P.L. 2021, CHAPTER 427, ***approved January 18, 2022***
Senate, No. 4233 ***(First Reprint)***

AN ACT concerning access to patient medical and billing records, and amending P.L.2019, c.217.

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

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

1. a. Except as provided in subsection d. of this section, if a patient of a general, special, or psychiatric hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) or of a State-licensed health care professional, the patient's legally authorized representative, or an authorized third party requests, in writing, a copy of the patient's medical **[**or billing**]** records**[**, or both**]**, the hospital or the health care professional shall provide a legible paper or electronic reproduction of the requested records within the dates requested to the patient, the patient's legally authorized representative, or the authorized third party within 30 days of the request, in accordance with the following:

(1) (a) For a request by a patient or the patient's legally authorized representative for a medical **[**or billing**]** record **[**that is not**]**, whether such record is stored electronically, on microfilm or microfiche, or on paper, the fee for reproducing the record shall not exceed $1 per page or $**[**10**]**50 per individual admission record **[**for the first 100 pages**]**, whichever is less. **[**For medical and billing records that are not stored on microfilm or microfiche that contain more than 100 pages, a reproduction fee of no more than $0.25 per page may be charged for pages in excess of the first 100 pages, up to a maximum of $200 for each request. For medical and billing records stored on microfilm or microfiche, the fee for reproducing the record shall be $1.50 per image, up to a maximum of $200 for each request.**]** The fee for reproducing a medical record shall not exceed $50 per individual admission or patient record, inclusive of any additional fees specified in paragraph (3) of this subsection;

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

(c)**]** If a patient requests a copy of the patient's own medical records in accordance with the federal "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, the requirements

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:
[1]Assembly floor amendments adopted January 10, 2022.

provided under 45 C.F.R. 164.524(b) with respect to the time required to respond to such requests and the applicable fees shall apply; and

(c) A hospital or a health care professional shall not charge any fee to provide an electronic or paper reproduction of a billing record requested by a patient, a patient's legally authorized representative, or an authorized third party.

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

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

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

(c) the record can be delivered electronically.

(3) In addition to per-page fees, a hospital or a health care professional shall apply the following charges, provided that the total fees charged per individual admission record or patient record do not exceed $50:

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

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

(c) a fee for certification of a copy of a medical **[**and billing**]** record of no more than $10 per certification; and

(d) costs for delivering records in any medium, plus sales tax, if applicable.

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

(5) The hospital or the health care professional shall establish a policy assuring access to copies of medical **[**and billing**]** records for patients who do not have the ability to pay for the copies.

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

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

any denial of access to the patient, legally authorized representative, or authorized third party, and shall document the denial and explanation in the medical record. In the event that direct access to a copy by the patient is medically contraindicated, as documented by a physician in the patient's medical record, the hospital or the health care professional shall not limit access to the record to a legally authorized representative of the patient, an authorized third party, or the patient's attending physician.

c. A hospital or a health care professional shall not assess any fees or charges for a copy of a patient's medical **[**and billing**]** records as provided herein other than those provided for in this section.

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

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

(2) A not-for-profit corporation indicating in writing that it is representing a patient; **1[**or**]1**

(3) **1**A health care practitioner ; or

(4)**1** An attorney representing a patient on a pro bono basis, provided that the attorney submits with the request a certification that the attorney is representing the patient on a pro bono basis. An attorney representing a patient on a contingency fee basis shall be assessed the ordinary fees to obtain a copy of the patient's medical **[**and billing**]** records.

e. As used in this section:

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

<u>“Health care professional” means an individual who, acting within the scope of the individual’s licensure or certification, provides health care services, and includes, but is not limited to, a physician, dentist, nurse, pharmacist, or other health care professional whose professional practice is regulated pursuant to Title 45 of the Revised Statutes.</u>

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

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

2. This act shall take effect on the first day of the fourth month next following the date of enactment.

Limits fees charged to patients and authorized third parties for copies of medical and billing records.