

P.L. 2021, CHAPTER 359, *approved January 10, 2022*
Assembly, No. 4139 (*Second Reprint*)

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 patient
9 of a general, special, or psychiatric hospital licensed pursuant to
10 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;

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

3 (c) the 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; provided that no
7 search fee shall be charged to a patient who is requesting the patient's
8 own record. If a search fee may be charged under this subparagraph,
9 the fee shall apply even if no medical or billing records are found as a
10 result of the search;

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

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

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

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

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

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

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

46 b. Access to a copy of a patient's medical record shall be limited
47 only to the extent necessary to protect the patient. The patient's
48 attending physician shall provide a verbal explanation for any denial of

1 access to the patient, legally authorized representative, or authorized
2 third party, and shall document the denial and explanation in the
3 medical record. In the event that direct access to a copy by the patient
4 is medically contraindicated, as documented by a physician in the
5 patient's medical record, the hospital shall not limit access to the
6 record to a legally authorized representative of the patient, an
7 authorized third party, or the patient's attending physician.

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

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

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

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

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

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

48 e. As used in this section:

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

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

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

14
15 2. Section 2 of P.L.2019, c.217 (C.45:9-22.27) is amended to read
16 as follows:

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

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

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

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

1 licensee shall, however, provide a copy of the record or summary upon
2 request to:

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

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

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

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

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

28 (3) A search for records, which search fee shall be no more than
29 \$10 per request; provided that no search fee shall be charged to a
30 patient requesting the patient's own records. A search fee that may be
31 charged pursuant to this paragraph shall apply even if no individual
32 treatment or billing record is found as a result of the search; and

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

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

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

45 f. Delivery of an electronic copy of a patient treatment or billing
46 record to the requestor shall be required only if: (1) the entire request
47 can be reproduced from an electronic health record system; (2) the

1 record is specifically requested to be delivered in electronic format;
2 and (3) the record can be delivered electronically.

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

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

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

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

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

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

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

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

45 (3) An attorney representing a patient on a pro bono basis,
46 provided that the attorney submits with the request a certification that
47 the attorney is representing the patient on a pro bono basis. An

1 attorney representing a patient on a contingency fee basis shall be
2 assessed the ordinary fees to obtain a copy of the patient's records; or

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

7 k. As used in this section:

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

11 "Legally authorized representative" means: the patient's spouse,
12 domestic partner, or civil union partner; the patient's immediate next of
13 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 the
15 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.

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

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

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31 3. This act shall take effect immediately.

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