

# ASSEMBLY, No. 5369

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 16, 2019

**Sponsored by:**

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**District 31 (Hudson)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

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**District 18 (Middlesex)**

**SYNOPSIS**

“Patient Protection Act”; establishes requirements concerning the transfer and referral of certain patients receiving health care services.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/21/2019)**

1   **AN ACT** concerning the transfer and referral of certain patients  
2   receiving health care services, designated as the “Patient  
3   Protection Act,” and supplementing Title 26 of the Revised  
4   Statutes.

5  
6   **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7   *of New Jersey:*

8  
9   1. The Legislature finds and declares that:

10   a. Despite existing State and federal laws and regulations to  
11   protect consumers from certain surprise out-of-network charges,  
12   additional disclosures are needed to ensure transparency when  
13   accessing healthcare from out-of-State health care facilities and  
14   health care providers.

15   b. Out-of-network charges continue to pose problems for health  
16   care consumers who access health care services in New Jersey but  
17   are then transferred or referred to health care facilities or providers  
18   located outside the State of New Jersey. Many consumers are  
19   surprised to receive bills for hospital procedures or for charges from  
20   providers after receiving out-of-State care.

21   c. Therefore, it is in the public interest to enhance consumer  
22   protections by ensuring consumers are empowered to make  
23   appropriate health care choices for themselves and their families  
24   prior to being transferred or referred to health care facilities or  
25   health care providers located outside the State of New Jersey.

26

27   2. a. Notwithstanding any provision of law to the contrary,  
28   prior to obtaining consent to transfer a patient to a health care  
29   facility located outside the State, a health care professional licensed  
30   or certified pursuant to Title 45 of the Revised Statutes shall  
31   provide the patient, in writing and in a manner that is easily  
32   understood, the following information, the provision of which shall  
33   be documented in the patient record:

34   (1) the patient’s right to receive medical care at a health care  
35   facility of the patient’s choosing;

36   (2) the clinical basis for the patient’s proposed transfer to a  
37   health care facility located outside the State;

38   (3) the availability of clinically-appropriate services at health  
39   care facilities within the State or a determination no such clinically-  
40   appropriate services are available in the State;

41   (4) the location of the out-of-State facility;

42   (5) in the case of a:

43   (a) trauma-related diagnosis, a determination as to why the  
44   patient is not being transferred to a Level 1 or Level 2 trauma center  
45   in the State;

46   (b) stroke-related diagnosis, a determination as to why the  
47   patient is not being transferred to a designated certified  
48   comprehensive or primary stroke center in the State; and

1 (c) cardiovascular-related diagnosis, a determination as to why  
2 the patient is not being transferred to a licensed New Jersey cardiac  
3 surgery center; and  
4 (6) if the health care facility is affiliated with the out-of-State  
5 facility, the nature of the relationship between the facilities.  
6 b. (1) Prior to transferring the patient to a health care facility  
7 outside the State, a health care facility licensed pursuant to  
8 P.L.1971, c.136 (C.26:2H-1 et seq.) shall notify:  
9 (a) the patient's health insurance carrier or self-funded health  
10 benefits plan sponsor of the pending transfer and facilitate  
11 communication between the patient and the patient's insurance  
12 carrier concerning:  
13 (i) the network status of the health care facility located outside  
14 the State and whether the specific medical services provided by that  
15 health care facility are covered under the patient's health benefits  
16 plan; and  
17 (ii) any estimated out-of-pocket costs the patient would incur as  
18 the result of being transferred to a health care facility located  
19 outside the State; and  
20 (b) the Department of Health, on a quarterly basis and in form  
21 and manner to be determined by the department, of each transfer  
22 and the clinical necessity or other reason for the transfer.  
23 (2) A health care facility that has been unable to notify a  
24 patient's health insurance carrier or self-funded health benefits plan  
25 sponsor shall be deemed in compliance with paragraph (1) of this  
26 subsection if a health care professional who determines it is  
27 necessary to transfer a patient to a health care facility outside the  
28 State certifies that the notification required pursuant to subsection a.  
29 of this section has been made.  
30 c. Prior to referring a patient to a licensed health care  
31 professional not located in the State, a health care professional  
32 licensed or certified pursuant to Title 45 of the Revised Statutes  
33 shall provide the patient, in writing and in a manner that is easily  
34 understood, the following information, which shall be documented  
35 in the patient record:  
36 (1) the patient's right to receive medical care from a licensed  
37 health care professional of the patient's choosing;  
38 (2) the clinical basis for the patient's proposed referral to a  
39 health care professional not located in the State, and the location of  
40 the out-of-State health care professional's office; and  
41 (3) whether clinically-appropriate services provided by a health  
42 care professional licensed or certified pursuant to Title 45 of the  
43 Revised Statutes are available in the State;  
44 (4) if the referring health care professional is affiliated with the  
45 licensed health care professional not located in the State to whom  
46 the patient is to be referred, the nature of the relationship between  
47 the professionals.

- 1 d. (1) Prior to referring a patient to a health care professional
- 2 not located in the State, a health care professional licensed or
- 3 certified pursuant to Title 45 of the Revised Statutes shall notify:
- 4 (a) the patient's health insurance carrier or self-funded health
- 5 benefits plan sponsor of the pending referral in a form and manner
- 6 prescribed by the Department of Banking and Insurance, and
- 7 facilitate communication between the patient and the insurance
- 8 carrier concerning:
- 9 (i) the network status of the out-of-State health care
- 10 professional and whether the specific medical services provided by
- 11 that health care professional are covered under the patient's health
- 12 benefits plan; and
- 13 (ii) any estimated out-of-pocket costs the patient would incur as
- 14 the result of being referred to the out-of-State health care
- 15 professional; and
- 16 (b) the State licensing board having jurisdiction over the health
- 17 care professional, on a quarterly basis and in a form and manner to
- 18 be determined by the licensing board, of each referral and the
- 19 clinical necessity or other reasons for the referral concerning a
- 20 referral by the health care professional. The licensing board shall
- 21 forward the form to the Division of Consumer Affairs in the
- 22 Department of Law and Public Safety.
- 23 e. (1) The Department of Health shall post on its Internet
- 24 website, at least annually, information on the number of :
- 25 (a) patients transferred by each health care facility licensed
- 26 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) to a health care
- 27 facility located outside the State, along with the services provided
- 28 to transferred patients and the clinical basis for such transfers; and
- 29 (b) complaints received by the department regarding patient
- 30 transfers by health care facilities licensed pursuant to P.L.1971,
- 31 c.136 (C.26:2H-1 et seq.) to health care facilities located outside the
- 32 State.
- 33 (2) The Division of Consumer Affairs shall post on its Internet
- 34 website, at least annually, information on the number of:
- 35 (a) patients referrals by health care professionals licensed in the
- 36 State pursuant to Title 45 of the Revised Statutes to licensed health
- 37 care professionals not located in the State; and
- 38 (b) complaints received by the division regarding patient
- 39 referrals by health care professionals licensed or certified pursuant
- 40 to Title 45 of the Revised Statutes to out-of-State health care
- 41 professionals.
- 42 f. In the case of a patient in need of pediatric care, a health
- 43 care facility or a health care professional providing such services
- 44 shall be exempt from the requirements of this act.
- 45 g. As used in this section, "health benefits plan" means a
- 46 benefits plan which pays or provides hospital and medical expense
- 47 benefits and other health care services for covered services, and is
- 48 delivered or issued for delivery in this State by or through a carrier,

1 or an employer or third party administrator that pays hospital and  
2 medical benefits. For the purposes of this act, “health benefits  
3 plan” shall not include the following plans, policies or contracts:  
4 Medicaid, Medicare, Medicare Advantage, accident only, credit,  
5 disability, long-term care, TRICARE supplement coverage,  
6 coverage arising out of a workers' compensation or similar law,  
7 automobile medical payment insurance, personal injury protection  
8 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), a  
9 dental plan as defined pursuant to section 1 of P.L.2014, c.70  
10 (C.26:2S-26), and hospital confinement indemnity coverage.

11  
12 3. If any provision of this act or any particular application  
13 thereof is found to be unconstitutional or invalid, the provision or  
14 application shall be deemed severable, and the unconstitutionality  
15 or invalidity of such provision or application shall not affect other  
16 provisions or applications thereof.

17  
18 4. The Department of Health, pursuant to the “Administrative  
19 Procedures Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt  
20 rules and regulations necessary for the implementation of this act.

21  
22 5. This act shall take effect immediately.

23

24

25 STATEMENT

26

27 This bill, designated as the “Patient Protection Act,” requires  
28 health care professionals, prior to obtaining consent to transfer a  
29 patient to a health care facility located outside the State, to provide  
30 the patient, in writing and in a manner that is easily understood, the  
31 following information, which is to be documented in the patient  
32 record: the patient’s right to receive medical care at a health care  
33 facility of the patient’s choosing; the clinical basis for the patient’s  
34 proposed transfer to a health care facility located outside the State;  
35 the availability of clinically-appropriate services at health care  
36 facilities within the State or a determination that no such clinically-  
37 appropriate services are available in the State; in the case of a  
38 trauma-related, stroke-related, or cardiovascular-related diagnosis, a  
39 determination as to why the patient is not being transferred to a  
40 Level 1 or Level 2 trauma center, designated certified  
41 comprehensive or primary stroke center, or a licensed State cardiac  
42 surgery center in the State, as appropriate; and if the health care  
43 facility is affiliated with the out-of-State facility, the nature of the  
44 relationship between the facilities.

45 In addition, the health care professional would be required to  
46 notify: the patient’s health insurance carrier or self-funded health  
47 benefits plan sponsor of the pending transfer, and facilitate  
48 communication between the patient and the patient’s carrier

1 concerning: the network status of the health care facility located  
2 outside the State and whether the specific medical services provided  
3 by that health care facility are covered under the patient's health  
4 benefits plan; and any estimated out-of-pocket costs the patient  
5 would incur as the result of being transferred to a health care  
6 facility located outside the State; and the Department of Health  
7 (DOH), on a quarterly basis and in form and manner to be  
8 determined by the department, of each transfer and the clinical  
9 necessity or other reason for the transfer.

10 The bill also requires that, prior to referring a patient to an out-  
11 of-State health care professional, a health care professional licensed  
12 or certified in the State pursuant to Title 45 of the Revised Statutes  
13 would be required to provide the patient, in writing and in a manner  
14 that is easily understood, the following information, which would  
15 be documented in the patient record: the patient's right to receive  
16 medical care from a health care professional of the patient's  
17 choosing; the clinical basis for the patient's proposed referral to an  
18 out-of-State health care professional; the location of the out-of-  
19 State health care professional's office; whether clinically-  
20 appropriate services from an in-State health care professional are  
21 available; and, if the referring health care professional is affiliated  
22 with the out-of-State health care professional to whom the patient is  
23 to be referred, the nature of the relationship between the two  
24 professionals.

25 In addition, the health care professional seeking to make the  
26 referral would be required to notify: the patient's health insurance  
27 carrier or self-funded health benefits plan sponsor of the pending  
28 transfer in a form and manner prescribed by Department of Banking  
29 and Insurance, and facilitate communication between the patient  
30 and the health benefits plan concerning: the network status of the  
31 out-of-State health care professional and whether the specific  
32 medical services provided by that health care professional are  
33 covered under the patient's health benefits plan; any estimated out-  
34 of-pocket costs the patient would incur as the result of being  
35 referred to an out-of-State health care professional; and the State  
36 licensing board having jurisdiction over the professional seeking to  
37 make the referral, on a quarterly basis and in form and manner to be  
38 determined by the licensing board, of each referral and the clinical  
39 necessity or other reasons for the referral. The licensing board  
40 would then forward the form to the Division of Consumer Affairs  
41 (DCA) in the Department of Law and Public Safety.

42 Under the bill, a health care professional that transfers a patient  
43 to an out-of-State health care facility without an opportunity to  
44 notify the patient's health insurance carrier would be required to  
45 certify that the referring health care facility is in compliance with  
46 the bill's notification provisions. The certification would be  
47 included in the patient record and made available to DOH or DCA,  
48 as applicable, for inspection upon request.

1       The bill mandates DOH and DCA, as applicable, to post on their  
2       respective Internet websites information, at least annually, on the  
3       number of: patients transferred by each health care facility to an  
4       out-of-State health care facility and the services provided to those  
5       patients; the number of patients referred by in-State health care  
6       professionals to out-of-State health care professionals by specialty  
7       and the clinical basis for patient transfers and referrals; and the  
8       number of complaints received by DOH or DCA regarding patient  
9       transfers to out-of-State health care facilities and professionals.

10       The bill also stipulates that, in the case of a patient in need of  
11       pediatric care, a health care facility or a health care professional  
12       providing such services would be exempt from the requirements of  
13       the bill.

14       As defined in the bill, “health benefits plan” means a benefits  
15       plan which pays or provides hospital and medical expense benefits  
16       and other health care services for covered services, and is delivered  
17       or issued for delivery in this State by or through a carrier, or an  
18       employer or third party administrator that pays hospital and medical  
19       benefits but would not include, Medicare, Medicare Advantage,  
20       accident only, credit, disability, long-term care, TRICARE  
21       supplement coverage, coverage arising out of a workers'  
22       compensation or similar law, automobile medical payment  
23       insurance, personal injury protection insurance issued pursuant to  
24       P.L.1972, c.70 (C.39:6A-1 et seq.), a dental plan as defined  
25       pursuant to section 1 of P.L.2014, c.70 (C.26:2S-26), and hospital  
26       confinement indemnity coverage.