

[First Reprint]

SENATE, No. 2893

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

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.



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.

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 (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 a
7 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 be
18 limited to, mailing the record to any address or faxing the record to
19 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 billing
23 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 the
31 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 of
35 access to the patient, legally authorized representative, or authorized
36 third party, and shall document the denial and explanation in the
37 medical record. In the event that direct access to a copy by the patient
38 is medically contraindicated, as documented by a physician in the
39 patient's medical record, the hospital shall not limit access to the
40 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 below
48 250 percent of the federal poverty level; or (b) proof of eligibility for,

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

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

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

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

34 e. As used in this section:

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

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

47 (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 read
2 as follows:

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

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

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

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

36 (1) the patient's attorney;

37 (2) another licensed health care professional;

38 (3) the patient's health insurance carrier through an employee
39 thereof;

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

42 (5) an authorized third party.

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

46 (1) (a) A request by a patient or a patient's legally authorized
47 representative for the reproduction of patient treatment and billing
48 records, which shall be no more than \$1 per page or \$200 for the entire

1 record, whichever is less, except that, for records stored on microfilm
2 or microfiche, the reproduction fee shall be no more than \$1.50 per
3 image or \$200 for the entire record, whichever is less; and

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

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

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

18 (4) The costs for delivering records in any medium, plus sales tax,
19 if applicable. Medical 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

41 k. As used in this section:

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

45 "Legally authorized representative" means: the patient's spouse,
46 domestic partner, or civil union partner; the patient's immediate next of
47 kin; the patient's legal guardian; the patient's attorney; the patient's
48 third party insurer; or the patient's worker's compensation carrier, if the

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

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

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8 3. This act shall take effect immediately.