

[First Reprint]

ASSEMBLY, No. 4139

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 11, 2020

Sponsored by:

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District 14 (Mercer and Middlesex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

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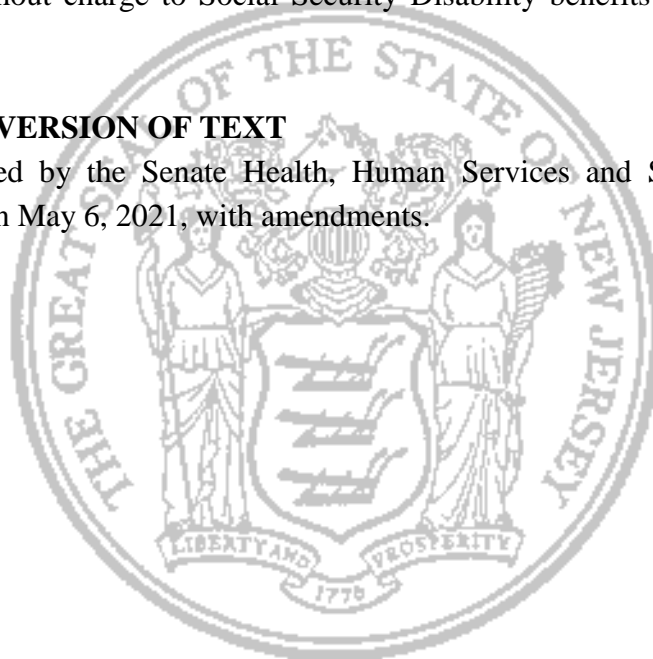
**Assemblywoman Jasey, Assemblyman Armato and Assemblywoman
McKnight**

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 reported by the Senate Health, Human Services and Senior Citizens Committee on May 6, 2021, with amendments.



(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 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.

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

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.

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

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

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

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

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

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

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

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

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

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

44 (1) A patient who does not have the ability to pay and who
45 presents either: (a) a statement certifying to annual income at or below
46 250 percent of the federal poverty level; or (b) proof of eligibility for,
47 or enrollment in, a State or federal assistance program including, but
48 not limited to: the federal Supplemental Nutrition Assistance Program

1 established pursuant to the "Food and Nutrition Act of 2008,"
2 Pub.L.110-246 (7 U.S.C. s.2011 et seq.); the federal Supplemental
3 Security Income program established pursuant to Title XVI of the
4 federal Social Security Act, Pub.L.92-603 (42 U.S.C. s.1381 et seq.);
5 the National School Lunch Program established pursuant to the
6 "Richard B. Russell National School Lunch Act," Pub.L.79-396 (42
7 U.S.C. s.1751 et seq.); the federal special supplemental food program
8 for women, infants, and children established pursuant to Pub.L.95-627
9 (42 U.S.C. s.1786); the State Medicaid program established pursuant
10 to the "New Jersey Medical Assistance and Health Services Act,"
11 P.L.1968, c.413 (C.30:4D-1 et seq.); the NJ FamilyCare Program
12 established pursuant to the "Family Health Care Coverage Act,"
13 P.L.2005, c.156 (C.30:4J-8 et al.); the Work First New Jersey program
14 established pursuant to the "Work First New Jersey Act," P.L.1997,
15 c.38 (C.44:10-55 et seq.); the New Jersey Supplementary Food Stamp
16 Program established pursuant to the "New Jersey Supplementary Food
17 Stamp Program Act," P.L.1998, c.32 (C.44:10-79 et seq.); any
18 successor program; or any other State or federal assistance program
19 now or hereafter established by law;

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

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

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

32 e. As used in this section:

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

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

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

46

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

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

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

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

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

34 (1) the patient's attorney;

35 (2) another licensed health care professional;

36 (3) the patient's health insurance carrier through an employee
37 thereof;

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

40 (5) an authorized third party.

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

44 (1) (a) A request by a patient or a patient's legally authorized
45 representative for the reproduction of patient treatment and billing
46 records, which shall be no more than \$1 per page or \$200 for the entire
47 record, whichever is less, except that, for records stored on microfilm

1 or microfiche, the reproduction fee shall be no more than \$1.50 per
2 image or \$200 for the entire record, whichever is less; and

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

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

12 (3) A search for records, which search fee shall be no more than
13 \$10 per request; provided that no search fee shall be charged to a
14 patient requesting the patient's own records. A search fee that may be
15 charged pursuant to this paragraph shall apply even if no individual
16 treatment or billing record is found as a result of the search; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 k. As used in this section:

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

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

1 treatment or billing record that is relevant to the specific work-related
2 incident at issue in the worker's compensation claim.

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

4

5 3. This act shall take effect immediately.