

**SENATE, No. 2893**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED SEPTEMBER 14, 2020

**Sponsored by:**  
**Senator NELLIE POU**  
**District 35 (Bergen and Passaic)**

**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.



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  
7 read 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  
10 pursuant 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,  
13 the hospital shall provide a legible paper or electronic reproduction  
14 of the requested records within the dates requested to the patient,  
15 the patient's legally authorized representative, or the authorized  
16 third party within 30 days of the request, in accordance with the  
17 following:

18 (1) (a) For a request by a patient or the patient's legally  
19 authorized representative for a medical or billing record that is not  
20 stored on microfilm or microfiche, the fee for reproducing the  
21 record shall not exceed \$1 per page or \$100 per individual  
22 admission record for the first 100 pages, whichever is less. For  
23 medical and billing records that are not stored on microfilm or  
24 microfiche that contain more than 100 pages, a reproduction fee of  
25 no more than \$0.25 per page may be charged for pages in excess of  
26 the first 100 pages, up to a maximum of \$200 for each request. For  
27 medical and billing records stored on microfilm or microfiche, the  
28 fee for reproducing the record shall be \$1.50 per image, up to a  
29 maximum of \$200 for each request;

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

35 (c) If a patient requests a copy of the patient's own medical  
36 records in accordance with the federal "Health Insurance Portability  
37 and Accountability Act of 1996," Pub.L.104-191, the requirements  
38 provided under 45 C.F.R. 164.524(b) with respect to the time  
39 required to respond to such requests and the applicable fees shall  
40 apply.

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

43 (a) the entire request can be reproduced from an electronic  
44 health 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.

1 (b) the record is specifically requested to be delivered in  
2 electronic 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  
7 no search fee shall be charged to a patient who is requesting the  
8 patient's own record. If a search fee may be charged under this  
9 subparagraph, the fee shall apply even if no medical or billing  
10 records are found as a 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  
13 photocopy machine, which shall be no more than \$15 per printed  
14 image or \$30 per compact disc (CD) or digital video disc (DVD),  
15 plus an administrative fee of \$10;

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

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

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

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

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

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

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

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

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

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

35 (4) A patient who has a pending application for, or is currently  
36 receiving, federal Social Security disability benefits provided under  
37 Title II or Title XVI of the federal Social Security Act, Pub.L.92-  
38 603 (42 U.S.C. s.1351 et al.).

39 e. As used in this section:

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

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

1 by a worker's compensation carrier shall be limited only to that  
2 portion of the treatment or billing record that is relevant to the  
3 specific work-related incident at issue in the worker's compensation  
4 claim.

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

6

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

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

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

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

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

44 (1) the patient's attorney;

45 (2) another licensed health care professional;

46 (3) the patient's health insurance carrier through an employee  
47 thereof;

1 (4) a governmental reimbursement program or an agent thereof,  
2 with responsibility to review utilization or quality of care; or  
3 (5) an authorized third party.

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

7 (1) (a) A request by a patient or a patient's legally authorized  
8 representative for the reproduction of patient treatment and billing  
9 records, which shall be no more than \$1 per page or \$200 for the  
10 entire record, whichever is less, except that, for records stored on  
11 microfilm or microfiche, the reproduction fee shall be no more than  
12 \$1.50 per image or \$200 for the entire record, whichever is less; and  
13 (b) A request by an authorized third party for the reproduction  
14 of patient treatment and billing records, which shall be no more  
15 than \$1 per page or, in the case of records stored on microfilm or  
16 microfiche, no more than \$1.50 per image;

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

22 (3) A search for records, which search fee shall be no more than  
23 \$10 per request; provided that no search fee shall be charged to a  
24 patient requesting the patient's own records. A search fee that may  
25 be charged pursuant to this paragraph shall apply even if no  
26 individual treatment or billing record is found as a result of the  
27 search; and

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

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

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

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

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

- 1 (1) the licensee has affirmatively terminated a patient from  
2 practice in accordance with the requirements of N.J.A.C.13:35-6.22;  
3 or  
4 (2) the licensee leaves a practice that the licensee was formerly  
5 a member of, or associated with, and the patient requests that the  
6 patient's medical care continue to be provided by that licensee.
- 7 h. If the patient or a subsequent treating health care  
8 professional is unable to read the treatment record, either because it  
9 is illegible or prepared in a language other than English, the  
10 licensee shall provide a transcription or translation, as applicable, at  
11 no cost to the patient.
- 12 i. The licensee shall not refuse to provide a professional  
13 treatment record on the grounds that the patient owes the licensee  
14 an unpaid balance if the record is needed by another health care  
15 professional for the purpose of rendering care.
- 16 j. The fees authorized by this section shall not be imposed on:  
17 (1) A patient who does not have the ability to pay and who  
18 presents either: (a) a statement certifying to annual income at or  
19 below 250 percent of the federal poverty level; or (b) proof of  
20 eligibility for, or enrollment in, a State or federal assistance  
21 program including, but not limited to: the federal Supplemental  
22 Nutrition Assistance Program established pursuant to the "Food and  
23 Nutrition Act of 2008," Pub.L.110-246 (7 U.S.C. s.2011 et seq.);  
24 the federal Supplemental Security Income program established  
25 pursuant to Title XVI of the federal Social Security Act, Pub.L.92-  
26 603 (42 U.S.C. s.1381 et seq.); the National School Lunch Program  
27 established pursuant to the "Richard B. Russell National School  
28 Lunch Act," Pub.L.79-396 (42 U.S.C. s.1751 et seq.); the federal  
29 special supplemental food program for women, infants, and children  
30 established pursuant to Pub.L.95-627 (42 U.S.C. s.1786); the State  
31 Medicaid program established pursuant to the "New Jersey Medical  
32 Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et  
33 seq.); the NJ FamilyCare Program established pursuant to the  
34 "Family Health Care Coverage Act," P.L.2005, c.156 (C.30:4J-8 et  
35 al.); the Work First New Jersey program established pursuant to the  
36 "Work First New Jersey Act," P.L.1997, c.38 (C.44:10-55 et seq.);  
37 the New Jersey Supplementary Food Stamp Program established  
38 pursuant to the "New Jersey Supplementary Food Stamp Program  
39 Act," P.L.1998, c.32 (C.44:10-79 et seq.); any successor program;  
40 or any other State or federal assistance program now or hereafter  
41 established by law;
- 42 (2) A not-for-profit corporation indicating in writing that it is  
43 representing a patient; **[or]**
- 44 (3) An attorney representing a patient on a pro bono basis,  
45 provided that the attorney submits with the request a certification  
46 that the attorney is representing the patient on a pro bono basis. An  
47 attorney representing a patient on a contingency fee basis shall be

1 assessed the ordinary fees to obtain a copy of the patient's records;  
2 or

3 (4) A patient who has a pending application for, or is currently  
4 receiving, federal Social Security disability benefits provided under  
5 Title II or Title XVI of the federal Social Security Act, Pub.L.92-  
6 603 (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  
13 next of kin; the patient's legal guardian; the patient's attorney; the  
14 patient's third party insurer; or the patient's worker's compensation  
15 carrier, if the carrier is authorized to access to the patient's  
16 treatment or billing records by contract or law, provided that access  
17 by a worker's compensation carrier shall be limited only to that  
18 portion of the treatment or billing record that is relevant to the  
19 specific work-related incident at issue in the worker's compensation  
20 claim.

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

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23 3. This act shall take effect immediately.

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26

#### STATEMENT

27

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

37 The bill further specifies that patient records are to be delivered  
38 in the manner specified by the requestor, including mailing the  
39 records to any address or faxing the records to any number specified  
40 by the requestor, including the requestor's attorney. Nothing in the  
41 bill will alter the ability of hospitals and health care professionals to  
42 assess a fee for the costs of delivering the records, unless the  
43 records are otherwise to be provided without charge.