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

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

1. The Legislature finds and declares that:
   a. Despite existing State and federal laws and regulations to protect consumers from certain surprise out-of-network charges, additional disclosures are needed to ensure transparency when accessing healthcare from out-of-State health care facilities and health care providers.
   b. Out-of-network charges continue to pose problems for health care consumers who access health care services in New Jersey but are then transferred or referred to health care facilities or providers located outside the State of New Jersey. Many consumers are surprised to receive bills for hospital procedures or for charges from providers after receiving out-of-State care.
   c. Therefore, it is in the public interest to enhance consumer protections by ensuring consumers are empowered to make appropriate health care choices for themselves and their families prior to being transferred or referred to health care facilities or health care providers located outside the State of New Jersey.

2. a. Notwithstanding any provision of law to the contrary, prior to obtaining consent to transfer a patient to a health care facility located outside the State, the health care professional seeking to transfer the patient to an out-of-State health care facility shall provide the patient, in writing and in a manner that is easily understood, the following information, the provision of which shall be documented in the patient record:
   (1) the patient’s right to receive medical care at a health care facility of the patient’s choosing;
   (2) the clinical basis for the patient’s proposed transfer to a health care facility located outside the State;
   (3) the availability of clinically-appropriate services at health care facilities within the State or a determination no such clinically-appropriate services are available in the State;
   (4) the location of the out-of-State facility;
   (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.
(a) trauma-related diagnosis, a determination as to why the patient is not being transferred to a Level 1 or Level 2 trauma center in the State;
(b) stroke-related diagnosis, a determination as to why the patient is not being transferred to a designated certified comprehensive or primary stroke center in the State; and
(c) cardiovascular-related diagnosis, a determination as to why the patient is not being transferred to a licensed New Jersey cardiac surgery center; and
(6) if the health care facility is affiliated with the out-of-State facility, the nature of the relationship between the facilities.

If the patient is unconscious or otherwise lacks the capacity to make health care decisions, the health care professional shall provide the information to the patient’s designated next of kin, patient advocate, or legally authorized representative, as appropriate; except that, if the patient’s designated next of kin, patient advocate, or legally authorized representative is unknown or if it is determined, after best efforts to contact the designated next of kin, patient advocate, or legally authorized representative is unavailable, the requirement to provide the information required pursuant to this subsection shall be deemed to be waived and the transfer of the patient to the out-of-State facility shall be deemed to be authorized.3

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

(a) the patient’s health insurance carrier or self-funded health benefits plan sponsor of the pending transfer and facilitate communication between the patient and the patient’s insurance carrier concerning:

(i) the network status of the health care facility located outside the State and whether the specific medical services provided by that health care facility are covered under the patient’s health benefits plan; and

(ii) any estimated out-of-pocket costs the patient would incur as the result of being transferred to a health care facility located outside the State; and

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

(2) A health care facility that has been unable to notify a patient’s health insurance carrier or self-funded health benefits plan sponsor shall be deemed in compliance with paragraph (1) of this subsection if a health care professional who determines it is necessary to transfer a patient to a health care facility outside the State certifies that the notification required pursuant to subsection a.
of this section has been made. If the patient is unconscious or otherwise lacks the capacity to make health care decisions, the health care professional shall certify that the notification was provided to the patient’s designated next of kin, patient advocate, or legally authorized representative, as applicable, or that the patient’s designated next of kin, patient advocate, or legally authorized representative is unknown or was determined to be unavailable.

c. Prior to referring a patient to a licensed health care professional or a health care facility located outside the State, a health care professional licensed or certified pursuant to Title 45 of the Revised Statutes shall provide the patient, in writing and in a manner that is easily understood, the following information, which shall be documented in the patient record:

1. the patient’s right to receive medical care from a licensed health care professional or health care facility of the patient’s choosing;
2. the clinical basis for the patient’s proposed referral to a health care professional or health care facility located outside the State, and the location of the out-of-State health care professional’s office or out-of-State health care facility; and
3. whether clinically-appropriate services provided by a health care professional or health care facility located outside the State are available in the State; and
4. if the referring health care professional is affiliated with the licensed health care professional or health care facility located outside the State to whom the patient is to be referred, the nature of the relationship between the professionals or the professional and the facility.

d. Prior to referring a patient to a health care professional or a health care facility located outside the State, a health care professional licensed or certified pursuant to Title 45 of the Revised Statutes shall notify:

1. the patient’s health insurance carrier or self-funded health benefits plan sponsor of the pending referral in a form and manner prescribed by the Department of Banking and Insurance, and facilitate communication between the patient and the insurance carrier concerning:

1. the network status of the out-of-State health care professional or health care facility and whether the specific medical services provided by that health care professional or health care facility are covered under the patient’s health benefits plan; and
any estimated out-of-pocket costs the patient would incur as the result of being referred to the out-of-State health care professional; and

(b) the State licensing board having jurisdiction over the health care professional, on a quarterly basis and in a form and manner to be determined by the licensing board, of each referral and the clinical necessity or other reasons for the referral concerning a referral by the health care professional. The licensing board shall forward the form to the Division of Consumer Affairs in the Department of Law and Public Safety or health care facility.

e. (1) The Department of Health shall post on its Internet website and update at least annually, information on the number of:

(a) patients transferred by each health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) to a health care facility located outside the State, along with the services provided to transferred patients and the clinical basis for such transfers; and

(b) complaints received by the department regarding patient transfers by health care facilities licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) to health care facilities located outside the State.

(2) The Division of Consumer Affairs in the Department of Law and Public Safety shall post on its Internet website and update at least annually, information on the number of:

(a) patients referrals by health care professionals licensed in the State pursuant to Title 45 of the Revised Statutes to licensed health care professionals not located in and health care facilities located outside the State; and

(b) complaints received by the division regarding patient referrals by health care professionals licensed or certified pursuant to Title 45 of the Revised Statutes to out-of-State health care professionals and facilities.

f. In the case of a patient in need of pediatric care, a health care facility or a health care professional providing such services shall be exempt from the requirements of this act.

g. As used in this section, “health benefits plan” means a benefits plan which pays or provides hospital and medical expense benefits and other health care services for covered services, and is delivered or issued for delivery in this State by or through a carrier, or an employer or third party administrator that pays hospital and medical benefits, including a benefits plan provided under the State Health Benefits Program pursuant to P.L.1961, c.49 (C.52:14-17.25 et seq.) or the School Employees’ Health Benefits Program pursuant to sections 31 through 41 of P.L.2007, c.103 (C.52:14-17.46.1 through C.52:14-17.46.11).
purposes of this act, “health benefits plan” shall not include the following plans, policies or contracts: Medicaid, Medicare, Medicare Advantage, accident only, credit, disability, long-term care, TRICARE supplement coverage, coverage arising out of a workers’ compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), a dental plan as defined pursuant to section 1 of P.L.2014, c.70 (C.26:2S-26), and hospital confinement indemnity coverage.]¹²

³. a. A health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall notify the Department of Health, on a quarterly basis and in a form and manner to be determined by the department, of each patient it transfers to a health care facility located outside the State and the clinical necessity or other reason for the transfer.

b. A health care professional licensed or certified pursuant to Title 45 of the Revised Statutes shall notify the Department of Health, on a quarterly basis and in a form and manner to be determined by the department, of each referral of a patient to a health care professional or health care facility located outside the State and the clinical necessity or other reasons for the referral recommended by the health care professional. The Department of Health shall forward each notification it receives pursuant to this subsection to the Division of Consumer Affairs in the Department of Law and Public Safety.

c. The Department of Health shall make available to health care facilities and health care professionals an electronic reporting system to facilitate the reporting for the purpose of providing the notice required pursuant to subsections a. and b. of this section.¹³

⁴. If any provision of this act or any particular application thereof is found to be unconstitutional or invalid, the provision or application shall be deemed severable, and the unconstitutionality or invalidity of such provision or application shall not affect other provisions or applications thereof.

⁵. The Department of Health and the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary for the implementation of this act.

⁶. This act shall take effect immediately.