

**SUBSTITUTE FOR
HOUSE BILL NO. 4706**

A bill to provide for and to regulate access to and disclosure of medical records; to prescribe powers and duties of certain state agencies and departments; to establish fees; to prescribe administrative sanctions; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "medical records access act".

3 Sec. 3. As used in this act:

4 (a) "Guardian" means an individual who is appointed as a full
5 guardian of a legally incapacitated person under section 5306 of
6 the estates and protected individuals code, 1998 PA 386,
7 MCL 700.5306. Guardian includes an individual who is appointed
8 as the guardian of a minor under section 5202 or 5204 of the
9 estates and protected individuals code, 1998 PA 386, MCL 700.5202
10 and 700.5204.

1 (b) "Health care" means any care, service, or procedure
2 provided by a health care provider or health facility to
3 diagnose, treat, or maintain a patient's physical condition, or
4 that affects the structure or a function of the human body.

5 (c) "Health care provider" means a person who is licensed or
6 registered or otherwise authorized under article 15 of the public
7 health code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide
8 health care in the ordinary course of business or practice of a
9 health profession. Health care provider does not include a
10 person who provides health care solely through the sale or
11 dispensing of drugs or medical devices or a psychiatrist,
12 psychologist, social worker, or professional counselor who
13 provides only mental health services.

14 (d) "Health facility" means a health facility or agency
15 licensed under article 17 of the public health code, 1978 PA 368,
16 MCL 333.20101 to 333.22260, or any other organized entity where a
17 health care provider provides health care to patients.

18 (e) "Maintain", as related to medical records, means to hold,
19 possess, preserve, retain, store, or control medical records.

20 (f) "Medicaid" means that term as defined in section 2701 of
21 the public health code, 1978 PA 368, MCL 333.2701.

22 (g) "Medical record" means information oral or recorded in
23 any form or medium that pertains to a patient's health care,
24 medical history, diagnosis, prognosis, or medical condition and
25 that is maintained by a health care provider or health facility
26 in the process of the patient's health.

27 (h) "Medical records company" means a person who stores,

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1 locates, or copies medical records for a health care provider or
2 health facility, is compensated for doing so by a health care
3 provider or health facility, and charges a fee for providing
4 medical records to a patient or patient's representative.

5 (i) "Medically indigent individual" means that term as
6 defined under section 106 of the social welfare act, 1939 PA 280,
7 MCL 400.106.

8 (j) "Medicare" means that term as defined in section 2701 of
9 the public health code, 1978 PA 368, MCL 333.2701.

10 (k) "Minor" means an individual who is less than 18 years of
11 age, but does not include an individual who is emancipated under
12 section 4 of 1968 PA 293, MCL 722.4.

13 (l) "Patient" means an individual who receives or has
14 received health care from a health care provider.

15 (m) "Patient advocate" means an individual designated to make
16 medical treatment decisions under section 5506 of the estates and
17 protected individuals code, 1998 PA 386, MCL 700.5506.

18 (n) "Patient representative" means [a minor patient's parent or a
19 person to whom a patient, a minor patient's parent,]

20 or a patient's guardian has given written authorization to act on
21 the patient's behalf for a specific, limited purpose or for
22 general purpose regarding the patient's health care and medical
23 records. This person may include, but is not limited to, a

24 [] parent, guardian, patient advocate, or personal

25 representative. If the patient is deceased, patient

26 representative means the executor or administrator of the

27 patient's estate or the person responsible for the patient's

estate if it is not to be probated. Patient representative does

1 not include a third party payer.

2 (o) "Person" means an individual, corporation, estate, trust,
3 partnership, association, joint venture, government, governmental
4 subdivision or agency, or other legal or commercial entity.

5 (p) "Personal representative" means that term as defined in
6 section 1106 of the estates and protected individuals code, 1998
7 PA 386, MCL 700.1106.

8 (q) "Third party payer" means a public or private health care
9 payment or benefits program that is created, authorized, or
10 licensed under the laws of this state, including, but not limited
11 to, all of the following:

- 12 (i) A health insurer.
- 13 (ii) A nonprofit health care corporation.
- 14 (iii) A health maintenance organization.
- 15 (iv) A preferred provider organization.
- 16 (v) A nonprofit dental care corporation.
- 17 (vi) Medicaid or medicare.

18 Sec. 5. (1) Except as otherwise provided by law or
19 regulation, a patient or his or her patient representative has
20 the right to examine or obtain the patient's medical record.

21 (2) An individual authorized under subsection (1) who wishes
22 to examine or obtain a copy of the patient's medical record shall
23 submit a written request that is signed and dated by that
24 individual not more than 60 days before being submitted to the
25 health care provider or health facility that maintains the
26 medical record that is the subject of the request. Upon receipt
27 of a request under this subsection, a health care provider or

1 health facility shall, as promptly as required under the
2 circumstances, but not later than 30 days after receipt of the
3 request or if the medical record is not maintained or accessible
4 on-site not later than 60 days after receipt of the request, do 1
5 or more of the following:

6 (a) Make the medical record available for inspection or
7 copying, or both, at the health care provider's or health
8 facility's business location during regular business hours or
9 provide a copy of all or part of the medical record, as requested
10 by the patient or patient's representative.

11 (b) If the health care provider or health facility has
12 contracted with another person or medical records company to
13 maintain the health care provider's or health facility's medical
14 records, the health care provider or health facility shall
15 transmit a request made under this subsection to the person or
16 medical records company maintaining the medical records. The
17 health care provider or health facility shall retrieve the
18 medical record from the person or medical records company
19 maintaining the medical records and comply with subdivision (a)
20 or shall require the person or medical records company that
21 maintains that medical record to comply with subdivision (a).

22 (c) Inform the patient or the patient's representative if the
23 medical record does not exist or cannot be found.

24 (d) If the health care provider or health facility to which
25 the request is directed does not maintain the medical record
26 requested and does not have a contract with another person or
27 medical records company as described in subdivision (b), so

1 inform the patient or the patient's representative and provide
2 the name and address, if known, of the health care provider or
3 health facility that maintains the medical records.

4 (e) If the health care provider or health facility determines
5 that disclosure of the requested medical record is likely to have
6 an adverse effect on the patient, the health care provider or
7 health facility shall provide a clear statement supporting that
8 determination and provide the medical record to another health
9 care provider, health facility, or legal counsel designated by
10 the patient or patient's representative.

11 (f) If the health care provider or health facility receives a
12 request for a medical record that was obtained from another
13 health care provider or health facility under a confidentiality
14 agreement, the health care provider or health facility may deny
15 access to that medical record. If the health care provider or
16 health facility denies access under this subdivision, it shall
17 provide the patient or patient's representative with a written
18 denial.

19 (g) The health care provider or health facility shall take
20 reasonable steps to verify the identity of the person making the
21 request to examine or obtain a copy of the patient's medical
22 record.

23 (3) If the health care provider or health facility is unable
24 to take action as required under subsection (2) and the health
25 care provider or health facility provides the patient with a
26 written statement indicating the reasons for its delay within the
27 required time period, the health care provider or health facility

1 may extend the response time for no more than 30 days. A health
2 care provider or health facility may only extend the response
3 time once per request under this subsection.

4 Sec. 7. A health care provider or health facility that
5 receives a request for a medical record under section 5 shall not
6 inquire as to the purpose of the request.

7 Sec. 9. (1) If a patient or the patient's representative
8 makes a request for a copy of all or part of his or her medical
9 record under section 5, the health care provider or health
10 facility to which the request is directed may charge the patient
11 or the patient's representative a reasonable and cost base fee
12 that is not more than the amount set forth in this section. The
13 total cost for all copies and services related to obtaining a
14 copy of all or part of a medical record shall not exceed the sum
15 of the following:

16 (a) An initial fee of \$10.00 per request for a copy of the
17 record.

18 (b) Paper copies as follows:

19 (i) One dollar per page for the first 10 pages.

20 (ii) Fifty cents per page for pages 11 through 50.

21 (iii) Twenty cents for pages 51 and over.

22 (c) If the medical record is in some form or medium other
23 than paper, the actual cost of preparing a duplicate.

24 (d) Any postage or shipping costs incurred by the health care
25 provider, health facility, or medical records company in
26 providing the copies.

27 (e) Any actual costs incurred by the health care provider,

1 health facility, or medical records company in retrieving medical
2 records that are 7 years old or older and not maintained or
3 accessible on-site.

4 (2) A health care provider or health facility may refuse to
5 retrieve or copy all or part of a medical record for a patient or
6 patient's representative until the applicable fee is paid.

7 (3) A health care provider or health facility shall not
8 charge a fee for retrieving, copying, or mailing all or part of a
9 medical record other than a fee allowed under subsection (1).
10 Except as otherwise provided in subsection (4), a health care
11 provider or health facility shall waive all fees for a medically
12 indigent individual. The health care provider or health facility
13 may require the patient or the patient's representative to
14 provide proof that the patient is a recipient of assistance as
15 described in this subsection.

16 (4) A medically indigent individual that receives copies of
17 medical records at no charge under subsection (3) is limited to 1
18 set of copies per health care provider or health facility. Any
19 additional requests for the same records from the same health
20 care provider or health care facility shall be subject to the fee
21 provisions under subsection (1).

22 (5) A patient or the patient's representative may supply his
23 or her own copying equipment on the premises of the health care
24 provider or health facility and pay only the initial fee allowed
25 under subsection (1)(a).

26 Sec. 11. (1) This act does not apply to copies of medical
27 records provided to an insurer or insurance organization issued a

1 license or certification of authority in this state.

2 (2) This act does not require or preclude the distribution of
3 a medical record at any particular cost or fee to an insurer or
4 insurance organization issued a license or certification of
5 authority in this state.