

ABUSE REPORTING UNDER MICHIGAN STATE LAW AND HIPAA

I. CHILD CUSTODY ACT

A. Parents Right to Records and Information: MCL 722.30

1. Notwithstanding any other law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless prohibited by protective order.
 - HIPAA Counterpart: 164.502(g)(2) and 164.502(g)(3)
 - Both state law and the Rule apply because the Rule defers to state law regarding disclosures to parents, guardians and person acting in *loco parentis*.

II. CHILD PROTECTION LAW

a. Abuse and Neglect Reporting: MCL 722.623

1. Providers of health care, educational, social or mental health services with reasonable cause to suspect child abuse or neglect shall immediately report to the FIA.
 - HIPAA Counterpart: 164.512(a)(1); 164.512(b)(1)(ii); and 164.512(j)
 - Both state law and the Rule apply because:
 - (1) State law requires reporting of child abuse and the Rule defers to state law with respect to reporting obligations (160.203(c)).
 - (2) Rule also permits disclosure without consent or authorization in cases of child abuse and to avert serious threat of harm.
2. FIA may provide copies of written report to prosecuting attorney and probate court. Local law enforcement agency shall provide credible written report to FIA.
 - HIPAA Counterpart: None – FIA and local law agency are not covered entities
 - State law applies.

3. Staff of hospital, agency, or school shall not be dismissed or penalized for making a suspected abuse report or cooperate with an investigation.
 - HIPAA Counterpart: 164.530(g)
 - State law and the Rule apply because each prohibits retaliation against whistleblowers.

b. Abuse and Neglect Reporting Involving Alcohol or Controlled Substances: MCL 722.623a

1. In addition to above, a person is required to report suspected child abuse or neglect and who knows, or has reasonable cause to suspect that a newborn infant has any amount of alcohol or controlled substance, unless for medical treatment.
 - HIPAA Counterparts: 164.512(a)(1); and 164.512(b)(1)(ii)
 - Both state law and the Rule apply because Rule defers to state law, and the Rule permits disclosure without consent, so no consent needed.

c. Protection of Identity of Person Reporting Child Abuse: MCL 722.625

1. Except for records available under the FIA Central Registry, the identity of a person reporting child abuse is confidential, and cannot be released without consent of that person or judicial process.
 - HIPAA Counterpart: None
 - State law applies

d. Detention of Abused or Neglected Child by Hospital: MCL 722.626

1. If a child is suspected of being abused or neglected is admitted or brought to an outpatient department and attending physician determines release would endanger the child, the physician must notify person in charge at hospital and FIA.
 - HIPAA Counterpart: 164.512(a)(1); 164.512(b)(1)(ii); and 164.512(j)
 - Both state law and the Rule apply because rule defers to state law, and the Rule permits disclosure without consent or authorization.

e. FIA Central Registry and Release, Amendment and Expunction of Central Registry Records: MCL 722.627

1. FIA shall maintain a statewide, electronic central registry to carry out the intent of the Child Protection Law.
 - HIPAA Counterpart: None
 - State law applies because no Rule counterpart exists, and the FIA is not a covered entity.

III. PUBLIC HEALTH CODE

a. Mistreatment of Nursing Home Patients: MCL 333.21771

1. Nursing home employees aware of abuse or neglect must report to nursing home administrator and administrator must report to MDCH.
 - HIPAA Counterparts: 164.512(a); 164.512(b)(1)(i); 164.512(b)(1)(ii); 164.512(c); 164.512(d).
 - Both state law and HIPAA apply because the rule permits disclosure without consent or authorization: as required by law; for abuse or neglect reporting; health oversight; and public health purposes and state law requires disclosure.
2. Nursing home administrator may not retaliate against a patient, a patient's representative, or an employee who makes a complaint.
 - HIPAA Counterpart: None (only for reporting violations of the rule)
 - State law applies because no Rule counterpart exists precluding retaliation for reporting abuse.

IV. SOCIAL WELFARE ACT

a. Reporting of Suspected Abuse of Adults: MCL 400.11a

1. Health care providers, law enforcement, medical examiner employees and service providers, and employees of agencies providing health care, educational, social welfare mental health and other human service must report suspected abuse, neglect, or exploitation to the FIA.
 - HIPAA Counterparts: 164.512(a); 164.512(b)(1)(ii); 164.512(c); 164.512(d); 164.512(j).
 - State law and Rule apply if reporter is a covered entity because state law and the Rule permit disclosure without consent or authorization: as required by law; for abuse or neglect reporting; health oversight; and public health purposes.
2. Report of suspected adult abuse made by a physician is not considered a violation of any legally recognized privileged communication.
 - HIPAA Counterpart: None
 - State Law Applies because no Rule counterpart exists regarding privileged communications.

b. Confidentiality of Identity of Reporter MCL 400.11c

1. Identity of person making a report shall be confidential, subject to persons consent or judicial process.
 - HIPAA Counterpart: None
 - State law applies because no Rule counterpart exists regarding identity of a person making a report of abuse.