

[First Reprint]

SENATE, No. 984

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JANUARY 16, 2018

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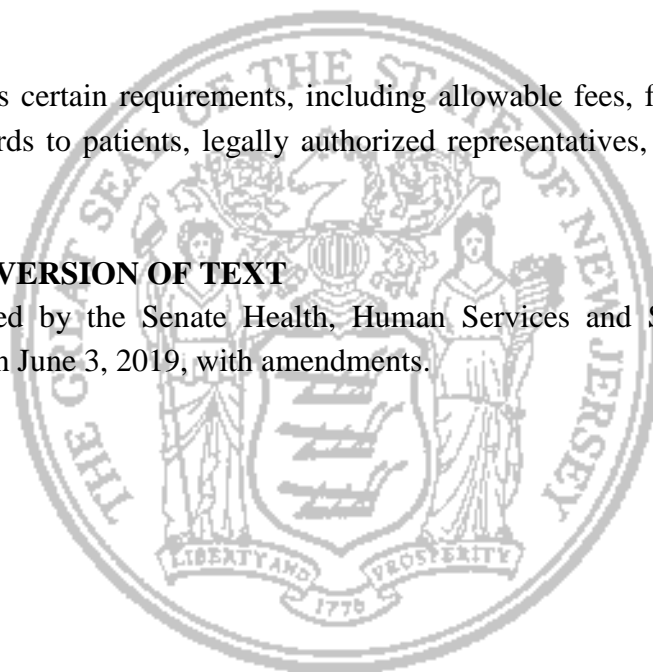
Assemblywoman Jones

SYNOPSIS

Establishes certain requirements, including allowable fees, for provision of medical records to patients, legally authorized representatives, and authorized third parties.

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee on June 3, 2019, with amendments.



(Sponsorship Updated As Of: 6/21/2019)

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

3

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

6

7 1. a. Except as provided in subsection d. of this section, if a
8 patient of a general, special, or psychiatric hospital licensed pursuant
9 to P.L.1971, c.136 (C.26:2H-1 et seq.), the patient's legally authorized
10 representative, or an authorized third party requests, in writing, a copy
11 of the patient's medical ¹**[record]** or billing records, or both¹, the
12 hospital shall provide a legible paper or electronic reproduction of the
13 ¹**[medical record from each individual admission]** requested records¹
14 within the dates requested to the patient, the patient's legally
15 authorized representative, or the authorized third party within 30 days
16 of the request, in accordance with the following:

17 (1) (a) For a request by a patient or the patient's legally authorized
18 representative for ¹**[an individual admission]** a medical or billing¹
19 record that is not stored on microfilm or microfiche¹, the fee for
20 reproducing the record shall not exceed \$1 per page or \$100 per
21 individual admission record for the first 100 pages, whichever is less.
22 For ¹**[individual admission]** medical and billing¹ records that ¹are not
23 stored on microfilm or microfiche that¹ contain more than 100 pages, a
24 ¹**[copying]** reproduction¹ fee of no more than \$0.25 per page may be
25 charged for pages in excess of the first 100 pages, up to a maximum of
26 \$200 for each ¹**[admission record; and]** request. For medical and
27 billing records stored on microfilm or microfiche, the fee for
28 reproducing the record shall be \$1.50 per image, up to a maximum of
29 \$200 for each request;¹

30 (b) For a request by an authorized third party, the fee for
31 reproducing ¹**[an individual admission record]** medical and billing
32 records that are not stored on microfilm or microfiche¹ shall be no
33 more than \$1 per page ¹, and the fee for reproducing records stored on
34 microfilm or microfiche shall be \$1.50 per image; and

35 (c) If a patient requests a copy of the patient's own medical
36 records in accordance with the federal "Health Insurance Portability
37 and Accountability Act of 1996," Pub.L.104-191, the requirements
38 provided under 45 C.F.R. 164.524(b) with respect to the time required
39 to respond to such requests and the applicable fees shall apply¹.

40 (2) Delivery of an electronic reproduction of a patient's medical
41 ¹or billing¹ record shall be required only if:

42 (a) the entire request can be reproduced from an electronic health
43 record system;

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:

¹Senate SHH committee amendments adopted June 3, 2019.

- 1 (b) the ¹~~["medical"]~~¹ record is specifically requested to be delivered
2 in electronic format; and
- 3 (c) the ¹~~["medical"]~~¹ record can be delivered electronically.
- 4 (3) In addition to per-page fees, a hospital shall apply the
5 following charges:
- 6 (a) a search fee of no more than \$10 per request ¹~~["~~. Although the
7 patient may have had more than one admission, and thus more than
8 one individual admission record is provided, only one search fee shall
9 be charged for each request¹ ; provided that no search fee shall be
10 charged to a patient who is requesting the patient's own record¹ .
11 ¹~~["The"]~~ If a¹ search fee ¹may be charged under this subparagraph, the
12 fee¹ shall apply even if no ¹~~["individual admission record is"]~~ medical
13 or billing records are¹ found as a result of the search;
- 14 (b) a fee for the reproduction of x-rays or any other material
15 ¹~~["within an individual admission record"]~~¹ that cannot be routinely
16 copied or duplicated on a commercial photocopy machine, which shall
17 be no more than ¹~~["the actual cost of the duplication of the materials"]~~
18 \$15 per printed image or \$30 per compact disc (CD) or digital video
19 disc (DVD)¹ , plus an administrative fee of ¹~~["the lesser of \$10 or 10~~
20 percent of that cost. The actual cost of duplication shall include: cost
21 of materials; time spent by office personnel for retrieving, duplicating,
22 and refiling the materials; and overhead costs¹] \$10¹;
- 23 (c) a fee for certification of a copy of a medical ¹and billing¹
24 record of no more than \$10 per certification; and
- 25 (d) costs for delivering records in any medium, plus sales tax, if
26 applicable.
- 27 (4) The fees established in this subsection shall be charged for
28 electronic reproductions as well as paper copies of medical ¹and
29 billing¹ records.
- 30 (5) The hospital shall establish a policy assuring access to copies
31 of medical ¹and billing¹ records for patients who do not have the
32 ability to pay for the copies.
- 33 (6) The hospital shall establish a fee policy providing an incentive
34 for the use of abstracts or summaries of medical records; however, a
35 patient, a patient's legally authorized representative, or an authorized
36 third party shall have the right to receive a full or certified copy of the
37 medical record.
- 38 ¹~~["(7) As used in P.L. , c. (C.) (pending before the~~
39 Legislature as this act), "legally authorized representative" means the
40 following:
- 41 (a) the patient's spouse, domestic partner, or civil union partner;
42 (b) the patient's immediate next of kin;
43 (c) the patient's legal guardian;
44 (d) the patient's attorney;
45 (e) the patient's third party insurer; or

1 (f) the patient's worker's compensation carrier, where access is
2 permitted by contract or law, but limited only to that portion of the
3 medical record that is relevant to the specific work-related incident at
4 issue in the worker's compensation claim.

5 (8) As used in P.L. , c. (C.) (pending before the
6 Legislature as this act), "authorized third party" shall mean a third
7 party with a valid authorization, subpoena, or court order granting
8 access to a patient's medical records.】¹

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

19 c. A hospital shall not assess any fees or charges for a copy of a
20 patient's medical ¹【records】 and billing records¹ as provided herein
21 other than those provided for in this section.

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

23 (1) A patient who does not have the ability to pay and who
24 presents either: (a) a statement certifying to annual income at or below
25 250 percent of the federal poverty level; or (b) proof of eligibility for,
26 or enrollment in, a State or federal assistance program including, but
27 not limited to: the federal Supplemental Nutrition Assistance Program
28 established pursuant to the "Food and Nutrition Act of 2008,"
29 Pub.L.110-246 (7 U.S.C. s.2011 et seq.); the federal Supplemental
30 Security Income program established pursuant to Title XVI of the
31 federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1381 et seq.);
32 the National School Lunch Program established pursuant to the
33 "Richard B. Russell National School Lunch Act," Pub.L.79-396 (42
34 U.S.C. s.1751 et seq.); the federal special supplemental food program
35 for women, infants, and children established pursuant to Pub.L.95-627
36 (42 U.S.C. s.1786); the State Medicaid program established pursuant
37 to the "New Jersey Medical Assistance and Health Services Act,"
38 P.L.1968, c.413 (C.30:4D-1 et seq.); the NJ FamilyCare Program
39 established pursuant to the "Family Health Care Coverage Act,"
40 P.L.2005, c.156 (C.30:4J-8 et al.); the Work First New Jersey program
41 established pursuant to the "Work First New Jersey Act," P.L.1997,
42 c.38 (C.44:10-55 et seq.); the New Jersey Supplementary Food Stamp
43 Program established pursuant to the "New Jersey Supplementary Food
44 Stamp Program Act," P.L.1998, c.32 (C.44:10-79 et seq.); any
45 successor program; or any other State or federal assistance program
46 now or hereafter established by law;

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

1 (3) An attorney representing a patient on a pro bono basis,
2 provided that the attorney submits with the request a certification that
3 the attorney is representing the patient on a pro bono basis. An
4 attorney representing a patient on a contingency fee basis shall be
5 assessed the ordinary fees to obtain a copy of the patient's ¹medical
6 and billing¹ records.

7 ¹e. As used in this section:

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

11 "Legally authorized representative" means: the patient's spouse,
12 domestic partner, or civil union partner; the patient's immediate next
13 of kin; the patient's legal guardian; the patient's attorney; the patient's
14 third party insurer; or the patient's worker's compensation carrier, if
15 the carrier is authorized to access to the patient's treatment or billing
16 records by contract or law, provided that access by a worker's
17 compensation carrier shall be limited only to that portion of the
18 treatment or billing record that is relevant to the specific work-related
19 incident at issue in the worker's compensation claim.¹

20
21 2. A person licensed to practice a health care profession regulated
22 by the State Board of Medical Examiners shall provide copies of
23 professional treatment ¹and billing¹ records, including ¹treatment¹
24 records from other health care providers that are part of a patient's
25 record, to a patient, the patient's ¹legally¹ authorized representative, or
26 an authorized third party in accordance with the following:

27 a. No later than 30 days ¹**【from】** after¹ receipt of a request from a
28 patient, a patient's ¹legally¹ authorized representative, or an authorized
29 third party, the licensee shall provide an electronic copy or photocopy
30 of the professional treatment records, billing records, or both, as
31 requested. The record shall include all pertinent, objective data,
32 including test results and x-ray results, as applicable, and subjective
33 information.

34 b. Unless otherwise required by law, a licensee may elect to
35 provide a summary of the record in lieu of providing the electronic
36 copy or photocopy required pursuant to subsection a. of this section,
37 ¹**【so long as that】** provided that the¹ summary adequately reflects the
38 patient's history and treatment. A licensee may charge a reasonable
39 fee for the preparation of a summary that has been provided in lieu of
40 the actual record, which shall not exceed the cost that would be
41 charged for the actual record pursuant to subsection d. of this section;
42 however, a patient, a patient's legally authorized representative, or an
43 authorized third party shall have the right to receive a full or certified
44 copy of the ¹**【medical】** patient's treatment¹ record. The fee for
45 certification shall be no more than \$10 per certification.

46 c. If, in the exercise of the licensee's professional judgment, a
47 licensee has reason to believe that the patient's mental or physical

1 condition will be adversely affected upon being made aware of the
2 subjective information contained in the professional treatment record
3 or a summary of the record, the licensee may refuse to provide the
4 record or summary to the patient. The licensee shall include in the
5 record a notice setting forth the reasons for the original refusal. The
6 licensee shall, however, provide a copy of the record or summary upon
7 request to:

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

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

18 (1) (a) A request by a patient or a patient's legally authorized
19 representative for the reproduction of patient ¹treatment and billing¹
20 records, which shall be no more than \$1 per page or \$200 for the entire
21 record, whichever is less ¹, except that, for records stored on microfilm
22 or microfiche, the reproduction fee shall be no more than \$1.50 per
23 image or \$200 for the entire record, whichever is less¹; and

24 (b) A request by an authorized third party for the reproduction of
25 patient ¹treatment and billing¹ records, which shall be no more than \$1
26 per page ¹or, in the case of records stored on microfilm or microfiche,
27 no more than \$1.50 per image¹;

28 (2) The reproduction of x-rays or any other material within a
29 patient ¹treatment¹ record that cannot be routinely copied or duplicated
30 on a commercial photocopy machine, which shall be no more than
31 ¹the actual cost of the duplication of the materials, plus an
32 administrative fee of the lesser of \$10 or 10 percent of that cost. The
33 actual cost of duplication shall include: cost of materials; time spent
34 by office personnel for retrieving, duplicating, and refiling the
35 materials; and overhead costs ¹\$15 per printed image or \$30 per
36 compact disc (CD) or digital video disc (DVD), plus an administrative
37 fee of \$10¹;

38 (3) A search for records ¹the search ¹, which search¹ fee shall
39 be no more than \$10 per request ¹the search ¹. Although the patient may have
40 had more than one admission, and thus more than one individual
41 admission record is provided, only one search fee shall be charged for
42 each request. The ¹; provided that no search fee shall be charged to a
43 patient requesting the patient's own records. A¹ search fee ¹that may
44 be charged pursuant to this paragraph¹ shall apply even if no
45 individual ¹admission ¹treatment or billing¹ record is found as a
46 result of the search; and

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

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

6 e. The fees established in subsection d. of this section shall be
7 charged for electronic copies as well as paper copies of **'[medical]**
8 treatment and billing' records.

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

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

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

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

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

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

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

31 (1) A patient who does not have the ability to pay and who
32 presents either: (a) a statement certifying to annual income at or below
33 250 percent of the federal poverty level; or (b) proof of eligibility for,
34 or enrollment in, a State or federal assistance program including, but
35 not limited to: the federal Supplemental Nutrition Assistance Program
36 established pursuant to the "Food and Nutrition Act of 2008,"
37 Pub.L.110-246 (7 U.S.C. s.2011 et seq.); the federal Supplemental
38 Security Income program established pursuant to Title XVI of the
39 federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1381 et seq.);
40 the National School Lunch Program established pursuant to the
41 "Richard B. Russell National School Lunch Act," Pub.L.79-396 (42
42 U.S.C. s.1751 et seq.); the federal special supplemental food program
43 for women, infants, and children established pursuant to Pub.L.95-627
44 (42 U.S.C. s.1786); the State Medicaid program established pursuant
45 to the "New Jersey Medical Assistance and Health Services Act,"
46 P.L.1968, c.413 (C.30:4D-1 et seq.); the NJ FamilyCare Program
47 established pursuant to the "Family Health Care Coverage Act,"

1 P.L.2005, c.156 (C.30:4J-8 et al.); the Work First New Jersey program
2 established pursuant to the "Work First New Jersey Act," P.L.1997,
3 c.38 (C.44:10-55 et seq.); the New Jersey Supplementary Food Stamp
4 Program established pursuant to the "New Jersey Supplementary Food
5 Stamp Program Act," P.L.1998, c.32 (C.44:10-79 et seq.); any
6 successor program; or any other State or federal assistance program
7 now or hereafter established by law;

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

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

15 ¹k. As used in this section:

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

19 "Legally authorized representative" means: the patient's spouse,
20 domestic partner, or civil union partner; the patient's immediate next
21 of kin; the patient's legal guardian; the patient's attorney; the patient's
22 third party insurer; or the patient's worker's compensation carrier, if
23 the carrier is authorized to access to the patient's treatment or billing
24 records by contract or law, provided that access by a worker's
25 compensation carrier shall be limited only to that portion of the
26 treatment or billing record that is relevant to the specific work-related
27 incident at issue in the worker's compensation claim.¹

28

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

33

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