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BILL ANALYSIS

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House Bill 4706 (Substitute H-2 as passed by the House)
House Bill 4755 (as passed by the House)
Sponsor: Representative Barb Vander Veen
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 2-23-04

CONTENT

House Bill 4706 (H-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 patient 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 patient 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 or facility could charge for copies of medical records.
- Require a provider or facility 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 sanctions; 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 (H-2)

Medical Record Request & Availability

A patient or patient 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 patient representative.
- If the provider or facility had contracted with another person or medical records company to maintain its records, transmit a 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 patient 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.
- Take reasonable steps to verify the identity of the person making the request.

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 the provider or facility denied access, it would have to give the patient or patient representative a written denial.

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 or facility 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 or facility 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 "patient representative" as 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. This person could include, but would not be limited to, a parent, guardian, patient advocate, or personal representative. If the patient were deceased, the term would mean the executor or administrator of the patient's estate or the person responsible for the patient's estate if it were not to be probated. The term would not include a third party payer.

"Guardian" would mean an individual who was appointed as a full guardian of a legally incapacitated person under the Estates and Protected Individuals Code. The term would include an individual who was appointed as the guardian of a minor under the Code. "Patient advocate" would mean an individual designated to make medical treatment decisions under the Code.

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, a health maintenance organization, a preferred provider organization, a nonprofit dental care corporation, or Medicaid or Medicare.

(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 patient representative requested a copy of all or part of the patient's medical record, the provider or facility could charge the patient or representative a reasonable and cost base fee that was not more than the following amounts:

- An initial fee of \$10 per request for a copy of the record.
- For paper copies, \$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.
- 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 or facility could refuse to retrieve or copy all or part of a record until the applicable fee was paid. A provider or facility could not charge a fee for retrieving, copying, or mailing all or part of a medical record other than the fees provided in the bill.

A provider or facility would have to waive all fees for a medically indigent individual. The provider or facility could require the patient or patient 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 or facility. Any additional requests for the same records from the same provider or facility would be subject to the fees.

A patient or patient representative could supply his or her own copying equipment on the premises of the provider or facility and pay only the initial \$10 fee.

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.)

Insurers

The bill specifies that the proposed Act would not apply to copies of medical records provided to, or require or preclude the distribution of a medical record at any particular cost or fee to, an insurer or insurance organization issued a license or certification of authority in Michigan.

House Bill 4755

Under the Public Health Code, the Department of Community Health (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.

The bill also would require a health facility or agency to comply with the proposed Medical Records Access Act. (The Code defines "health facility or agency" as:

- An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.
- A clinical laboratory.
- A county medical care facility.
- A freestanding surgical outpatient facility.
- A health maintenance organization.
- A home for the aged.
- A hospital.
- A nursing home.
- A hospice.
- A hospice residence.
- Facilities or agencies listed above located in a university, college, or other educational institution.)

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

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