

House Bills 4706 and 4755
Sponsor: Rep. Barb Vander Veen
Committee: Health Policy

Complete to 6-2-03

A SUMMARY OF HOUSE BILLS 4706 AND 4755 AS INTRODUCED 5-20-03 AND 5-27-03

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, his or her guardian or patient advocate, patient representative, or conservator, or the parents or guardians of a minor, 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 generated and maintained by a health care provider in the process of the patient’s health.

A “patient representative” would mean a person to whom a patient or his or her 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 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, an adult patient; his or her guardian, patient advocate, conservator, or patient representative; or the parent or guardian of a minor may 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 the patient 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, 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 transmit the request and retrieve the requested material from the company and then make it available to the patient. 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.

- 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.

- If, during the allowable response time, a provider was unavailable, the patient would have to be informed of the provider’s unavailability and the request would have to be filled within 30 days after the provider became available.

- A treating health care provider 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 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.

Fees. Charges for supplying the information would be limited to 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 the record search;

- 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 retrieval costs incurred by the health care provider or 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.

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■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.