

**9. HIPAA/FOIA**

HIPAA & ORR memo – 5/28/03

Refusing FOIA requests (MDHHS-ORR research)

HIPAA guidelines – 45CFR 164.524 (2/6/14)

Freedom of Information Act - PA 442 of 1976 (FOIA)

FOIA Letter example

Medical Records Access PA 47 of 2004



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From: Beverly K. Sobolewski  
To: Dianne L. Baker 05/28/03 03:03PM >>  
Subject: Re: HIPAA Exception for ORR Access

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>>>Dianne L. Baker 05/28/03 03:03PM>>>

We have been asked for the citation in HIPAA that allows the DCH, CMHSP and its contracted agencies rights offices and LPH/U rights officers/advisors access to protected health information. The citation is 42 CFR 164.512 (d)(1)...A covered entity may disclose protected health information to a health oversight agency (e.g. *recipient rights offices*) for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections;...or other activities necessary for appropriate oversight of (i) the health care system; (ii) government benefit programs...relevant to beneficiary eligibility; (iii) ...determining compliance with program standards; or (iv) entities subject to civil rights laws for which health information is necessary for determining compliance.

164.512(d)(2) states exceptions to health oversight activities.

Note: This information is not intended to be legal advice nor should it be deemed as legal advice. Please consult your legal counsel for advice and consultation.

## FOIA Request

Explanation regarding exemption of ORR Investigations and related documents in the investigative case file.

The documents requested are exempt from disclosure under Michigan's Mental Health Code and Freedom of Information Act (Act 422 of 1976) as provided below:

15.243 Exemptions from disclosure; public body as school district or public school academy; withholding of information required by law or in possession of the executive office.

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:

(d) Records or information specifically described and exempted from disclosure by statute.

Michigan Mental Health Code (Act 258 of 1974)

### 330.1748 Confidentiality.

Sec. 748. (1) Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection...

### 330.1206 Community mental health services program: purpose: services.

Sec. 206. (1) The purpose of a community mental health services program shall be to provide a comprehensive array of mental health services... The array of mental health services shall include, at a minimum, all of the following:

(e) Recipient rights services.

### 330.1755 Office of recipient rights: establishment by community mental health services program and hospital.

Sec. 755. (5) Each office of recipient rights established under this section shall do all of the following:

(i) Ensure that all reports of apparent or suspected violations of rights within the community mental health services program system or licensed hospital system are investigated in accordance with section 778 and that those reports that do not warrant investigation are recorded in accordance with subdivision (d).

### 330.1754 State office of recipient rights: establishment by department; selection of director: powers and authority of state office of recipient rights.

Sec. 754. (6) The state office of recipient rights shall do all of the following:

(k) Ensure that all reports of apparent or suspected violations of rights within state facilities or programs operated by providers under contract with the department other than community mental health services programs are investigated in accordance with section 778 and that those reports that do not warrant investigation are recorded in accordance with subdivision (c).

**(a) Standard: Access to protected health information**

(1) Right of access. Except as otherwise provided in paragraph (a)(2) or (a)(3) of this section, an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set, except for:

- (i) Psychotherapy notes; and
- (ii) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

(2) Unreviewable grounds for denial. A covered entity may deny an individual access without providing the individual an opportunity for review, in the following circumstances.

- (i) The protected health information is excepted from the right of access by paragraph (a)(1) of this section.
- (ii) A covered entity that is a correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.
- (iii) An individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research.
- (iv) An individual's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. 552a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.
- (v) An individual's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

(3) Reviewable grounds for denial. A covered entity may deny an individual access, provided that the individual is given a right to have such denials reviewed, as required by paragraph (a)(4) of this section, in the following circumstances:

- (i) A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;
- (ii) The protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or
- (iii) The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

(4) Review of a denial of access. If access is denied on a ground permitted under paragraph (a)(3) of this section, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny. The covered entity must provide or deny access in accordance with the determination of the reviewing official under paragraph (d)(4) of this section.

**(b) Implementation specifications: Requests for access and timely action**

(1) Individual's request for access. The covered entity must permit an individual to request access to inspect or to obtain a copy of the protected health information about the individual that is maintained in a designated record set. The covered entity may require individuals to make requests for access in writing, provided that it informs individuals of such a requirement.

(2) Timely action by the covered entity.

(i) Except as provided in paragraph (b)(2)(ii) of this section, the covered entity must act on a request for access no later than 30 days after receipt of the request as follows.

(A) If the covered entity grants the request, in whole or in part, it must inform the individual of the acceptance of the request and provide the access requested, in accordance with paragraph (c) of this section.

(B) If the covered entity denies the request, in whole or in part, it must provide the individual with a written denial, in accordance with paragraph (d) of this section.

(ii) If the covered entity is unable to take an action required by paragraph (b)(2)(i)(A) or (B) of this section within the time required by paragraph (b)(2)(i) of this section, as applicable, the covered entity may extend the time for such actions by no more than 30 days, provided that:

(A) The covered entity, within the time limit set by paragraph (b)(2)(i) of this section, as applicable, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will complete its action on the request; and

(B) The covered entity may have only one such extension of time for action on a request for access.

**(c) Implementation specifications: Provision of access. If the covered entity provides an individual with access, in whole or in part, to protected health information, the covered entity must comply with the following requirements.**

(1) Providing the access requested. The covered entity must provide the access requested by individuals, including inspection or obtaining a copy, or both, of the protected health information about them in designated record sets. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the covered entity need only produce the protected health information once in response to a request for access.

(2) Form of access requested.

(i) The covered entity must provide the individual with access to the protected health information in the form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by the covered entity and the individual.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, if the protected health information that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, the covered entity must provide the individual with access to the protected health information in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual.

(iii) The covered entity may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if:

(A) The individual agrees in advance to such a summary or explanation; and

(B) The individual agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.

(3) Time and manner of access.

(i) The covered entity must provide the access as requested by the individual in a timely manner as required by paragraph (b)(2) of this section, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the protected health information, or mailing the copy of the protected health information at the individual's request. The covered entity may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access.

(ii) If an individual's request for access directs the covered entity to transmit the copy of protected health information directly to another person designated by the individual, the covered entity must provide the copy to the person designated by the individual. The individual's request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.

(4) Fees. If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

(i) Labor for copying the protected health information requested by the individual, whether in paper or electronic form;

- (ii) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media;
- (iii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and
- (iv) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(iii) of this section.

**(d) Implementation specifications: Denial of access. If the covered entity denies access, in whole or in part, to protected health information, the covered entity must comply with the following requirements.**

- (1) Making other information accessible. The covered entity must, to the extent possible, give the individual access to any other protected health information requested, after excluding the protected health information as to which the covered entity has a ground to deny access.
- (2) Denial. The covered entity must provide a timely, written denial to the individual, in accordance with paragraph (b)(2) of this section. The denial must be in plain language and contain:
  - (i) The basis for the denial;
  - (ii) If applicable, a statement of the individual's review rights under paragraph (a)(4) of this section, including a description of how the individual may exercise such review rights; and
  - (iii) A description of how the individual may complain to the covered entity pursuant to the complaint procedures in § 164.530(d) or to the Secretary pursuant to the procedures in § 160.306. The description must include the name, or title, and telephone number of the contact person or office designated in § 164.530(a)(1)(ii).
- (3) Other responsibility. If the covered entity does not maintain the protected health information that is the subject of the individual's request for access, and the covered entity knows where the requested information is maintained, the covered entity must inform the individual where to direct the request for access.
- (4) Review of denial requested. If the individual has requested a review of a denial under paragraph (a)(4) of this section, the covered entity must designate a licensed health care professional, who was not directly involved in the denial to review the decision to deny access. The covered entity must promptly refer a request for review to such designated reviewing official. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested based on the standards in paragraph (a)(3) of this section. The covered entity must promptly provide written notice to the individual of the determination of the designated reviewing official and take other action as required by this section to carry out the designated reviewing official's determination.

**(e) Implementation specification: Documentation. A covered entity must document the following and retain the documentation as required by § 164.530(j):**

- (1) The designated record sets that are subject to access by individuals; and
- (2) The titles of the persons or offices responsible for receiving and processing requests for access by individuals.

[65 FR 82802, Dec. 28, 2000, as amended at 78 FR 5701, Jan. 25, 2013; 78 FR 34266, June 7, 2013; 79 FR 7316, Feb. 6, 2014]





**FREEDOM OF INFORMATION ACT (EXCERPT)**  
**Act 442 of 1976**

**15.232 Definitions.**

As used in this act:

(a) "Cybersecurity assessment" means an investigation undertaken by a person, governmental body, or other entity to identify vulnerabilities in cybersecurity plans.

(b) "Cybersecurity incident" includes, but is not limited to, a computer network intrusion or attempted intrusion; a breach of primary computer network controls; unauthorized access to programs, data, or information contained in a computer system; or actions by a third party that materially affect component performance or, because of impact to component systems, prevent normal computer system activities.

(c) "Cybersecurity plan" includes, but is not limited to, information about a person's information systems, network security, encryption, network mapping, access control, passwords, authentication practices, computer hardware or software, or response to cybersecurity incidents.

(d) "Cybersecurity vulnerability" means a deficiency within computer hardware or software, or within a computer network or information system, that could be exploited by unauthorized parties for use against an individual computer user or a computer network or information system.

(e) "Field name" means the label or identification of an element of a computer database that contains a specific item of information, and includes but is not limited to a subject heading such as a column header, data dictionary, or record layout.

(f) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

(ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(g) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(h) "Public body" means any of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, except that the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(i) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and that are subject to disclosure under this act.

(j) "Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

(k) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(l) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, hard drives, solid state storage components, or other means of recording or retaining meaningful content.

(m) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

**History:** 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1994, Act 131, Imd. Eff. May 19, 1994 ;-- Am. [1996, Act 553](#), Eff. Mar. 31, 1997 ;-- Am. [2018, Act 68](#), Eff. June 17, 2018

**15.233 Public records; request requirements; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.**

(1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A request from a person, other than an individual who qualifies as indigent under section 4(2)(a), must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription is valid for up to 6 months, at the request of the subscriber, and is renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

(2) A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.

(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(6) The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

**History:** 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2018, Act 523, Imd. Eff. Dec. 28, 2018

## Example of FOIA Letter

Dear \_\_\_\_\_,

This is a request under the Michigan Freedom of Information Act as amended, MCLA 15.231, et. seq.

I am writing for a copy of \_\_\_\_\_ .  
(be sure it's specific).

As you know, the amended act provides that if some parts of a file are exempt from release, the remaining portions shall be provided. I, therefore, request that if you determine that some portion of the requested information is exempted, you provide immediately with a copy of the remainder of the file. I, of course, reserve the right to appeal any such decisions.

If a determination is made that some or all of the requested information is exempted from release, would you please note which of the allowed exemptions apply.

Due to the fact that the information requested is in the public's interest; i.e., benefiting the general public, all fees should be waived.

If you have any questions regarding this request, please telephone me at ( ) \_\_\_\_\_ .

As provided in the amended act, I will expect to receive a reply within five business days.

Sincerely,

(Your Name)



## MEDICAL RECORDS ACCESS ACT

### Act 47 of 2004

AN ACT 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.

**History:** 2004, Act 47, Imd. Eff. Apr. 1, 2004

*The People of the State of Michigan enact:*

#### **333.26261 Short title.**

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

**History:** 2004, Act 47, Imd. Eff. Apr. 1, 2004

#### **333.26263 Definitions.**

Sec. 3. As used in this act:

(a) "Authorized representative" means any of the following:

(i) 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 this act.

(ii) If the patient is deceased, any of the following:

(A) His or her personal representative.

(B) His or her heirs at law including, but not limited to, his or her spouse.

(C) The beneficiary of the patient's life insurance policy, to the extent provided by section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(iii) For the purpose of obtaining a copy of an autopsy report regarding a deceased patient, any of the following:

(A) The deceased patient's heirs at law including, but not limited to, the deceased patient's spouse.

(B) The deceased patient's personal representative.

(C) The beneficiary of the deceased patient's life insurance policy, to the extent provided by section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(b) "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor.

(c) "Guardian" means an individual who is appointed under section 5306 of the estates and protected individuals code, 1998 PA 386, MCL 700.5306, to the extent that the scope of the guardianship includes the authority to act on the individual's behalf with regard to his or her health care. Guardian includes an individual who is appointed as the guardian of a minor under section 5202 or 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5202 and 700.5204, or under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, to the extent that the scope of the guardianship includes the authority to act on the individual's behalf with regard to his or her health care.

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

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

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

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

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

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

(j) "Medical records company" means a person who stores, locates, or copies medical records for a health care provider or health facility under a contract or agreement with that health care provider or health facility and charges a fee for providing medical records to a patient or his or her authorized representative for that health care provider or health facility.

(k) "Medically indigent individual" means that term as defined in section 106 of the social welfare act, 1939 PA 280, MCL 400.106.

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

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

(n) "Patient" means an individual who receives or has received health care from a health care provider or health facility. Patient includes a guardian, if appointed, and a parent, guardian, or person acting in loco parentis, if the individual is a minor, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting in loco parentis, in which case the minor has the exclusive right to exercise the rights of a patient under this act with respect to those medical records relating to that care.

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

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

(q) "Third party payer" means a public or private health care payment or benefits program including, but not limited to, all of the following:

- (i) A health insurer.
- (ii) A nonprofit health care corporation.
- (iii) A health maintenance organization.
- (iv) A preferred provider organization.
- (v) A nonprofit dental care corporation.
- (vi) Medicaid or Medicare.

**History:** 2004, Act 47, Imd. Eff. Apr. 1, 2004 ;-- Am. 2008, Act 124, Imd. Eff. May 9, 2008

### **333.26265 Request by authorized individual to examine or obtain medical record; response by health care provider or facility; extension of response time.**

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

(2) An individual authorized under subsection (1) who wishes to examine or obtain a copy of the patient's medical record shall submit a written request that is signed and dated by that individual not more than 60 days before being submitted to the health care provider or health facility that maintains the medical record that is the subject of the request. Upon receipt of a request under this subsection, a health care provider or health facility shall, as promptly as required under the circumstances, but not later than 30 days after receipt of the request or if the medical record is not maintained or accessible on-site not later than 60 days after receipt of the request, do 1 or more of the following:

(a) Make the medical record available for inspection or copying, or both, at the health care provider's or health 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 his or her authorized representative.

(b) If the health care provider or health facility has contracted with another person or medical records company to maintain the health care provider's or health facility's medical records, the health care provider or health facility shall transmit a request made under this subsection to the person or medical records company maintaining the medical records. The health care provider or health facility shall retrieve the medical record from the person or medical records company maintaining the medical records and comply with subdivision (a) or shall require the person or medical records company that maintains that medical record to comply with subdivision (a).

(c) Inform the patient or his or her authorized representative if the medical record does not exist or cannot be found.

(d) If the health care provider or health facility to which the request is directed does not maintain the medical record requested and does not have a contract with another person or medical records company as described in subdivision (b), so inform the patient or his or her authorized representative and provide the name and address, if known, of the health care provider or health facility that maintains the medical records.

(e) If the health care provider or health facility determines that disclosure of the requested medical record is likely to have an adverse effect on the patient, the health care provider or health facility shall provide a clear statement supporting that determination and provide the medical record to another health care provider, health facility, or legal counsel designated by the patient or his or her authorized representative.

(f) If the health care provider or health facility receives a request for a medical record that was obtained from someone other than a health care provider or health facility under a confidentiality agreement, the health care provider or health facility may deny access to that medical record if access to that medical record would be reasonably likely to reveal the source of the information. If the health care provider or health facility denies access under this subdivision, it shall provide the patient or his or her authorized representative with a written denial.

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

(3) If the health care provider, health facility, or medical records company is unable to take action as required under subsection (2) and the health care provider, health facility, or medical records company provides the patient with a written statement indicating the reasons for its delay within the required time period, the health care provider, health facility, or medical records company may extend the response time for no more than 30 days. A health care provider, health facility, or medical records company may only extend the response time once per request under this subsection.

**History:** 2004, Act 47, Imd. Eff. Apr. 1, 2004

### **333.26267 Inquiry as to purpose prohibited.**

Sec. 7.

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

**History:** 2004, Act 47, Imd. Eff. Apr. 1, 2004

### **333.26269 Fee.**

Sec. 9. (1) Except as otherwise provided in this section, if a patient or his or her authorized representative makes a request for a copy of all or part of his or her medical record under section 5, the health care provider, health facility, or medical records company to which the request is directed may charge the patient or his or her authorized representative a fee that is not more than the following amounts:

(a) An initial fee of \$20.00 per request for a copy of the record.

(b) Paper copies as follows:

(i) One dollar per page for the first 20 pages.

(ii) Fifty cents per page for pages 21 through 50.

(iii) Twenty cents for pages 51 and over.

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

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

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

(2) A health care provider, health facility, or medical records company may refuse to retrieve or copy all or part of a medical record for a patient or his or her authorized representative until the applicable fee is paid.

(3) A health care provider, health facility, or medical records company shall not charge a fee for retrieving, copying, or mailing all or part of a medical record other than a fee allowed under subsection (1). Except as otherwise provided in subsection (4), a health care provider, health facility, or medical records company shall waive all fees for a medically indigent individual. The health care provider, health facility, or medical records company may require the patient or his or her authorized representative to provide proof that the patient is a recipient of assistance as described in this subsection.

(4) A medically indigent individual that receives copies of medical records at no charge under subsection (3) is limited to 1 set of copies per health care provider, health facility, or medical records company. Any additional requests for the same

records from the same health care provider, health facility, or medical records company shall be subject to the fee provisions under subsection (1).

(5) Notwithstanding subsection (1), a health care provider, health facility, or medical records company shall not charge a patient an initial fee for his or her medical record.

(6) Beginning 2 years after the effective date of this act, the department of community health shall adjust on an annual basis the fees prescribed by subsection (1) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index.

**History:** 2004, Act 47, Imd. Eff. Apr. 1, 2004

**333.26271 Applicability of act to third party payer.**

Sec. 11.

This act does not apply to copies of medical records provided to a third party payer, insurer as defined in section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106, or self-funded plan.

**History:** 2004, Act 47, Imd. Eff. Apr. 1, 2004