

[Third Reprint]

ASSEMBLY, No. 5369

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 16, 2019

Sponsored by:

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District 31 (Hudson)

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District 37 (Bergen)

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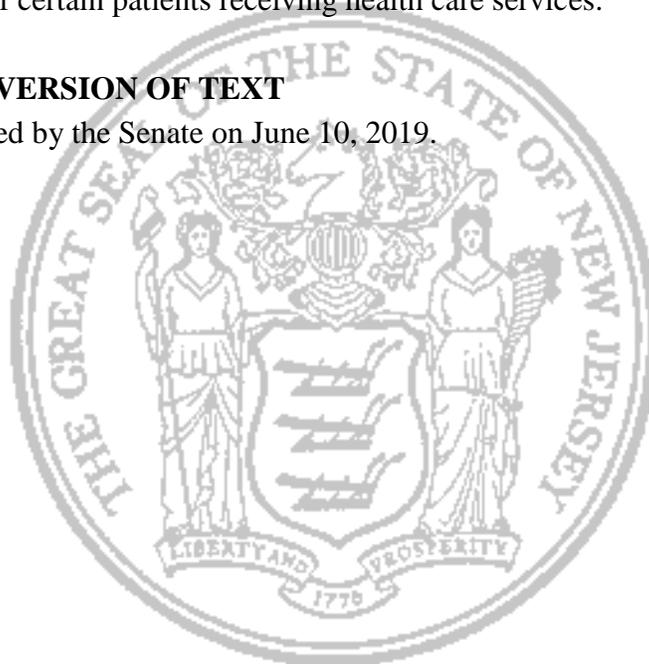
**Assemblyman Benson, Assemblywoman McKnight, Assemblymen
Conaway, Mukherji, Assemblywomen Jasey and Downey**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on June 10, 2019.



(Sponsorship Updated As Of: 5/24/2019)

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, ²**[a]** the² health care professional
30 ²**[licensed or certified pursuant to Title 45 of the Revised Statutes]**
31 seeking to transfer the patient to an out-of-State health care facility²
32 shall provide the patient, in writing and in a manner that is easily
33 understood, the following information, the provision of which shall
34 be documented in the patient record:

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

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

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

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

43 (5) in the case of a:

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted May 20, 2019.

²Senate SHH committee amendments adopted June 3, 2019.

³Senate floor amendments adopted June 10, 2019.

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

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

7 (c) cardiovascular-related diagnosis, a determination as to why
8 the patient is not being transferred to a licensed New Jersey cardiac
9 surgery center; and

10 (6) if the health care facility is affiliated with the out-of-State
11 facility, the nature of the relationship between the facilities.

12 ³If the patient is unconscious or otherwise lacks the capacity to
13 make health care decisions, the health care professional shall
14 provide the information to the patient's designated next of kin,
15 patient advocate, or legally authorized representative, as
16 appropriate; except that, if the patient's designated next of kin,
17 patient advocate, or legally authorized representative is unknown or
18 if it is determined, after best efforts to contact the designated next
19 of kin, patient advocate, or legally authorized representative, that
20 the designated next of kin, patient advocate, or legally authorized
21 representative is unavailable, the requirement to provide the
22 information required pursuant to this subsection shall be deemed to
23 be waived and the transfer of the patient to the out-of-State facility
24 shall be deemed to be authorized.³

25 b. (1) Prior to transferring the patient to a health care facility
26 ²located² outside the State, a health care facility licensed pursuant
27 to P.L.1971, c.136 (C.26:2H-1 et seq.) shall notify ²[:

28 (a)]² the patient's health insurance carrier or self-funded health
29 benefits plan sponsor of the pending transfer and facilitate
30 communication between the patient and the patient's insurance
31 carrier concerning:

32 ²[(i)] (a)² the network status of the health care facility located
33 outside the State and whether the specific medical services provided
34 by that health care facility are covered under the patient's health
35 benefits plan; and

36 ²[(ii)] (b)² any estimated out-of-pocket costs the patient would
37 incur as the result of being transferred to a health care facility
38 located outside the State ¹]; and

39 (b) the Department of Health, on a quarterly basis and in form
40 and manner to be determined by the department, of each transfer
41 and the clinical necessity or other reason for the transfer]¹ .

42 (2) A health care facility that ²[has been] ²is² unable to notify a
43 patient's health insurance carrier or self-funded health benefits plan
44 sponsor shall be deemed in compliance with paragraph (1) of this
45 subsection if a health care professional who determines it is
46 necessary to transfer a patient to a health care facility outside the
47 State certifies that the notification required pursuant to subsection a.

1 of this section has been made. ³If the patient is unconscious or
2 otherwise lacks the capacity to make health care decisions, the
3 health care professional shall certify that the notification was
4 provided to the patient's designated next of kin, patient advocate, or
5 legally authorized representative, as applicable, or that the patient's
6 designated next of kin, patient advocate, or legally authorized
7 representative is unknown or was determined to be unavailable.³

8 c. Prior to referring a patient to a licensed health care
9 professional ²[not located in] or a health care facility located
10 outside² the State, a health care professional licensed or certified
11 pursuant to Title 45 of the Revised Statutes shall provide the patient,
12 in writing and in a manner that is easily understood, the following
13 information, which shall be documented in the patient record:

14 (1) the patient's right to receive medical care from a licensed
15 health care professional ²or health care facility² of the patient's
16 choosing;

17 (2) the clinical basis for the patient's proposed referral to a
18 health care professional ²[not located in] or health care facility
19 located outside² the State, and the location of the out-of-State health
20 care professional's office ²or out-of-State health care facility²;
21 ²[and]²

22 (3) whether clinically-appropriate services provided by a health
23 care professional licensed or certified pursuant to Title 45 of the
24 Revised States are available in the State; ²and²

25 (4) if the referring health care professional is affiliated with the
26 licensed health care professional ²[not located in] or health care
27 facility located outside² the State to whom the patient is to be
28 referred, the nature of the relationship between the professionals²or
29 the professional and the facility² .

30 d. ²[(1)]² Prior to referring a patient to a health care
31 professional ²[not located in] or health care facility located
32 outside² the State, a health care professional licensed or certified
33 pursuant to Title 45 of the Revised Statutes shall notify ²[:

34 (a)² the patient's health insurance carrier or self-funded health
35 benefits plan sponsor of the pending referral in a form and manner
36 prescribed by the Department of Banking and Insurance, and
37 facilitate communication between the patient and the insurance
38 carrier concerning:

39 ²[(i)] (1)² the network status of the out-of-State health care
40 professional ²or health care facility² and whether the specific
41 medical services provided by that health care professional ²or
42 health care facility² are covered under the patient's health benefits
43 plan; and

- 1 ²[(ii)] (2)² any estimated out-of-pocket costs the patient would
2 incur as the result of being referred to the out-of-State health care
3 professional ¹]; and
- 4 (b) the State licensing board having jurisdiction over the health
5 care professional, on a quarterly basis and in a form and manner to
6 be determined by the licensing board, of each referral and the
7 clinical necessity or other reasons for the referral concerning a
8 referral by the health care professional. The licensing board shall
9 forward the form to the Division of Consumer Affairs in the
10 Department of Law and Public Safety¹ ²or health care facility².
- 11 e. (1) The Department of Health shall post on its Internet
12 website, ²and update² at least annually, information on the number
13 of:
- 14 (a) patients transferred by each health care facility licensed
15 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) to a health care
16 facility located outside the State, along with ²[the services provided
17 to transferred patients and]² the clinical basis for such transfers;
18 and
- 19 (b) complaints received by the department regarding patient
20 transfers by health care facilities licensed pursuant to P.L.1971,
21 c.136 (C.26:2H-1 et seq.) to health care facilities located outside the
22 State.
- 23 (2) The Division of Consumer Affairs ²in the Department of
24 Law and Public Safety² shall post on its Internet website, ²and
25 update² at least annually, information on the number of:
- 26 (a) patients referrals by health care professionals licensed in the
27 State pursuant to Title 45 of the Revised Statutes to licensed health
28 care professionals ²[not located in] and health care facilities
29 located outside² the State; and
- 30 (b) complaints received by the division regarding patient
31 referrals by health care professionals licensed or certified pursuant
32 to Title 45 of the Revised Statutes to out-of-State health care
33 professionals ²and facilities².
- 34 f. In the case of a patient in need of pediatric care, a health
35 care facility or a health care professional providing such services
36 shall be exempt from the requirements of this act.
- 37 g. As used in this section, “health benefits plan” means a
38 benefits plan which pays or provides hospital and medical expense
39 benefits and other health care services for covered services, and is
40 delivered or issued for delivery in this State by or through a carrier,
41 or an employer or third party administrator that pays hospital and
42 medical benefits¹, including a benefits plan provided under the
43 State Health Benefits Program ²[.] pursuant to² P.L.1961, c.49
44 (C.52:14-17.25 et seq.) or the School Employees' Health Benefits
45 Program ²[Act.] pursuant to² sections 31 through 41 of P.L.2007,
46 c.103 (C.52:14-17.46.1 through C.52:14-17.46.11)¹. ²[For the

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

10
11 ¹3. a. A health care facility licensed pursuant to P.L.1971,
12 c.136 (C.26:2H-1 et seq.) shall notify the Department of Health, on
13 a quarterly basis and in a form and manner to be determined by the
14 department, of each ²[transfer] patient it transfers to a health care
15 facility located outside the State² and the clinical necessity or other
16 reason for the transfer.

17 b. A health care professional licensed or certified pursuant to
18 Title 45 of the Revised Statutes shall notify the Department of
19 Health, on a quarterly basis and in a form and manner to be
20 determined by the department, of each referral ²of a patient to a
21 health care professional or health care facility located outside the
22 State² and the clinical necessity or other reasons for the referral
23 ²[recommended by the health care professional]² . The Department
24 of Health shall forward ²[the form] each notification it receives
25 pursuant to this subsection² to the Division of Consumer Affairs in
26 the Department of Law and Public Safety.

27 c. The Department of Health shall make available to health
28 care facilities and health care professionals an electronic reporting
29 system ²[to facilitate the reporting] for the purpose of providing the
30 notice² required pursuant to subsections a. and b. of this section.¹

31
32 ¹[3.] 4.¹ If any provision of this act or any particular
33 application thereof is found to be unconstitutional or invalid, the
34 provision or application shall be deemed severable, and the
35 unconstitutionality or invalidity of such provision or application
36 shall not affect other provisions or applications thereof.

37
38 ¹[4.] 5.¹ The Department of Health ²and the Division of
39 Consumer Affairs in the Department of Law and Public Safety²,
40 pursuant to the “Administrative ²[Procedures] Procedure² Act,”
41 P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
42 regulations necessary for the implementation of this act.

43
44 ¹[5.] 6.¹ This act shall take effect immediately.