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BILL ANALYSIS

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House Bill 4706 (Substitute S-2 as reported)
House Bill 4755 (as reported without amendment)
Sponsor: Representative Barb Vander Veen
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 3-2-04

RATIONALE

Patients who need to switch health care providers, apply for insurance benefits, or provide documentation for State and Federal assistance programs such as Medicaid, often must pay a fee for copies of their medical records. Reportedly, the cost varies widely from provider to provider, and sometimes bears no relation to the actual cost of providing a duplicate of the records. It has been suggested that a new law should be created to ensure that patients have access to their medical records and are charged a fair fee, and that health professionals who violate the law may be subject to disciplinary action.

CONTENT

House Bill 4706 (S-2) would create the "Medical Records Access Act" to regulate a patient's access to his or her medical records. The bill would do the following:

- Provide that, except as otherwise provided by law or regulation, a patient or his or her authorized representative would have the right to obtain his or her medical record.
- Require a health care provider or health facility to take certain actions upon receiving a request from a patient or authorized representative to examine or obtain a copy of the patient's medical records.
- Set deadlines for a provider or facility to act.
- Establish the maximum fees that a provider, facility, or medical records company could charge for copies of medical records; and require the Department of Community Health (DCH) to adjust the fees annually.

-- Require a provider, facility, or medical records company to waive fees for a medically indigent individual.

House Bill 4755 would amend the Public Health Code to include a violation of the proposed Medical Records Access Act among grounds for administrative sanction; and to require a health facility or agency to comply with the proposed Act.

House Bill 4755 is tie-barred to House Bill 4706. The bills are described below in further detail.

House Bill 4706 (S-2)

Medical Record Request & Availability

A patient or authorized representative who wished to examine or obtain a copy of the patient's medical record would have to submit a written request that was signed and dated within 60 days before being submitted to the health care provider or health facility that maintained the requested record. Upon receiving the request, the provider or facility would have to do at least one of the following:

- Make the medical record available for inspection or copying, or both, at the provider's or facility's business location during regular business hours or provide a copy of all or part of the medical record, as requested by the patient or authorized representative.
- If the provider or facility had contracted with another person or medical records company to maintain its records, transmit the request to the person or company that maintained the records; retrieve the record

from the person or company; and comply with the preceding requirement, or require the person or company to do so.

- Inform the patient or authorized representative if the record did not exist or could not be found.
- If the provider or facility did not maintain the requested record and did not have a contract with another person or medical records company, so inform the patient or representative and provide the name and address, if known, of the provider or facility that maintained the records.
- If the provider or facility determined that disclosure of the requested record was likely to have an adverse effect on the patient, provide a clear statement supporting that determination and give the record to another provider, facility, or legal counsel designated by the patient or patient representative.

If the provider or facility received a request for a record that was obtained from another provider or facility under a confidentiality agreement, the provider or facility could deny access to the record if access were reasonably likely to reveal the source of the information. If the provider or facility denied access, it would have to give the patient or patient representative a written denial.

The provider, facility, or medical records company would have to take reasonable steps to verify the identity of the person making the request.

The health care provider or health facility would have to comply with these requirements as promptly as required under the circumstances, but not later than 30 days after receiving the request or, if the record were not maintained or accessible on-site, not later than 60 days after receiving the request.

If the provider, facility, or medical records company were unable to take the required action and it gave the patient a written statement indicating the reasons for its delay within the required time period, the provider or facility could extend the response time for up to 30 days. A provider, facility, or medical records company could extend the response time only once per request.

A provider or facility that received a request could not inquire as to its purpose.

The bill would define "authorized representative" as either of the following:

- A person empowered by the patient by explicit written authorization to act on the patient's behalf to access, disclose, or consent to the disclosure of the patient's medical record, in accordance with the proposed Act.
- If the patient were deceased, his or her personal representative or his or her heirs at law or the beneficiary of the patient's life insurance policy, to the extent provided by Section 2157 of the Revised Judicature Act.

(Under Section 2157 of the Revised Judicature Act, a patient is considered to have waived the physician-patient privilege if he or she brings a malpractice action against a physician and produces another physician as a witness who has treated him or her for the injury or for any disease or condition for which the malpractice is alleged. If a patient has died, his or her heirs at law or the beneficiary of the patient's life insurance policy are considered personal representatives of the patient for the purpose of waiving the privilege.)

"Guardian" would mean an individual who was appointed under the Estates and Protected Individuals Code, to the extent that the scope of the guardianship included the authority to act on the individual's behalf with regard to his or her health care. The term would include an individual who was appointed as the guardian of a minor under the Estates and Protected Individuals Code or the Mental Health Code.

The bill would define "health care provider" as a person who is licensed or registered or otherwise authorized under Article 15 of the Public Health Code to provide health care in the ordinary course of business or practice of a health profession. The term would not include a person who provided health care solely through the sale or dispensing of drugs or medical devices, or a psychiatrist, psychologist, social worker, or professional counselor who provided only mental health services.

"Health facility" would mean a facility or agency licensed under Article 17 of the Public Health Code or any other organized entity where a health care provider provided health care to patients.

Fees for Medical Record Copies

If a patient or authorized representative requested a copy of all or part of the patient's medical record, the provider, facility, or medical records company could charge the patient or representative a fee that was not more than the following amounts:

- An initial fee of \$20 per request for a copy of the record.
- For paper copies, \$1 per page for the first 20 pages, 50 cents per page for pages 21 through 50, and 20 cents per page for pages 51 and over.
- If the medical record were in some form or medium other than paper, the actual cost of preparing a duplicate.
- Any postage or shipping costs incurred by the provider, facility, or medical records company in providing the copies.
- Any actual costs incurred by the provider, facility, or medical records company in retrieving medical records that were at least seven years old and not maintained or accessible on-site.

A provider, facility, or medical records company could refuse to retrieve or copy all or part of a record until the applicable fee was paid. A provider, facility, or medical records company could not charge a fee for retrieving, copying, or mailing all or part of a medical record, and could not charge an initial fee for the record, other than the fees provided in the bill.

A provider, facility, or medical records company would have to waive all fees for a medically indigent individual. The provider, facility, or company could require the patient or authorized representative to provide proof that the patient was a recipient of assistance.

A medically indigent individual who received copies at no charge would be limited to one set of copies per provider, facility, or medical records company. Any additional requests for the same records from the same provider, facility, or company would be subject to the fees.

The bill would define "medically indigent individual" as that term is defined under Section 106 of the Social Welfare Act. (Under the Social Welfare Act, the term means an individual receiving Family Independence Program benefits or Federal supplemental

security income or State supplementation, or an individual who meets specific conditions pertaining to his or her need for medical assistance, annual income, assets, and eligibility for benefits.)

The DCH annually would have to adjust the fees by an amount determined by the State Treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index, beginning two years after the bill's effective date.

Third Party Payers

The proposed Act would not apply to copies of medical records provided to a third party payer. The term "third party payer" would mean a public or private health care payment or benefits program that was created, authorized, or licensed under Michigan law, including a health insurer, a nonprofit health care corporation (Blue Cross and Blue Shield of Michigan), a health maintenance organization, a preferred provider organization, a nonprofit dental care corporation, or Medicaid or Medicare.

House Bill 4755

Under the Public Health Code, the DCH may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The DCH must report its finding to the appropriate disciplinary subcommittee, which must impose administrative sanctions if it finds the existence of certain grounds, such as a violation of general duty, personal disqualifications, prohibited acts, or unethical business practices. The bill would add to the grounds for administrative sanctions a violation of the proposed Medical Records Access Act. The disciplinary subcommittee would have to order a reprimand; probation; the denial, suspension, or revocation of a license or registration; restitution; community service; and/or a fine.

MCL 333.16221 et al. (H.B. 4755)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Currently, there is no law regulating the cost of medical record copies in Michigan. Some people evidently are charged unreasonable, and sometimes exorbitant, fees to obtain the medical records needed to provide evidence for a disability or workers' compensation case, furnish information to a school that wishes to perform an assessment of a student's abilities for special education purposes, switch health care providers, obtain a restraining order in a domestic violence case, or obtain medical insurance. A provider could even charge outrageous fees for records in order to deter a patient from switching to another provider. Furthermore, the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 has contributed to the cost of records to the patient. Now, a patient must ask each individual specialist for his or her records; the patient can no longer obtain all of his or her records from a general practitioner.

Often, there is no relation between what a patient is charged and the actual cost of providing the records, particularly when a record is maintained electronically. The HIPAA allows providers to charge a "reasonable fee" for copies of records, but does not specify what that term means. Health care providers and medical records companies can make enormous profits off of patients who need copies of their records and cannot obtain them through any other means. Costs also have risen significantly as many health care organizations have out-sourced their medical record departments. In many cases, Michigan citizens are paying for the profit margins of out-of-state companies that do not contribute to the local economy.

The bills would provide assurance that patients could obtain access to their medical records for a reasonable charge, and within a reasonable period of time after making a request.

Supporting Argument

House Bill 4706 (S-2) would help people obtain the records they need to show that they qualify for Federal disability assistance and Medicaid, thereby reducing the strain on the State and local public and private resources. The State often supports low-income people during the application process for Social Security Income (SSI), Social Security Disability, and Medicaid programs. The bill would reduce delays in the application

process and facilitate the movement of people from State assistance programs. According to Senate Committee testimony, in fiscal year 2002-03, more than 8800 people received State Disability Assistance (SDA). If just one-third of these people were moved to Federal assistance programs, the State would save approximately \$6 million.

Supporting Argument

House Bill 4706 (S-2) would contribute to reduced overall health care costs by making it more affordable for uninsured people to obtain insurance. Uninsured people often cannot afford preventative care, or an office visit or prescription in the early stages of an ailment. Instead, they must wait until their conditions worsen and become so serious that they must seek treatment in hospital emergency rooms, where they must be treated regardless of their ability to pay. According to Senate Committee testimony, uncompensated care provided by Michigan hospitals was valued at \$823 million in 1999. If these people could afford copies of their medical records, it would be easier for them to secure health insurance and, therefore, preventative care. The cost of providing one free copy to a medically indigent person most likely would be offset by the overall savings the bill would generate.

Opposing Argument

The proposed fee structure would be insufficient to cover the cost of copying services. Maintaining and copying medical records is much more involved than simply placing a document on a machine and pushing a button. Because of their importance, medical records must be maintained with more care than other kinds of records require.

When producing copies, one must take into account patient confidentiality laws that regulate who may view and handle the records. Since the HIPAA went into effect, the costs of maintaining and copying records have increased. Furthermore, most patients' medical records are more than a few pages long. In some cases, a medical record can be several volumes containing hundreds of pages, which someone might need to spend an entire day copying.

Some other states have much higher fees, and not all require free copies to the medically indigent. Many hospitals are struggling financially. If they could not recoup their costs, the overall quality of patient care would decline. Even providing one free copy to a

medically indigent person could be a strain for some providers or records companies. Furthermore, the proposed fee structure would not apply to third party payers. If insurers had to pay higher fees, the costs could be passed on to patients. If medical records companies could not make a profit, they might decide to leave the business, making room for less professional companies to take over. In either case, all health care consumers would be negatively affected.

Response: Under House Bill 4706 (S-2), the DCH would have to adjust the fees according to the annual change in the Detroit consumer price index. The bill would enable providers and medical records companies to recoup their costs while ensuring that patients were charged a fair fee.

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 4706

The bill would have no fiscal impact on State or local government.

House Bill 4755

Costs associated with the investigation of health professionals and subsequent disciplinary subcommittee action would be covered with existing appropriations. Any fines collected for violations found as a result of this bill would be used to support current appropriations.

Fiscal Analyst: Dana Patterson

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.