

CHAPTER 217

AN ACT concerning access to medical records and supplementing Titles 26 and 45 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.26:2H-5n Hospital to provide medical, billing records; fees.

1. a. Except as provided in subsection d. of this section, if a patient of a general, special, or psychiatric hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), the patient's legally authorized representative, or an authorized third party requests, in writing, a copy of the patient's medical or billing records, or both, the hospital shall provide a legible paper or electronic reproduction of the requested records within the dates requested to the patient, the patient's legally authorized representative, or the authorized third party within 30 days of the request, in accordance with the following:

(1) (a) For a request by a patient or the patient's legally authorized representative for a medical or billing record that is not stored on microfilm or microfiche, the fee for reproducing the record shall not exceed \$1 per page or \$100 per individual admission record for the first 100 pages, whichever is less. For medical and billing records that are not stored on microfilm or microfiche that contain more than 100 pages, a reproduction fee of no more than \$0.25 per page may be charged for pages in excess of the first 100 pages, up to a maximum of \$200 for each request. For medical and billing records stored on microfilm or microfiche, the fee for reproducing the record shall be \$1.50 per image, up to a maximum of \$200 for each request;

(b) For a request by an authorized third party, the fee for reproducing medical and billing records that are not stored on microfilm or microfiche shall be no more than \$1 per page, and the fee for reproducing records stored on microfilm or microfiche shall be \$1.50 per image; and

(c) If a patient requests a copy of the patient's own medical records in accordance with the federal "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, the requirements provided under 45 C.F.R. 164.524(b) with respect to the time required to respond to such requests and the applicable fees shall apply.

(2) Delivery of an electronic reproduction of a patient's medical or billing record shall be required only if:

- (a) the entire request can be reproduced from an electronic health record system;
- (b) the record is specifically requested to be delivered in electronic format; and
- (c) the record can be delivered electronically.

(3) In addition to per-page fees, a hospital shall apply the following charges:

(a) a search fee of no more than \$10 per request; provided that no search fee shall be charged to a patient who is requesting the patient's own record. If a search fee may be charged under this subparagraph, the fee shall apply even if no medical or billing records are found as a result of the search;

(b) a fee for the reproduction of x-rays or any other material that cannot be routinely copied or duplicated on a commercial photocopy machine, which shall be no more than \$15 per printed image or \$30 per compact disc (CD) or digital video disc (DVD), plus an administrative fee of \$10;

(c) a fee for certification of a copy of a medical and billing record of no more than \$10 per certification; and

(d) costs for delivering records in any medium, plus sales tax, if applicable.

(4) The fees established in this subsection shall be charged for electronic reproductions as well as paper copies of medical and billing records.

(5) The hospital shall establish a policy assuring access to copies of medical and billing records for patients who do not have the ability to pay for the copies.

(6) The hospital shall establish a fee policy providing an incentive for the use of abstracts or summaries of medical records; however, a patient, a patient's legally authorized representative, or an authorized third party shall have the right to receive a full or certified copy of the medical record.

b. Access to a copy of a patient's medical record shall be limited only to the extent necessary to protect the patient. The patient's attending physician shall provide a verbal explanation for any denial of access to the patient, legally authorized representative, or authorized third party, and shall document the denial and explanation in the medical record. In the event that direct access to a copy by the patient is medically contraindicated, as documented by a physician in the patient's medical record, the hospital shall not limit access to the record to a legally authorized representative of the patient, an authorized third party, or the patient's attending physician.

c. A hospital shall not assess any fees or charges for a copy of a patient's medical and billing records as provided herein other than those provided for in this section.

d. The fees authorized by this section shall not be imposed on:

(1) A patient who does not have the ability to pay and who presents either: (a) a statement certifying to annual income at or below 250 percent of the federal poverty level; or (b) proof of eligibility for, or enrollment in, a State or federal assistance program including, but not limited to: the federal Supplemental Nutrition Assistance Program established pursuant to the "Food and Nutrition Act of 2008," Pub.L.110-246 (7 U.S.C. s.2011 et seq.); the federal Supplemental Security Income program established pursuant to Title XVI of the federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1381 et seq.); the National School Lunch Program established pursuant to the "Richard B. Russell National School Lunch Act," Pub.L.79-396 (42 U.S.C. s.1751 et seq.); the federal special supplemental food program for women, infants, and children established pursuant to Pub.L.95-627 (42 U.S.C. s.1786); the State Medicaid program established pursuant to the "New Jersey Medical Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.); the NJ FamilyCare Program established pursuant to the "Family Health Care Coverage Act," P.L.2005, c.156 (C.30:4J-8 et al.); the Work First New Jersey program established pursuant to the "Work First New Jersey Act," P.L.1997, c.38 (C.44:10-55 et seq.); the New Jersey Supplementary Food Stamp Program established pursuant to the "New Jersey Supplementary Food Stamp Program Act," P.L.1998, c.32 (C.44:10-79 et seq.); any successor program; or any other State or federal assistance program now or hereafter established by law;

(2) A not-for-profit corporation indicating in writing that it is representing a patient; or

(3) An attorney representing a patient on a pro bono basis, provided that the attorney submits with the request a certification that the attorney is representing the patient on a pro bono basis. An attorney representing a patient on a contingency fee basis shall be assessed the ordinary fees to obtain a copy of the patient's medical and billing records.

e. As used in this section:

"Authorized third party" means a third party with a valid authorization, subpoena, legal process, or court order granting access to a patient's medical or billing records.

"Legally authorized representative" means: the patient's spouse, domestic partner, or civil union partner; the patient's immediate next of kin; the patient's legal guardian; the patient's attorney; the patient's third party insurer; or the patient's worker's compensation carrier, if the carrier is authorized to access to the patient's treatment or billing records by contract or law, provided that access by a worker's compensation carrier shall be limited only to that portion of

the treatment or billing record that is relevant to the specific work-related incident at issue in the worker's compensation claim.

C.45:9-22.27 Health care professional to provide copies of treatment, billing records; fees.

2. A person licensed to practice a health care profession regulated by the State Board of Medical Examiners shall provide copies of professional treatment and billing records, including treatment records from other health care providers that are part of a patient's record, to a patient, the patient's legally authorized representative, or an authorized third party in accordance with the following:

a. No later than 30 days after receipt of a request from a patient, a patient's legally authorized representative, or an authorized third party, the licensee shall provide an electronic copy or photocopy of the professional treatment records, billing records, or both, as requested. The record shall include all pertinent, objective data, including test results and x-ray results, as applicable, and subjective information.

b. Unless otherwise required by law, a licensee may elect to provide a summary of the record in lieu of providing the electronic copy or photocopy required pursuant to subsection a. of this section, provided that the summary adequately reflects the patient's history and treatment. A licensee may charge a reasonable fee for the preparation of a summary that has been provided in lieu of the actual record, which shall not exceed the cost that would be charged for the actual record pursuant to subsection d. of this section; however, a patient, a patient's legally authorized representative, or an authorized third party shall have the right to receive a full or certified copy of the patient's treatment record. The fee for certification shall be no more than \$10 per certification.

c. If, in the exercise of the licensee's professional judgment, a licensee has reason to believe that the patient's mental or physical condition will be adversely affected upon being made aware of the subjective information contained in the professional treatment record or a summary of the record, the licensee may refuse to provide the record or summary to the patient. The licensee shall include in the record a notice setting forth the reasons for the original refusal. The licensee shall, however, provide a copy of the record or summary upon request to:

- (1) the patient's attorney;
- (2) another licensed health care professional;
- (3) the patient's health insurance carrier through an employee thereof;
- (4) a governmental reimbursement program or an agent thereof, with responsibility to review utilization or quality of care; or
- (5) an authorized third party.

d. A licensee may require a record request to be in writing and, except as provided in subsection j. of this section, may charge a fee for:

(1) (a) A request by a patient or a patient's legally authorized representative for the reproduction of patient treatment and billing records, which shall be no more than \$1 per page or \$200 for the entire record, whichever is less, except that, for records stored on microfilm or microfiche, the reproduction fee shall be no more than \$1.50 per image or \$200 for the entire record, whichever is less; and

(b) A request by an authorized third party for the reproduction of patient treatment and billing records, which shall be no more than \$1 per page or, in the case of records stored on microfilm or microfiche, no more than \$1.50 per image;

(2) The reproduction of x-rays or any other material within a patient treatment record that cannot be routinely copied or duplicated on a commercial photocopy machine, which shall be no

more than \$15 per printed image or \$30 per compact disc (CD) or digital video disc (DVD), plus an administrative fee of \$10;

(3) A search for records, which search fee shall be no more than \$10 per request; provided that no search fee shall be charged to a patient requesting the patient's own records. A search fee that may be charged pursuant to this paragraph shall apply even if no individual treatment or billing record is found as a result of the search; and

(4) The costs for delivering records in any medium, plus sales tax, if applicable.

A licensee shall not assess any fees or charges for a copy of a patient's treatment or billing records as provided herein other than those provided for in this section.

e. The fees established in subsection d. of this section shall be charged for electronic copies as well as paper copies of treatment and billing records.

f. Delivery of an electronic copy of a patient treatment or billing record to the requestor shall be required only if: (1) the entire request can be reproduced from an electronic health record system; (2) the record is specifically requested to be delivered in electronic format; and (3) the record can be delivered electronically.

g. A licensee shall not charge a patient for a copy of the patient's treatment or billing record when:

(1) the licensee has affirmatively terminated a patient from practice in accordance with the requirements of N.J.A.C.13:35-6.22; or

(2) the licensee leaves a practice that the licensee was formerly a member of, or associated with, and the patient requests that the patient's medical care continue to be provided by that licensee.

h. If the patient or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the licensee shall provide a transcription or translation, as applicable, at no cost to the patient.

i. The licensee shall not refuse to provide a professional treatment record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

j. The fees authorized by this section shall not be imposed on:

(1) A patient who does not have the ability to pay and who presents either: (a) a statement certifying to annual income at or below 250 percent of the federal poverty level; or (b) proof of eligibility for, or enrollment in, a State or federal assistance program including, but not limited to: the federal Supplemental Nutrition Assistance Program established pursuant to the "Food and Nutrition Act of 2008," Pub.L.110-246 (7 U.S.C. s.2011 et seq.); the federal Supplemental Security Income program established pursuant to Title XVI of the federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1381 et seq.); the National School Lunch Program established pursuant to the "Richard B. Russell National School Lunch Act," Pub.L.79-396 (42 U.S.C. s.1751 et seq.); the federal special supplemental food program for women, infants, and children established pursuant to Pub.L.95-627 (42 U.S.C. s.1786); the State Medicaid program established pursuant to the "New Jersey Medical Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.); the NJ FamilyCare Program established pursuant to the "Family Health Care Coverage Act," P.L.2005, c.156 (C.30:4J-8 et al.); the Work First New Jersey program established pursuant to the "Work First New Jersey Act," P.L.1997, c.38 (C.44:10-55 et seq.); the New Jersey Supplementary Food Stamp Program established pursuant to the "New Jersey Supplementary Food Stamp Program Act," P.L.1998, c.32 (C.44:10-79 et seq.); any successor program; or any other State or federal assistance program now or hereafter established by law;

(2) A not-for-profit corporation indicating in writing that it is representing a patient; or

(3) An attorney representing a patient on a pro bono basis, provided that the attorney submits with the request a certification that the attorney is representing the patient on a pro bono basis. An attorney representing a patient on a contingency fee basis shall be assessed the ordinary fees to obtain a copy of the patient's records.

k. As used in this section:

"Authorized third party" means a third party with a valid authorization, subpoena, or court order granting access to a patient's treatment or billing records.

"Legally authorized representative" means: the patient's spouse, domestic partner, or civil union partner; the patient's immediate next of kin; the patient's legal guardian; the patient's attorney; the patient's third party insurer; or the patient's worker's compensation carrier, if the carrier is authorized to access to the patient's treatment or billing records by contract or law, provided that access by a worker's compensation carrier shall be limited only to that portion of the treatment or billing record that is relevant to the specific work-related incident at issue in the worker's compensation claim.

3. The Commissioner of Health and the State Board of Medical Examiners, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations as necessary to effectuate the purposes of this act.

4. This act shall take effect on the first day of the seventh month next following the date of enactment, except that the Commissioner of Health and the State Board of Medical Examiners may take such anticipatory administrative action in advance thereof as may be necessary for the implementation of this act.

Approved August 9, 2019.