

SENATE: Yes Health, Human Services &
Senior Citizens

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH/JA

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 patient¹ or 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)

30

31 3. This act shall take effect immediately.

32

33

34

35

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.

CHAPTER 359
(CORRECTED COPY)

AN ACT concerning patient 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:

C.26:2H-5n Hospital to provide medical, billing records; fees.

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.), 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 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 stored on microfilm or microfiche, the fee for reproducing the record shall not exceed \$1 per page or \$100 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;

(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 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.

(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 shall apply the following charges:

(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 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 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.

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

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 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 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;

(3) 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; or

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

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.

"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 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.

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

C.45:9-22.27 Health care professional to provide copies of treatment, billing records; fees.

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

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

b. Unless otherwise required by law, a licensee may elect to provide a summary of the record in lieu of providing the electronic copy or photocopy required pursuant to subsection a. of this section, provided that the summary adequately reflects the patient's history and treatment. A licensee may charge a reasonable fee for the preparation of a summary that has been provided in lieu of the actual record, which shall not exceed the cost that would be charged for the actual record pursuant to subsection d. of this section; 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 patient's treatment record. The fee for certification shall be no more than \$10 per certification.

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

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

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

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

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

(2) The reproduction of x-rays or any other material within a patient treatment record 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;

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

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

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

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

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

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

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

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

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

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

j. 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;

(3) 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 records; or

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

k. As used in this section:

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

"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 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.

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

3. This act shall take effect immediately.

Approved January 10, 2022.

ASSEMBLY, No. 4139

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 11, 2020

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Assemblywoman Jasey, Assemblyman Armato and Assemblywoman McKnight

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.



(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
11 authorized representative, or an authorized third party requests, in
12 writing, a copy of the patient's medical or billing records, or both, the
13 hospital shall provide a legible paper or electronic reproduction of
14 the requested records within the dates requested to the patient, the
15 patient's legally authorized representative, or the authorized third
16 party within 30 days 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
22 that are not stored on microfilm or microfiche that contain more than
23 100 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
25 of \$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
31 fee for reproducing records stored on microfilm or microfiche shall
32 be \$1.50 per image; and

33 (c) If a patient requests a copy of the patient's own medical
34 records in accordance with the federal "Health Insurance Portability
35 and 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
37 required to respond to such requests and the applicable fees shall
38 apply.

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

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

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

45 (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.

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

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

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

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

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

35 e. As used in this section:

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

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

48 (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
2 read as follows:

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

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

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

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

- 38 (1) the patient's attorney;
39 (2) another licensed health care professional;
40 (3) the patient's health insurance carrier through an employee
41 thereof;
42 (4) a governmental reimbursement program or an agent thereof,
43 with responsibility to review utilization or quality of care; or
44 (5) an authorized third party.

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

1 (1) (a) A request by a patient or a patient's legally authorized
2 representative for the reproduction of patient treatment and billing
3 records, which shall be no more than \$1 per page or \$200 for the
4 entire record, whichever is less, except that, for records stored on
5 microfilm or microfiche, the reproduction fee shall be no more than
6 \$1.50 per image or \$200 for the entire record, whichever is less; and

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

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

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

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

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

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

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

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

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

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

47 h. If the patient or a subsequent treating health care professional
48 is unable to read the treatment record, either because it is illegible or

1 prepared in a language other than English, the licensee shall provide
2 a transcription or translation, as applicable, at no cost to the patient.

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

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

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

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

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

40 (4) A patient who has a pending application for, or is currently
41 receiving, federal Social Security disability benefits provided under
42 Title II or Title XVI of the federal Social Security Act, Pub.L.92-603
43 (42 U.S.C. s.1351 et al.).

44 k. As used in this section:

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

1 "Legally authorized representative" means: the patient's spouse,
2 domestic partner, or civil union partner; the patient's immediate next
3 of kin; the patient's legal guardian; the patient's attorney; the patient's
4 third party insurer; or the patient's worker's compensation carrier, if
5 the carrier is authorized to access to the patient's treatment or billing
6 records by contract or law, provided that access by a worker's
7 compensation carrier shall be limited only to that portion of the
8 treatment or billing record that is relevant to the specific work-related
9 incident at issue in the worker's compensation claim.
10 (cf: P.L.2019, c.217, s.2)

11

12 3. This act shall take effect immediately.

13

14

15

STATEMENT

16

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

26

27 The bill further specifies that patient records are to be delivered in
28 the manner specified by the requestor, including mailing the records
29 to any address or faxing the records to any number specified by the
30 requestor, including the requestor's attorney. Nothing in the bill will
31 alter the ability of hospitals and health care professionals to assess a
32 fee for the costs of delivering the records, unless the records are
otherwise to be provided without charge.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4139

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Assembly Health Committee reports favorably Assembly Bill No. 4139.

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

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

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4139

STATE OF NEW JERSEY

DATED: SEPTEMBER 17, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4139.

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

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

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4139

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 2021

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Assembly Bill No. 4139.

As amended by the committee, this bill revises P.L.2019, c.217 (C.26:2H-5n et al.), which sets forth certain requirements concerning the fees that may be charged for patient medical and billing records, to provide that these records may be provided without fee to any patient or attorney representing a patient who has a pending application for, or who is current receiving, federal Social Security disability benefits.

Current law already authorizes patient records to be furnished without fee to low income patients, not-for-profit corporations representing a patient, and attorneys representing a patient on a pro bono basis.

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

As reported by the committee with amendments, Assembly Bill No. 4139 is identical to Senate Bill No. 2893, which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments add a provision authorizing an attorney representing a patient who has a pending application for, or who is currently receiving, Social Security disability benefits, to receive copies of the patient's medical and billing records without fee.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4139

with Senate Floor Amendments
(Proposed by Senator POU)

ADOPTED: JUNE 21, 2021

These Senate amendments specify that the provisions of the bill requiring records to be delivered in the manner specified by the requestor will in no way affect how the fees authorized under current law will apply to the records request.

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.

S2893 POU

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)

22

23 3. This act shall take effect immediately.

24

25

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.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 2893

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 2021

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2893.

As amended by the committee, this bill revises P.L.2019, c.217 (C.26:2H-5n et al.), which sets forth certain requirements concerning the fees that may be charged for patient medical and billing records, to provide that these records may be provided without fee to any patient or attorney representing a patient who has a pending application for, or who is current receiving, federal Social Security disability benefits.

Current law already authorizes patient records to be furnished without fee to low income patients, not-for-profit corporations representing a patient, and attorneys representing a patient on a pro bono basis.

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

As reported by the committee with amendments, Senate Bill No. 2893 is identical to Assembly Bill No. 4139, which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments add a provision authorizing an attorney representing a patient who has a pending application for, or who is currently receiving, Social Security disability benefits, to receive copies of the patient's medical and billing records without fee.

STATEMENT TO
[First Reprint]
SENATE, No. 2893

with Senate Floor Amendment
(Proposed by Senator POU)

ADOPTED: JUNE 21, 2021

These Senate amendments specify that the provisions of the bill requiring records to be delivered in the manner specified by the requestor will in no way affect how the fees authorized under current law will apply to the records request.