

[Second Reprint]

SENATE, No. 2893

STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Establishes requirements for copies of medical and billing records to be provided without charge to Social Security Disability benefits applicants and recipients.

CURRENT VERSION OF TEXT

As amended by the Senate on June 21, 2021.



1 AN ACT concerning patient records and amending P.L.2019, c.217.

2

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

5

6 1. Section 1 of P.L.2019, c.217 (C.26:2H-5n) is amended to read
7 as follows:

8 1. a. Except as provided in subsection d. of this section, if a
9 patient of a general, special, or psychiatric hospital licensed pursuant
10 to P.L.1971, c.136 (C.26:2H-1 et seq.), the patient's legally authorized
11 representative, or an authorized third party requests, in writing, a copy
12 of the patient's medical or billing records, or both, the hospital shall
13 provide a legible paper or electronic reproduction of the requested
14 records 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 a medical or billing record that is not stored on
19 microfilm or microfiche, the fee for reproducing the record shall not
20 exceed \$1 per page or \$100 per individual admission record for the
21 first 100 pages, whichever is less. For medical and billing records that
22 are not stored on microfilm or microfiche that contain more than 100
23 pages, a reproduction fee of no more than \$0.25 per page may be
24 charged for pages in excess of the first 100 pages, up to a maximum of
25 \$200 for each request. For medical and billing records stored on
26 microfilm or microfiche, the fee for reproducing the record shall be
27 \$1.50 per image, up to a maximum of \$200 for each request;

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

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

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

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

42 (b) the record is specifically requested to be delivered in electronic
43 format; and

44 (c) the record can be delivered electronically.

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 May 6, 2021.

²Senate floor amendments adopted June 21, 2021.

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

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

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

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

15 (d) costs for delivering records in any medium, plus sales tax, if
16 applicable. ²Medical and billing records shall be delivered in the
17 manner specified by the requestor, which may include, but shall not be
18 limited to, mailing the record to any address or faxing the record to
19 any number specified by the requestor, including the requestor's
20 attorney.】²

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

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

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

32 ²(7) Subject to the requirements of paragraph (2) of this
33 subsection, medical and billing records shall be delivered in the
34 manner specified by the requestor, which may include, but shall not be
35 limited to, mailing the record to any address or faxing the record to
36 any number specified by the requestor, including the requestor's
37 attorney. Subject to the requirements of federal law, the method of
38 delivery specified by a requestor shall not affect the fees that would
39 ordinarily apply to the request under paragraphs (1) and (3) of this
40 subsection, subject to any policies established pursuant to paragraphs
41 (5) and (6) of this subsection and subject to the provisions of
42 subsections c. and d. of this section.²

43 b. Access to a copy of a patient's medical record shall be limited
44 only to the extent necessary to protect the patient. The patient's
45 attending physician shall provide a verbal explanation for any denial of
46 access to the patient, legally authorized representative, or authorized
47 third party, and shall document the denial and explanation in the
48 medical record. In the event that direct access to a copy by the patient

1 is medically contraindicated, as documented by a physician in the
2 patient's medical record, the hospital shall not limit access to the
3 record to a legally authorized representative of the patient, an
4 authorized third party, or the patient's attending physician.

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

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

9 (1) A patient who does not have the ability to pay and who
10 presents either: (a) a statement certifying to annual income at or below
11 250 percent of the federal poverty level; or (b) proof of eligibility for,
12 or enrollment in, a State or federal assistance program including, but
13 not limited to: the federal Supplemental Nutrition Assistance Program
14 established pursuant to the "Food and Nutrition Act of 2008,"
15 Pub.L.110-246 (7 U.S.C. s.2011 et seq.); the federal Supplemental
16 Security Income program established pursuant to Title XVI of the
17 federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1381 et seq.);
18 the National School Lunch Program established pursuant to the
19 "Richard B. Russell National School Lunch Act," Pub.L.79-396 (42
20 U.S.C. s.1751 et seq.); the federal special supplemental food program
21 for women, infants, and children established pursuant to Pub.L.95-627
22 (42 U.S.C. s.1786); the State Medicaid program established pursuant
23 to the "New Jersey Medical Assistance and Health Services Act,"
24 P.L.1968, c.413 (C.30:4D-1 et seq.); the NJ FamilyCare Program
25 established pursuant to the "Family Health Care Coverage Act,"
26 P.L.2005, c.156 (C.30:4J-8 et al.); the Work First New Jersey program
27 established pursuant to the "Work First New Jersey Act," P.L.1997,
28 c.38 (C.44:10-55 et seq.); the New Jersey Supplementary Food Stamp
29 Program established pursuant to the "New Jersey Supplementary Food
30 Stamp Program Act," P.L.1998, c.32 (C.44:10-79 et seq.); any
31 successor program; or any other State or federal assistance program
32 now or hereafter established by law;

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

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

41 (4) A patient ¹or an attorney representing a patient¹ who has a
42 pending application for, or is currently receiving, federal Social
43 Security disability benefits provided under Title II or Title XVI of the
44 federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1351 et al.).

45 e. As used in this section:

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

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

10 (cf: P.L.2019, c.217, s.1)

11
12 2. Section 2 of P.L.2019, c.217 (C.45:9-22.27) is amended to read
13 as follows:

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

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

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

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

47 (1) the patient's attorney;

48 (2) another licensed health care professional;

1 (3) the patient's health insurance carrier through an employee
2 thereof;

3 (4) a governmental reimbursement program or an agent thereof,
4 with responsibility to review utilization or quality of care; or

5 (5) an authorized third party.

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

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

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

19 (2) The reproduction of x-rays or any other material within a
20 patient treatment record that cannot be routinely copied or duplicated
21 on a commercial photocopy machine, which shall be no more than \$15
22 per printed image or \$30 per compact disc (CD) or digital video disc
23 (DVD), plus an administrative fee of \$10;

24 (3) A search for records, which search fee shall be no more than
25 \$10 per request; provided that no search fee shall be charged to a
26 patient requesting the patient's own records. A search fee that may be
27 charged pursuant to this paragraph shall apply even if no individual
28 treatment or billing record is found as a result of the search; and

29 (4) The costs for delivering records in any medium, plus sales tax,
30 if applicable. ²Medical and billing records shall be delivered in the
31 manner specified by the requestor, which may include, but shall not be
32 limited to, mailing the record to any address or faxing the record to
33 any number specified by the requestor, including the requestor's
34 attorney.】²

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

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

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

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

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

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

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

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

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

15 (1) A patient who does not have the ability to pay and who
16 presents either: (a) a statement certifying to annual income at or below
17 250 percent of the federal poverty level; or (b) proof of eligibility for,
18 or enrollment in, a State or federal assistance program including, but
19 not limited to: the federal Supplemental Nutrition Assistance Program
20 established pursuant to the "Food and Nutrition Act of 2008,"
21 Pub.L.110-246 (7 U.S.C. s.2011 et seq.); the federal Supplemental
22 Security Income program established pursuant to Title XVI of the
23 federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1381 et seq.);
24 the National School Lunch Program established pursuant to the
25 "Richard B. Russell National School Lunch Act," Pub.L.79-396 (42
26 U.S.C. s.1751 et seq.); the federal special supplemental food program
27 for women, infants, and children established pursuant to Pub.L.95-627
28 (42 U.S.C. s.1786); the State Medicaid program established pursuant
29 to the "New Jersey Medical Assistance and Health Services Act,"
30 P.L.1968, c.413 (C.30:4D-1 et seq.); the NJ FamilyCare Program
31 established pursuant to the "Family Health Care Coverage Act,"
32 P.L.2005, c.156 (C.30:4J-8 et al.); the Work First New Jersey program
33 established pursuant to the "Work First New Jersey Act," P.L.1997,
34 c.38 (C.44:10-55 et seq.); the New Jersey Supplementary Food Stamp
35 Program established pursuant to the "New Jersey Supplementary Food
36 Stamp Program Act," P.L.1998, c.32 (C.44:10-79 et seq.); any
37 successor program; or any other State or federal assistance program
38 now or hereafter established by law;

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

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

46 (4) A patient ¹or an attorney representing a patient¹ who has a
47 pending application for, or is currently receiving, federal Social

1 Security disability benefits provided under Title II or Title XVI of the
2 federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1351 et al.).

3 k. As used in this section:

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

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

16 ²1. Subject to the requirements of subsection f. of this section,
17 medical and billing records shall be delivered in the manner specified
18 by the requestor, which may include, but shall not be limited to,
19 mailing the record to any address or faxing the record to any number
20 specified by the requestor, including the requestor's attorney. Subject
21 to the requirements of federal law, the method of delivery specified by
22 a requestor shall not affect the fees that would ordinarily apply to the
23 request under subsections b. and d. of this section, subject to the
24 provisions of subsections g. and j. of this section.²

25 (cf: P.L.2019, c.217, s.2)

26

27 3. This act shall take effect immediately.