

HOUSE BILL No. 4706

May 20, 2003, Introduced by Reps. Vander Veen, Newell, Ehardt, Meyer, Middaugh, Voorhees, Sheen and Rocca and referred to the Committee on Health Policy.

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 generated and maintained by a health care provider in the
26 process of the patient's health.

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

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

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

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

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

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

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

19 (n) "Patient representative" means a person to whom a patient
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 guardian, patient advocate, or personal representative. If the
25 patient is deceased, patient representative means the executor or
26 administrator of the patient's estate or the person responsible
27 for the patient's estate if it is not to be probated. Patient

1 representative does 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) An adult patient, his or her guardian, his or
19 her patient advocate or conservator, his or her patient
20 representative, or the parent or guardian of a patient who is a
21 minor has the right to examine or obtain the adult patient's or
22 minor patient's medical record.

23 (2) An adult patient, his or her guardian, his or her patient
24 advocate or conservator, his or her patient representative, or
25 the parent or guardian of a patient who is a minor who wishes to
26 examine or obtain a copy of the patient's medical record shall
27 submit a written request that is signed and dated by the patient

1 not more than 60 days before being submitted to the health care
2 provider or health facility that maintains the medical record
3 that is the subject of the request. Upon receipt of a request
4 under this subsection, a health care provider or health facility
5 shall, as promptly as required under the circumstances, but not
6 later than 30 days after receipt of the request, do 1 or more of
7 the following:

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

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

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

25 (d) If the health care provider or health facility to which
26 the request is directed does not maintain the medical record
27 requested and does not have a contract with another person or

1 medical records company as described in subdivision (b), so
2 inform the patient or the patient's representative and provide
3 the name and address, if known, of the health care provider or
4 health facility that maintains the medical records.

5 (e) If the health care provider is unavailable during the
6 period of 30 days, upon becoming available, immediately notify
7 the patient or the patient's representative of the health care
8 provider's availability and complete the request within 30 days
9 after becoming available.

10 (f) If the health care provider who has treated the patient
11 determines that disclosure of the requested medical record is
12 likely to have an adverse effect on the patient, the health care
13 provider shall provide a clear statement supporting his or her
14 determination and provide the medical record to another health
15 care provider or legal counsel designated by the patient or
16 patient's representative.

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

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

24 Sec. 9. (1) If a patient or the patient's representative
25 makes a request for all or part of his or her medical record
26 under section 5, the health care provider or health facility to
27 which the request is directed may charge the patient or the

1 patient's representative not more than the amount set forth in
2 this section. The total cost for all copies and services related
3 to obtaining a copy of all or part of a medical record shall not
4 exceed the sum of the following:

5 (a) An initial fee of \$10.00 per request for the record
6 search.

7 (b) Paper copies as follows:

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

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

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

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

13 (d) Any postage or shipping costs incurred by the health care
14 provider, health care facility, or medical records company in
15 providing the copies.

16 (e) Any retrieval costs incurred by the health care provider,
17 health care facility, or medical records company in retrieving
18 medical records that are 7 years old or older and not maintained
19 or accessible on-site.

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

23 (3) A health care provider or health facility shall not
24 charge a fee for retrieving, copying, or mailing all or part of a
25 medical record other than a fee allowed under subsection (1).

26 Except as otherwise provided in subsection (4), a health care
27 provider or health facility shall waive all fees for a medically

1 indigent individual. The health care provider or health facility
2 may require the patient or the patient's representative to
3 provide proof that the patient is a recipient of assistance as
4 described in this subsection.

5 (4) A medically indigent individual that receives copies of
6 medical records at no charge under subsection (3) is limited to 1
7 set of copies per health care provider or health facility. Any
8 additional requests for the same records from the same health
9 care provider or health care facility shall be subject to the fee
10 provisions under subsection (1).

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

15 Sec. 11. (1) This act does not apply to copies of medical
16 records provided to an insurer or insurance organization issued a
17 license or certification of authority in this state.

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