

House Bill 4706 as passed by the House
House Bill 4755 as passed by the House
Second Analysis (1-14-04)

Sponsor: Rep. Barb Vander Veen
Committee: Health Policy

THE APPARENT PROBLEM:

The Health Insurance Portability Act (HIPPA) grants patients the right to obtain copies of their medical records, but the federal law states only that copies be supplied at a "reasonable cost". The result has been a wide disparity in the amount of fees charged to patients. Reportedly, per page charges currently range from under a dollar to several dollars per page. Some health care providers charge a flat fee (one specialist charged a patient \$50 for a request for a medical record that was one page); some charge sliding fees depending on how many pages the records contain (e.g., \$25 for up to 10 pages, \$50 for 11 to 25 pages, and \$126 for 26 pages or more). In addition, many also tack on retrieval or search fees and shipping and handling fees. Even a moderately sized record file can cost an individual several hundreds of dollars.

This situation is particularly devastating to low-income individuals and those living on fixed incomes. Those working with low-income individuals maintain that the high copying fees for medical records create a barrier that prevents some from obtaining benefits that they may otherwise qualify for because copies of medical records are needed in order to apply for needs-based programs such as Medicaid, Supplemental Security Income (SSI), and Social Security Disability Benefits (RSDI). Advocates for the poor also believe that the state could save money if those who could qualify for federal assistance were moved out of state-funded programs and into federally-funded programs.

Further complicating the matter is the HIPPA privacy component that recently went into effect. Instead of copies of visits to specialists or records from hospitalizations being included in the copies of records from a primary care physician's file, patients are now being directed to request records from each treating physician or health facility separately. Since so many providers charge a flat fee or a sliding fee, this can greatly increase the amount an individual must pay to obtain the necessary medical records.

Therefore, legislation has been introduced to establish a fee structure for copying medical records.

THE CONTENT OF THE BILLS:

House Bill 4706 would create the "Medical Records Access Act", which would regulate a patient's access to his or her medical records. House Bill 4755, which is tie-barred to House Bill 4706, would require administrative sanctions to be levied against a health care provider or health facility that did not comply with provisions of the Medical Records Access Act. Specifically, the bills would do the following:

House Bill 4706. The bill would create a new act, the Medical Records Access Act, to establish a procedure by which a patient or his or her patient representative would have the right to examine and obtain a copy of the patient's medical record. A "medical record" would be defined as information that was oral or recorded in any form or medium that pertained to a patient's health care, medical history, diagnosis and prognosis, or medical condition and that was maintained by a health care provider in the process of the patient's health.

A "patient representative" would mean a minor patient's parent or a person to whom a patient, a minor patient's parent, or a patient's guardian had given written authorization to act on the patient's behalf for a specific limited purpose or for general purpose regarding the patient's health care and medical records. A "patient representative" could include, but would not be limited to, a parent, guardian, patient advocate, or personal representative. If a patient were deceased, the term would apply to the executor or administrator of the patient's estate or, if the estate were not to be probated, the person responsible for the estate. However, it would not include a third party payer such as a health insurer, BCBSM, an HMO, a PPO, Medicaid or Medicare, or a nonprofit dental care corporation.

Exclusions. The bill would not apply to copies of medical records provided to a state- licensed or -certificated insurer or insurance organization and would neither require nor preclude the distribution of a medical record at any particular cost or fee to these entities. The bill would also not apply to records maintained by a pharmacist or a psychiatrist, psychologist, social worker, or professional counselor if that person only provided mental health services.

Obtaining medical records. Under the bill, a patient or his or her patient representative could submit a written request to examine or obtain a copy of the patient's medical record. The request would have to be signed and dated by that individual not more than 60 days before the request was submitted to the health care provider or health facility that maintained the records.

A "health care provider" would include licensed or registered health care professionals but would not include pharmacists or psychiatrists, psychologists, social workers, or professional counselors who provide only mental health services. A "health care facility" would include facilities and agencies licensed under Article 17 of the Public Health Code or any other organized entity where a health care provider provided health care to patients. "Maintained" would be defined as holding, possessing, preserving, retaining, storing, or controlling health care information.

Within 30 days of receiving the request for information (or within 60 days if the medical record were not kept or accessible on-site), the provider or facility would have to do one of the following:

- Make the medical record available for inspection or copying at the provider's or facility's place of business during regular business hours, or, provide a copy of the requested material to the patient.
- If the provider or facility contracted with another person or medical records company to maintain patients' medical files, the provider or facility would have to 1) transmit the request and retrieve the requested material from the company and then make it available to the patient or patient representative or 2) require the person or medical records company maintaining the record to make it available to the patient or his or her representative. A "medical records company" would mean a person who stored, located, or copied medical records for a health care provider or facility; was compensated for doing so by the provider or facility; and who charged a fee for

providing medical records to a patient or patient's representative.

- Inform the patient if the medical records cannot be found or do not exist.
- Access to a medical record could be denied by a health care provider or health facility if the request was for a medical record that had been obtained from another provider or facility under a confidentiality agreement. However, the person requesting the record would have to be provided with a written denial.
- If the medical records are held by a company that the provider or facility does not have a contract with, the patient would have to be informed and provided with the name and address, if known, of the company holding the information.
- A treating health care provider or health facility who determined that disclosure of the requested medical record were likely to have an adverse effect on the patient would have to provide a statement supporting his or her determination and then provide the medical record to another provider, facility, or legal counsel designated by the patient or his or her representative.
- Reasonable steps would have to be taken by the health care provider or facility to verify the identity of the person making the request to examine or obtain a copy of the records.

If a provider or facility cannot respond within the specified 30-day time frame, but provided the patient with a written statement indicating the reasons for the delay within that 30-day time period, the provider or facility could extend the response time for no more than 30 days. Only one extension would be allowed per request.

Fees. Charges for supplying the information would be limited to a reasonable and cost base fee that could not exceed the amounts set forth in the bill. The total costs for all copies and services related to obtaining a copy of all or part of a medical record could not exceed the sum of the following:

- An initial fee of \$10 per request for a copy of the record;
- Paper copies as follows: \$1 per page for the first 10 pages; 50 cents per page for pages 11 through 50; and 20 cents per page for pages 51 and over.

- The actual cost of preparing a duplicate if the medical record were in a form or medium other than paper;
- Any postage or shipping costs incurred by the health care provider or facility or the medical records company in providing the copies; and,
- Any actual costs incurred by the health provider, health facility, or medical records company in retrieving records seven years old or older and that were not maintained or accessible on-site.

Payment of the charges could be required before the information was released to a patient. All fees would have to be waived for patients deemed to be “medically indigent” as defined by Section 106 of the Social Welfare Act. However, a medically indigent individual would be limited to one set of copies per health care provider or facility. Additional requests for the same records would be subject to the bill’s fee provisions.

Miscellaneous provisions. A health care provider or facility would be prohibited from asking questions as to why a patient was requesting access to his or her files. Further, a patient or his or representative could supply his or her copying equipment on the premises of the health provider or facility, in which case only the initial fee of \$10 could be charged.

House Bill 4755 would amend the Public Health Code (MCL 333.16221 et al.) to require a health facility or agency to comply with the Medical Records Access Act created by House Bill 4706. The code allows the Department of Consumer and Industry Services to investigate activities related to the practice of a health profession by a licensee, registrant, or an applicant for licensure or registration. Findings are reported to an appropriate disciplinary subcommittee. The disciplinary subcommittee must impose sanctions for specified violations. Under the bill, a violation of the Medical Records Access Act would be grounds for a reprimand; license or registration probation, denial, suspension, revocation, or limitation; restitution; community service; or a fine.

The bill would also make a technical correction to a citation contained in the code for criminal sexual conduct offenses.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

People need affordable access to their medical records for a variety of reasons. Many assistance programs for low-income individuals require copies of medical records to accompany application forms. Records may be needed to dispute insurance benefits payments; to apply for health, life, long-term, and disability insurance; to document a child’s disability for special education services; for civil actions to recover for damages; and are needed when patients change providers or are referred to specialists.

In recent years, more and more physician practices, health facilities, and hospitals have begun charging fees for providing patients with copies of medical records. Others outsource the storage of the records and retrieval and copying services to medical records companies. The result has been a huge discrepancy in the amounts that patients or their legal representatives are charged to obtain a copy of a medical record.

Some advocates for low-income individuals report clients being charged as much as \$50 by a specialist for a single page. One advocate reported knowledge of an individual being charged over a thousand dollars. And, many providers and medical records companies charge search or retrieval fees along with shipping fees in addition to the copying costs. Therefore, a copy of a medical record of about 21 pages can cost anywhere from \$50 to \$75 or more. For the homeless and those with low-incomes, such high fees can act as an obstacle to obtaining records necessary to apply for state and federal assistance programs.

Faced with the high cost of providing medical services these days and often low insurance reimbursements, providers shouldn’t be expected to bear the brunt of providing copies of records to patients. House Bill 4706 would create a reasonable fee structure to cover the costs of retrieving, copying, and mailing medical records to patients, without overburdening the patient. Regardless of where in the state a provider was located, a patient or his or her legal representative would know the procedure by which to request a copy, the maximum amount that could be charged, and the time frame for a request to be filled. For those who meet the criteria for being medically indigent, one free copy would be provided, though additional copies would be assessed a fee. (However, once one copy was obtained, the person could make additional copies at a lower cost at any

copy center.) A provider who overcharged, denied a request, or failed to provide the copies within the stated time frame could face administrative sanctions under House Bill 4755. This represents a much fairer approach than that currently practiced by many health care providers and medical records companies.

Response:

House Bill 4706 would require that one free copy of a person's medical records be provided to a medical indigent individual. Apparently, however, House Bill 4706 contains a loophole that may inadvertently make it more difficult for these individuals to obtain the free copies of their records. The definition of "patient representative" does not specifically include an attorney or person working or volunteering with an organization that assists the indigent in filling out and filing claim forms. According to a representative of the Social Security Section of the Michigan State Bar, record copy services have already indicated that the bill as written would not cover attorneys and legal representatives who request records; this appears to be true whether a client was indigent or not. Therefore, a copy service would not be restricted to the reasonable copy fees as outlined in the bill, but could charge attorneys and legal representatives a higher fee. This would pose a hardship and a barrier to access of medical records for all low-income individuals, as well as the medically indigent. To prevent confusion and to protect the intended help to the medically indigent and others, the definition of "patient representative" should be amended to specifically include an authorized legal representative or attorney.

For:

The bill package represents good public policy, especially as it could result indirectly in saving the state millions of dollars annually. Advocates for the poor and homeless report that many of these people meet the criteria for various federally funded assistance programs. However, the high cost to obtain the medical reports necessary to apply for the programs often delay or prohibit these individuals from obtaining these services. This means that a person either goes without medical care until a very expensive emergency situation arises, or that he or she is on a state-funded program longer than necessary. Michigan hospitals lose millions every year treating the poor who cannot pay for the services received. (Reportedly, uncompensated care rendered by Michigan hospitals in 1999 was about \$800 million.) And, if people were moved off the state disability assistance (SDA) – which pays only about \$246 per month – and received benefits under the federal Supplemental Security Income (SSI) or Social

Security Disability Benefits (RSDI), they would receive more per month and may become eligible for Medicaid. This would result in a savings for the state, and would also benefit the individual with increased monthly aid and medical benefits.

Against:

House Bill 4706 should include an index, such as the Detroit consumer price index, so that the fees created in the bill could be adjusted for inflation and future increases in labor costs. Also, the provision in the bill that would require a facility to make the records available for copying at or outside of the facility could be interpreted as allowing a person to bring his or her own copier into the facility. This provision should be clarified to mean that a person could use the facility's copier (if it did not interfere with normal business operations or create a privacy concern) or eliminated completely as machinery not purchased and evaluated by the facility could pose a fire risk or create a space issue.

Against:

House Bill 4706 may have a detrimental impact on the privacy of minors and emancipated minors. As amended, the bill would include a minor patient's parents in the definition of "patient representative". This means that a parent would have the right to examine or obtain the minor's medical records even if the medical record in question was for a procedure or services for which parental consent is not required by law. For example, if a minor had sought reproductive health services, such as contraceptives, a parent could ask to see his or her child's medical records without the minor's authorization. Under the bill, the records would have to be produced, even though the minor patient had been assured that the medical services provided and records would be confidential.

This creates a dilemma for medical providers and health clinics because current federal case law has supported as valid the distribution of family planning devices to minors without notice to parents. In addition, Title X of the Public Health Service Act and the Medicaid Program require teens to be provided with confidential contraceptive services. Further, constitutional rights to privacy have been upheld by the courts as applying to an adolescent's decision to attempt to avoid an unwanted pregnancy. Therefore, the bill should be amended to restrict a parent's right to access a minor child's records to those records pertaining to services and procedures that do require parental consent and exclude access to those records involving services that do not need parental consent.

POSITIONS:

The Center for Civil Justice supports the bill. (8-28-03)

The Michigan Poverty Law Program supports the bills. (8-28-03)

The Michigan Chiropractic Society supports the bills. (9-2-03)

The Michigan Protection and Advocacy Services supports the bills. (9-2-03)

The Michigan Advocacy Project supports the bills. (8-28-03)

The Michigan Health and Hospital Association supports House Bill 4706 and is neutral on House Bill 4755. (9-15-03)

A representative of the Social Security Lawyers Section of the Michigan State Bar submitted written and oral testimony in support of the bills, but voiced a concern that the bill as written would not authorize an attorney or legal aid worker to request the medical records of indigent clients. (9-30-03)

A representative from the Western Michigan Legal Services testified in support of the bills. (6-2-03)

A representative from the Michigan Chapter of AARP indicated support for the bills. (6-2-03)

Planned Parenthood Affiliates of Michigan oppose the bills. (9-30-03)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.