

ASSEMBLY, No. 4139

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 11, 2020

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Assemblywoman Jasey, Assemblyman Armato and Assemblywoman McKnight

SYNOPSIS

Requires copies of medical and billing records be provided without charge to Social Security Disability benefits applicants and recipients; requires records be delivered in manner specified by requestor.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/24/2020)

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
11 authorized representative, or an authorized third party requests, in
12 writing, a copy of the patient's medical or billing records, or both, the
13 hospital shall provide a legible paper or electronic reproduction of
14 the requested records within the dates requested to the patient, the
15 patient's legally authorized representative, or the authorized third
16 party within 30 days 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
22 that are not stored on microfilm or microfiche that contain more than
23 100 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
25 of \$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
31 fee for reproducing records stored on microfilm or microfiche shall
32 be \$1.50 per image; and

33 (c) If a patient requests a copy of the patient's own medical
34 records in accordance with the federal "Health Insurance Portability
35 and 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
37 required to respond to such requests and the applicable fees shall
38 apply.

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

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

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

45 (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.

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
7 a 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. Medical and billing records shall be delivered in the
17 manner specified by the requestor, which may include, but shall not
18 be limited to, mailing the record to any address or faxing the record
19 to any number specified by the requestor, including the requestor's
20 attorney.

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

32 b. Access to a copy of a patient's medical record shall be limited
33 only to the extent necessary to protect the patient. The patient's
34 attending physician shall provide a verbal explanation for any denial
35 of access to the patient, legally authorized representative, or
36 authorized third party, and shall document the denial and explanation
37 in the medical record. In the event that direct access to a copy by the
38 patient is medically contraindicated, as documented by a physician
39 in the patient's medical record, the hospital shall not limit access to
40 the record to a legally authorized representative of the patient, an
41 authorized third party, or the patient's attending physician.

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

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

46 (1) A patient who does not have the ability to pay and who
47 presents either: (a) a statement certifying to annual income at or
48 below 250 percent of the federal poverty level; or (b) proof of

1 eligibility for, or enrollment in, a State or federal assistance program
2 including, but not limited to: the federal Supplemental Nutrition
3 Assistance Program established pursuant to the "Food and Nutrition
4 Act of 2008," Pub.L.110-246 (7 U.S.C. s.2011 et seq.); the federal
5 Supplemental Security Income program established pursuant to Title
6 XVI of the federal Social Security Act, Pub.L.92-603 (42 U.S.C.
7 s.1381 et seq.); the National School Lunch Program established
8 pursuant to the "Richard B. Russell National School Lunch Act,"
9 Pub.L.79-396 (42 U.S.C. s.1751 et seq.); the federal special
10 supplemental food program for women, infants, and children
11 established pursuant to Pub.L.95-627 (42 U.S.C. s.1786); the State
12 Medicaid program established pursuant to the "New Jersey Medical
13 Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et
14 seq.); the NJ FamilyCare Program established pursuant to the
15 "Family Health Care Coverage Act," P.L.2005, c.156 (C.30:4J-8 et
16 al.); the Work First New Jersey program established pursuant to the
17 "Work First New Jersey Act," P.L.1997, c.38 (C.44:10-55 et seq.);
18 the New Jersey Supplementary Food Stamp Program established
19 pursuant to the "New Jersey Supplementary Food Stamp Program
20 Act," P.L.1998, c.32 (C.44:10-79 et seq.); any successor program; or
21 any other State or federal assistance program now or hereafter
22 established by law;

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

25 (3) An attorney representing a patient on a pro bono basis,
26 provided that the attorney submits with the request a certification that
27 the attorney is representing the patient on a pro bono basis. An
28 attorney representing a patient on a contingency fee basis shall be
29 assessed the ordinary fees to obtain a copy of the patient's medical
30 and billing records; or

31 (4) A patient who has a pending application for, or is currently
32 receiving, federal Social Security disability benefits provided under
33 Title II or Title XVI of the federal Social Security Act, Pub.L.92-603
34 (42 U.S.C. s.1351 et al.).

35 e. As used in this section:

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

39 "Legally authorized representative" means: the patient's spouse,
40 domestic partner, or civil union partner; the patient's immediate next
41 of kin; the patient's legal guardian; the patient's attorney; the patient's
42 third party insurer; or the patient's worker's compensation carrier, if
43 the carrier is authorized to access to the patient's treatment or billing
44 records by contract or law, provided that access by a worker's
45 compensation carrier shall be limited only to that portion of the
46 treatment or billing record that is relevant to the specific work-related
47 incident at issue in the worker's compensation claim.

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

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

3 2. A person licensed to practice a health care profession
4 regulated by the State Board of Medical Examiners shall provide
5 copies of professional treatment and billing records, including
6 treatment records from other health care providers that are part of a
7 patient's record, to a patient, the patient's legally authorized
8 representative, or an authorized third party in accordance with the
9 following:

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

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

29 c. If, in the exercise of the licensee's professional judgment, a
30 licensee has reason to believe that the patient's mental or physical
31 condition will be adversely affected upon being made aware of the
32 subjective information contained in the professional treatment record
33 or a summary of the record, the licensee may refuse to provide the
34 record or summary to the patient. The licensee shall include in the
35 record a notice setting forth the reasons for the original refusal. The
36 licensee shall, however, provide a copy of the record or summary
37 upon request to:

- 38 (1) the patient's attorney;
39 (2) another licensed health care professional;
40 (3) the patient's health insurance carrier through an employee
41 thereof;
42 (4) a governmental reimbursement program or an agent thereof,
43 with responsibility to review utilization or quality of care; or
44 (5) an authorized third party.

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

1 (1) (a) A request by a patient or a patient's legally authorized
2 representative for the reproduction of patient treatment and billing
3 records, which shall be no more than \$1 per page or \$200 for the
4 entire record, whichever is less, except that, for records stored on
5 microfilm or microfiche, the reproduction fee shall be no more than
6 \$1.50 per image or \$200 for the entire record, whichever is less; and

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

11 (2) The reproduction of x-rays or any other material within a
12 patient treatment record that cannot be routinely copied or duplicated
13 on a commercial photocopy machine, which shall be no more than
14 \$15 per printed image or \$30 per compact disc (CD) or digital video
15 disc (DVD), plus an administrative fee of \$10;

16 (3) A search for records, which search fee shall be no more than
17 \$10 per request; provided that no search fee shall be charged to a
18 patient requesting the patient's own records. A search fee that may
19 be charged pursuant to this paragraph shall apply even if no
20 individual treatment or billing record is found as a result of the
21 search; and

22 (4) The costs for delivering records in any medium, plus sales tax,
23 if applicable. Medical and billing records shall be delivered in the
24 manner specified by the requestor, which may include, but shall not
25 be limited to, mailing the record to any address or faxing the record
26 to any number specified by the requestor, including the requestor's
27 attorney.

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

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

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

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

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

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

47 h. If the patient or a subsequent treating health care professional
48 is unable to read the treatment record, either because it is illegible or

1 prepared in a language other than English, the licensee shall provide
2 a transcription or translation, as applicable, at no cost to the patient.

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

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

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

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

44 k. As used in this section:

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

1 "Legally authorized representative" means: the patient's spouse,
2 domestic partner, or civil union partner; the patient's immediate next
3 of 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
5 the 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.2)

11

12 3. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill revises P.L.2019, c.217 (C.26:2H-5n et al.), which sets
18 forth certain requirements concerning the fees that may be charged
19 for patient medical and billing records, to provide that these records
20 may be provided without fee to any patient who has a pending
21 application for, or who is current receiving, federal Social Security
22 disability benefits. Current law already authorizes patient records
23 to be furnished without fee to low income patients, not-for-profit
24 corporations representing a patient, and attorneys representing a
25 patient on a pro bono basis.

26

27 The bill further specifies that patient records are to be delivered in
28 the manner specified by the requestor, including mailing the records
29 to any address or faxing the records to any number specified by the
30 requestor, including the requestor's attorney. Nothing in the bill will
31 alter the ability of hospitals and health care professionals to assess a
32 fee for the costs of delivering the records, unless the records are
otherwise to be provided without charge.