. THE POLICIES AND PROCEDURES SHALL
4 INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:
- 5 (A) WHO MAY OBTAIN ACCESS TO WHICH DATA.
6 (B) FEES FOR ACCESS TO THE DATABASE.
7 (C) WHO MAY USE WHICH DATA.
8 (D) HOW ACCESSIBLE DATA MAY BE USED.
9 (E) HOW PATIENT CONFIDENTIALITY IS TO BE PROTECTED.

1 (2) DATA COLLECTED UNDER THE DATA PLAN THAT IDENTIFY
2 INDIVIDUAL PATIENTS AND OTHER INFORMATION THAT COULD BE EXPECTED
3 TO REVEAL THE IDENTITY OF AN INDIVIDUAL PATIENT ARE NOT SUBJECT
4 TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442,
5 MCL 15.231 TO 15.246.

6 (3) THE POLICIES AND PROCEDURES REQUIRED UNDER
7 SUBSECTION (1) SHALL PROVIDE THAT PUBLICLY AVAILABLE INFORMATION
8 FROM THE DATABASE NOT ALLOW ACCESS TO COMBINATIONS OF PATIENT
9 CHARACTERISTIC DATA ELEMENTS THAT REASONABLY COULD BE EXPECTED TO
10 REVEAL THE IDENTITY OF AN INDIVIDUAL PATIENT. PUBLIC OR PRIVATE
11 ORGANIZATIONS WITH WHICH THE BOARD OR THE DATA CORPORATION, PUR-
12 SUANT TO CONTRACT WITH THE BOARD, CONTRACTS TO DEVELOP DATA ANA-
13 LYSES ARE BOUND BY THE POLICIES AND PROCEDURES REQUIRED UNDER
14 SUBSECTION (1), AND SHALL HAVE ACCESS TO PATIENT-LEVEL DATA FROM
15 THE DATABASE ONLY TO THE EXTENT NECESSARY TO DEVELOP DATA ANA-
16 LYSES, INCLUDING, BUT NOT LIMITED TO, LINKAGE FOR OUTCOME AND
17 OTHER ANALYSES. ONCE LINKAGE OCCURS, PATIENT-LEVEL DATA AND ANA-
18 LYSES SHALL BE CODED TO PREVENT THEIR USE OR DISPLAY IN ANY
19 MANNER THAT REASONABLY COULD BE EXPECTED TO REVEAL THE IDENTITY
20 OF A PATIENT.

21 (4) DATA COLLECTED UNDER A DATA PLAN THAT CONTAIN THE IDEN-
22 TITY OF INDIVIDUAL PROVIDERS, EMPLOYERS, AND PURCHASERS ARE NOT
23 CONFIDENTIAL AND ARE PUBLIC INFORMATION, UNLESS THE DATA COULD
24 REASONABLY BE EXPECTED TO REVEAL THE IDENTITY OF A PATIENT.

25 SEC. 2921. (1) THE HEALTH CARE INFORMATION THAT IS PROVIDED
26 TO THE BOARD OR TO THE DATA CORPORATION FROM A PATIENT'S MEDICAL
27 RECORD, OR SUPPLIED BY A HEALTH CARE PAYMENT OR BENEFITS PLAN TO

1 ENABLE THE BOARD OR THE DATA CORPORATION TO PERFORM ITS
2 FUNCTIONS, SHALL BE LIMITED TO ONLY THOSE DATA ELEMENTS SPECIFIED
3 IN THE DATA PLAN APPROVED AND MADE EFFECTIVE PURSUANT TO
4 SECTION 2909 AND IN EFFECT AT THE TIME THE HEALTH CARE INFORMA-
5 TION IS PROVIDED.

6 (2) A REQUEST FOR DATA FROM THE DATABASE, OTHER THAN PUBLIC
7 INFORMATION AVAILABLE UNDER SECTION 2911, SHALL STATE WITH PAR-
8 TICULARITY WHAT INFORMATION IS NEEDED AND THE REASONS FOR THE
9 REQUEST. IN ORDER FOR THE INFORMATION TO BE PROVIDED FROM THE
10 DATABASE, THE REQUEST MUST BE CONSISTENT WITH THE DATA PLAN.

11 SEC. 2923. DATA COLLECTED FOR THE DATABASE MAY BE DISCLOSED
12 ONLY IF THE DISCLOSURE IS IN COMPLIANCE WITH SECTIONS 2919 AND
13 2921.

14 SEC. 2925. THE ATTORNEY GENERAL, A COUNTY PROSECUTOR, OR A
15 PERSON AGGRIEVED BY A VIOLATION OF THIS PART MAY MAINTAIN A CIVIL
16 ACTION TO ENFORCE THIS PART IN A COURT OF COMPETENT
17 JURISDICTION. THE COURT MAY ORDER ANY RELIEF AUTHORIZED UNDER
18 SECTION 2927.

19 SEC. 2927. (1) A COURT IN WHICH AN ACTION IS FILED UNDER
20 SECTION 2925 MAY ORDER A PROVIDER, PURCHASER, OR ANY OTHER PERSON
21 TO COMPLY WITH THIS PART AND MAY ORDER ANY OTHER APPROPRIATE
22 RELIEF.

23 (2) IF THE COURT DESCRIBED IN SUBSECTION (1) DETERMINES THAT
24 THERE IS A VIOLATION OF THIS PART, THE AGGRIEVED PERSON, OR THE
25 ATTORNEY GENERAL OR A COUNTY PROSECUTOR ON BEHALF OF AN AGGRIEVED
26 PERSON, MAY RECOVER DAMAGES FOR PECUNIARY LOSSES SUSTAINED AS A
27 RESULT OF THE VIOLATION. IN ADDITION, IF THE VIOLATION INVOLVES

1 WILLFUL OR GROSSLY NEGLIGENT CONDUCT RESULTING IN THE DISCLOSURE
2 OF INFORMATION THAT IDENTIFIES A PATIENT, THE COURT MAY AWARD
3 EXEMPLARY DAMAGES OF NOT MORE THAN \$5,000.00 FOR A VIOLATION OF
4 THIS PART, EXCLUSIVE OF ANY PECUNIARY LOSS, RELATED TO THE DIS-
5 CLOSURE OF EACH DATA ELEMENT PERTAINING TO THE INDIVIDUAL
6 PATIENT.

7 (3) THE COURT DESCRIBED IN SUBSECTION (1) MAY AWARD REASON-
8 ABLE ATTORNEY FEES AND COSTS REASONABLY INCURRED IN AN ACTION
9 FILED UNDER THIS SECTION TO THE PREVAILING PARTY.

10 (4) A PERSON WHO DISCLOSES INFORMATION IN GOOD FAITH COMPLI-
11 ANCE WITH A DATA PLAN APPROVED AND MADE EFFECTIVE UNDER
12 SECTION 2909 IS NOT SUBJECT TO CIVIL, ADMINISTRATIVE, OR CRIMINAL
13 LIABILITY FOR THE DISCLOSURE.

14 Enacting section 1. This amendatory act does not take
15 effect unless all of the following bills of the 90th Legislature
16 are enacted into law:

17 (a) Senate Bill No. _____ or House Bill No. _____ (request
18 no. 00839'99).

19 (b) Senate Bill No. _____ or House Bill No. _____ (request
20 no. 00839'99 a).

21 (c) Senate Bill No. _____ or House Bill No. _____ (request
22 no. 00840'99).

23 (d) Senate Bill No. _____ or House Bill No. _____ (request
24 no. 00841'99).