

ASSEMBLY, No. 858

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 31 (Hudson)

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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

Introduced Pending Technical Review by Legislative Counsel.



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

19 b. (1) Prior to transferring the patient to a health care facility
20 located outside the State, a health care facility licensed pursuant to
21 P.L.1971, c.136 (C.26:2H-1 et seq.) shall notify the patient's health
22 insurance carrier or self-funded health benefits plan sponsor of the
23 pending transfer and facilitate communication between the patient
24 and the patient's insurance carrier concerning:

25 (a) the network status of the health care facility located outside
26 the State and whether the specific medical services provided by that
27 health care facility are covered under the patient's health benefits
28 plan; and

29 (b) any estimated out-of-pocket costs the patient would incur as
30 the result of being transferred to a health care facility located
31 outside the State.

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

45 c. Prior to referring a patient to a licensed health care
46 professional or a health care facility located outside the State, a
47 health care professional licensed or certified pursuant to Title 45 of
48 the Revised Statutes shall provide the patient, in writing and in a

1 manner that is easily understood, the following information, which
2 shall be documented in the patient record:

3 (1) the patient's right to receive medical care from a licensed
4 health care professional or health care facility of the patient's
5 choosing;

6 (2) the clinical basis for the patient's proposed referral to a
7 health care professional or health care facility located outside the
8 State, and the location of the out-of-State health care professional's
9 office or out-of-State health care facility;

10 (3) whether clinically-appropriate services provided by a health
11 care professional licensed or certified pursuant to Title 45 of the
12 Revised Statutes are available in the State; and

13 (4) if the referring health care professional is affiliated with the
14 licensed health care professional or health care facility located
15 outside the State to whom the patient is to be referred, the nature of
16 the relationship between the professionals or the professional and
17 the facility.

18 d. Prior to referring a patient to a health care professional or
19 health care facility located outside the State, a health care
20 professional licensed or certified pursuant to Title 45 of the Revised
21 Statutes shall notify the patient's health insurance carrier or self-
22 funded health benefits plan sponsor of the pending referral in a
23 form and manner prescribed by the Department of Banking and
24 Insurance, and facilitate communication between the patient and the
25 insurance carrier concerning:

26 (1) the network status of the out-of-State health care
27 professional or health care facility and whether the specific medical
28 services provided by that health care professional or health care
29 facility are covered under the patient's health benefits plan; and

30 (2) any estimated out-of-pocket costs the patient would incur as
31 the result of being referred to the out-of-State health care
32 professional or health care facility.

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

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

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

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

46 (a) patients referrals by health care professionals licensed in the
47 State pursuant to Title 45 of the Revised Statutes to licensed health

1 care professionals and health care facilities located outside the
2 State; and

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

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

10 g. As used in this section, "health benefits plan" means a
11 benefits plan which pays or provides hospital and medical expense
12 benefits and other health care services for covered services, and is
13 delivered or issued for delivery in this State by or through a carrier,
14 or an employer or third party administrator that pays hospital and
15 medical benefits, including a benefits plan provided under the State
16 Health Benefits Program pursuant to P.L.1961, c.49 (C.52:14-
17 17.25 et seq.) or the School Employees' Health Benefits Program
18 pursuant to sections 31 through 41 of P.L.2007, c.103 (C.52:14-
19 17.46.1 through C.52:14-17.46.11).

20

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

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

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

40

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

46

47 5. The Department of Health and the Division of Consumer
48 Affairs in the Department of Law and Public Safety, pursuant to the

1 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
2 seq.), shall adopt rules and regulations necessary for the
3 implementation of this act.

4
5 6. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill, designated as the “Patient Protection Act,” requires
11 that, prior to obtaining consent to transfer a patient to a health care
12 facility located outside the State, the health care professional
13 seeking to transfer the patient to an out-of-State facility is to
14 provide the patient, in writing and in a manner that is easily
15 understood, the following information, which is to be documented
16 in the patient record: the patient’s right to receive medical care at a
17 health care facility of the patient’s choosing; the clinical basis for
18 the patient’s proposed transfer to an out-of-State facility; the
19 availability of clinically-appropriate services at health care facilities
20 within the State or a determination that no such clinically-
21 appropriate services are available in the State; in the case of a
22 trauma-related, stroke-related, or cardiovascular-related diagnosis, a
23 determination as to why the patient is not being transferred to a
24 Level 1 or Level 2 trauma center, designated certified
25 comprehensive or primary stroke center, or a licensed cardiac
26 surgery center in the State, as appropriate; and if the health care
27 facility is affiliated with the out-of-State facility, the nature of the
28 relationship between the facilities.

29 Under the bill, if a patient is unconscious or otherwise lacks the
30 capacity to make health care decisions, the health care professional
31 who is required to provide the information is to provide the
32 information to the patient’s designated next of kin, patient advocate, or
33 legally authorized representative, as appropriate. If the designated
34 next of kin, patient advocate, or legally authorized representative is
35 unknown or is unavailable after best efforts to contact that individual,
36 the requirement to provide the information will be deemed to be
37 waived and the transfer of the patient to the out-of-State facility will be
38 deemed to be authorized. The bill provides that, in the event that
39 notice cannot be provided to the patient’s health benefits plan prior to
40 the transfer, the health care professional who is required to provide the
41 notice is to certify that the required information was provided to the
42 patient’s designated next-of-kin, patient advocate, or legally
43 authorized representative, or that such individual was unknown or
44 unavailable.

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

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

11 Under the bill, a health care facility that transfers a patient to an
12 out-of-State health care facility without an opportunity to notify the
13 patient's health insurance carrier is to be required to certify that the
14 patient notice requirements under the bill have been met.

15 The bill also requires that, prior to referring a patient to an out-
16 of-State health care professional or health care facility, a health care
17 professional will be required to provide the patient, in writing and
18 in a manner that is easily understood, the following information,
19 which is to be documented in the patient record: the patient's right
20 to receive medical care from a health care professional or facility of
21 the patient's choosing; the clinical basis for the patient's proposed
22 referral to an out-of-State health care professional or health care
23 facility; the location of the out-of-State health care professional's
24 office or the location of the out-of-State facility; whether clinically-
25 appropriate services from an in-State health care professional or
26 facility are available; and, if the referring health care professional is
27 affiliated with the out-of-State health care professional or health
28 care facility to whom the patient is to be referred, the nature of the
29 relationship between the two professionals or the professional and
30 the facility.

31 In addition, the health care professional is to notify the DOH, on
32 a quarterly basis, of each referral and the clinical necessity or other
33 reasons for the referral. The DOH is to then forward each such
34 notification to the Division of Consumer Affairs (Division) in the
35 Department of Law and Public Safety.

36 The bill mandates DOH and the Division, as applicable, to post
37 on their respective Internet websites information, and update at least
38 annually, the number of: patients transferred by each health care
39 facility to an out-of-State health care facility and the services
40 provided to those patients; the number of patients referred by in-
41 State health care professionals to out-of-State health care
42 professionals or health care facilities by specialty and the clinical
43 basis for patient transfers and referrals; and the number of
44 complaints received by DOH or the Division regarding patient
45 transfers to out-of-State health care facilities.

46 The bill also stipulates that, in the case of a patient in need of
47 pediatric care, a health care facility or a health care professional

1 providing such services would be exempt from the requirements of
2 the bill.

3 The bill provides that the DOH is to make available an electronic
4 reporting system to health care professionals and health care
5 facilities to provide the notifications required under the bill.

6 As defined in the bill, “health benefits plan” means a benefits
7 plan which pays or provides hospital and medical expense benefits
8 and other health care services for covered services, and is delivered
9 or issued for delivery in this State by or through a carrier, or an
10 employer or third party administrator that pays hospital and medical
11 benefits, including a benefits plan provided under the State Health
12 Benefits Program, P.L.1961, c.49 (C.52:14-17.25 et seq.), or the
13 School Employees' Health Benefits Program, sections 31 through 41
14 of P.L.2007, c.103 (C.52:14-17.46.1 through C.52:14-17.46.11).