

CHAPTER 125

HEALTH AND ENVIRONMENT

HOUSE BILL 14-1186

BY REPRESENTATIVE(S) Schafer, Ginal, Hullinghorst, Kraft-Tharp, Labuda, Pettersen, Rosenthal, Williams, Young;
also SENATOR(S) Aguilar, Nicholson.

AN ACT

**CONCERNING THE RELEASE OF MEDICAL RECORDS TO A PERSON OTHER THAN THE PATIENT, AND,
IN CONNECTION THEREWITH, SETTING REASONABLE FEES TO BE PAID FOR THE RELEASE OF THE
MEDICAL RECORDS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) The state board of health recently repealed a rule that set the fees that may be charged to third parties for patient medical records;

(b) Having clearly established fees creates a stable and predictable business environment that allows for the provision of medical records at a reasonable price;

(c) The task of providing medical records is complex due to state and federal privacy laws that require the careful review of each record in order to protect patient privacy;

(d) The "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended ("HIPAA"), has had a significant impact on the provision of medical records and patient privacy.

(2) Therefore, it is the intent of the general assembly to establish in statute maximum reasonable fees that may be charged to third parties, other than patients and their personal representatives, that were previously set by rule of the state board of health. These maximum fees are intended to apply only to third parties and not, under any circumstances, to patients or their personal representatives, because HIPAA governs those fees.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. In Colorado Revised Statutes, 25-1-801, **amend** (1) (a), (1) (b) (I), and (2); and **add** (5) as follows:

25-1-801. Patient records in custody of health care facility - definitions.

(1) (a) Every patient record in the custody of a health facility licensed or certified pursuant to section 25-1.5-103 (1) or article 3 of this title, or both, or any entity regulated under title 10, C.R.S., providing health care services, as defined in section 10-16-102 (33), C.R.S., directly or indirectly through a managed care plan, as defined in section 10-16-102 (43), C.R.S., or otherwise shall be available for inspection to the patient or the patient's ~~designated~~ PERSONAL representative through the attending health care provider or ~~such~~ THE provider's designated representative at reasonable times and upon reasonable notice, except records ~~pertaining to mental health problems or notes by a physician that, in the opinion of a licensed physician who practices psychiatry and is an independent third party, would have significant negative psychological impact upon the patient.~~ Such independent third-party physician shall consult with the attending physician prior to making a determination with regard to the availability for inspection of any patient record and shall report in writing findings to the attending physician and to the custodian of said record WITHHELD IN ACCORDANCE WITH 45 CFR 164.524 (a). A summary of records pertaining to a patient's mental health problems may, upon written request and signed and dated authorization, be made available to the patient or the patient's ~~designated~~ PERSONAL representative following termination of the treatment program.

(b) (I) (A) ~~Following any treatment, procedure, or health care service rendered by~~ A health facility licensed or certified pursuant to section 25-1.5-103 (1) or article 3 of this title, or both, or ~~by~~ an entity regulated under title 10, C.R.S., providing health care services, as defined in section 10-16-102 (33), C.R.S., directly or indirectly through a managed care plan, as defined in section 10-16-102 (43), C.R.S., or otherwise, ~~MUST PROVIDE~~ copies of ~~said~~ A PATIENT'S MEDICAL records, including X rays, ~~shall be furnished~~ to the patient OR THE PATIENT'S PERSONAL REPRESENTATIVE UPON REQUEST AND PAYMENT OF THE FEE A COVERED ENTITY MAY IMPOSE IN ACCORDANCE WITH THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED, AND ANY RULES PROMULGATED PURSUANT TO THE ACT, OR TO A THIRD PERSON WHO REQUESTS THE RECORDS upon submission of a ~~written authorization request for records, dated and signed by the patient~~ HIPAA-COMPLIANT AUTHORIZATION, VALID SUBPOENA, OR COURT ORDER and upon the payment of the reasonable ~~costs~~ FEES.

(B) THE HEALTH CARE FACILITY MUST DELIVER THE MEDICAL RECORDS IN ELECTRONIC FORMAT IF THE PERSON REQUESTS ELECTRONIC FORMAT, THE ORIGINAL MEDICAL RECORDS ARE STORED IN ELECTRONIC FORMAT, AND THE MEDICAL RECORDS ARE READILY PRODUCIBLE IN ELECTRONIC FORMAT.

(2) All requests by ~~patients~~ A PATIENT OR THE PATIENT'S PERSONAL REPRESENTATIVE for inspection of ~~their~~ THE PATIENT'S medical records made under this section shall be noted with the time and date of the ~~patient's~~ request and the time and date of inspection noted by the attending health care provider or his OR HER designated representative. The patient OR PERSONAL REPRESENTATIVE shall acknowledge the fact of ~~his~~ THE inspection by dating and signing ~~his~~ THE record file. A HEALTH CARE FACILITY SHALL NOT CHARGE A FEE FOR THE INSPECTION OF

MEDICAL RECORDS.

(5) AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "HIPAA-COMPLIANT" MEANS IN COMPLIANCE WITH THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED.

(b) "PERSONAL REPRESENTATIVE" HAS THE MEANING SET FORTH IN 45 CFR 164.502.

(c) (I) "REASONABLE FEES" MEANS AN AMOUNT NOT TO EXCEED:

(A) EIGHTEEN DOLLARS AND FIFTY-THREE CENTS FOR THE FIRST TEN PAGES, EIGHTY-FIVE CENTS PER PAGE FOR THE NEXT THIRTY PAGES, AND FIFTY-SEVEN CENTS PER PAGE FOR EACH ADDITIONAL PAGE; EXCEPT THAT, IF THE MEDICAL RECORDS ARE STORED ON MICROFILM, ONE DOLLAR AND FIFTY CENTS PER PAGE;

(B) FOR RADIOGRAPHIC STUDIES, ACTUAL REPRODUCTION COSTS FOR EACH COPY OF A RADIOGRAPH;

(C) IF THE AUTHORIZED PERSON REQUESTS CERTIFICATION OF THE MEDICAL RECORDS, A FEE OF TEN DOLLARS;

(D) ACTUAL POSTAGE AND ELECTRONIC MEDIA COSTS, IF APPLICABLE; AND

(E) APPLICABLE TAXES.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 8:

(A) IF A PATIENT RECORD IS REQUESTED BY A THIRD-PARTY ENTITY UNDER THE "LAURA HERSHEY DISABILITY-BENEFIT SUPPORT ACT", PART 22 OF ARTICLE 30 OF TITLE 24, C.R.S., THE THIRD PARTY MAY OBTAIN ONE FREE COPY OF THE RECORD FOR THE APPLICATION PROCESS OR FOR AN APPEAL OR REAPPLICATION WHEN REQUIRED BY THE DISABILITY BENEFIT ADMINISTRATOR;

(B) IF MAXIMUM RATES HAVE ALREADY BEEN ESTABLISHED BY STATUTE OR RULE FOR A STATE OR LOCAL GOVERNMENT ENTITY, THOSE RATES PREVAIL OVER THE RATES SET FORTH IN THIS PART 8; AND

(C) THIS PART 8 DOES NOT APPLY TO CORONERS REQUESTING MEDICAL RECORDS PURSUANT TO SECTION 30-10-606, C.R.S.

SECTION 3. In Colorado Revised Statutes, 25-1-802, **amend** (1) and (4) as follows:

25-1-802. Patient records in custody of individual health care providers.

(1) (a) Every patient record in the custody of a podiatrist, chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse, optometrist, OCCUPATIONAL THERAPIST, audiologist, acupuncturist, direct-entry midwife, or physical therapist required to be licensed under title 12, C.R.S., A NATUROPATHIC DOCTOR REQUIRED TO BE REGISTERED PURSUANT TO ARTICLE 37.3 OF TITLE 12, C.R.S., or a person

practicing psychotherapy under the provisions of article 43 of title 12, C.R.S., except records pertaining to mental health problems, shall RECORDS WITHHELD IN ACCORDANCE WITH 45 CFR 164.524 (a), MUST be available to the patient OR THE PATIENT'S PERSONAL REPRESENTATIVE upon submission of a ~~written authorization request~~ VALID AUTHORIZATION for inspection of records, dated and signed by the patient, at reasonable times and upon reasonable notice. A summary of records pertaining to a patient's mental health problems may, upon written request ~~and accompanied by a signed and dated authorization~~, be made available to the patient or the patient's ~~designated~~ PERSONAL representative following termination of the treatment program.

(b) (I) (A) A copy of ~~such~~ THE records, including ~~X rays~~, shall RADIOGRAPHIC STUDIES, MUST be made available to the patient or the patient's ~~designated~~ PERSONAL representative, upon ~~written authorization request for a copy of such records, dated and signed by the patient, upon reasonable notice~~ REQUEST and payment of the FEE A COVERED ENTITY MAY IMPOSE IN ACCORDANCE WITH THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED, OR TO A THIRD PERSON WHO REQUESTS THE MEDICAL RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT AUTHORIZATION, A VALID SUBPOENA, OR A COURT ORDER, AND PAYMENT OF reasonable ~~costs~~ FEES.

(B) THE HEALTH CARE PROVIDER MUST PROVIDE THE MEDICAL RECORDS IN ELECTRONIC FORMAT IF THE PERSON REQUESTS ELECTRONIC FORMAT, THE ORIGINAL MEDICAL RECORDS ARE STORED IN ELECTRONIC FORMAT, AND THE MEDICAL RECORDS ARE READILY PRODUCIBLE IN ELECTRONIC FORMAT.

(II) ~~In the event that~~ If a licensed health care professional determines that a copy of ~~any~~ A RADIOGRAPHIC STUDY, INCLUDING AN X ray, mammogram, CT SCAN, MRI, or other film is not sufficient for diagnostic or other treatment purposes, the podiatrist, chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse, optometrist, audiologist, acupuncturist, direct-entry midwife, or physical therapist required to be licensed under title 12, C.R.S., or, subject to the provisions of section 25-1-801 (1) (a) and paragraph (a) of this subsection (1), the person practicing psychotherapy under the provisions of article 43 of title 12, C.R.S., shall make the original of any ~~such film~~ RADIOGRAPHIC STUDY available to the patient, THE PATIENT'S PERSONAL REPRESENTATIVE, A PERSON AUTHORIZED BY THE PATIENT, or another health care professional or facility as specifically directed by the patient, PERSONAL REPRESENTATIVE, AUTHORIZED PERSON, OR HEALTH CARE PROFESSIONAL OR FACILITY pursuant to a ~~written authorization request for films~~ HIPAA-COMPLIANT AUTHORIZATION and upon the payment of the reasonable ~~costs~~ FEES for ~~such film~~ THE RADIOGRAPHIC STUDY. If a practitioner releases an original ~~film~~ RADIOGRAPHIC STUDY pursuant to this subparagraph (II), the practitioner ~~shall~~ IS not be responsible for any loss, damage, or other consequences as a result of ~~such~~ THE release. Any original ~~X ray, mammogram, CT SCAN, MRI, or other film~~ RADIOGRAPHIC STUDY made available pursuant to this subparagraph (II) ~~shall~~ MUST be returned upon request to the lending practitioner within thirty days.

(4) All requests by ~~patients~~ A PATIENT OR THE PATIENT'S PERSONAL REPRESENTATIVE for inspection of ~~their~~ HIS OR HER medical records made under this section shall be noted with the time and date of the ~~patient's~~ request and the time and date of inspection noted by the health care provider or his OR HER designated

representative. The patient OR THE PATIENT'S PERSONAL REPRESENTATIVE shall acknowledge ~~the fact of his~~ THE inspection by dating and signing ~~his~~ THE record file. A HEALTH CARE PROVIDER SHALL NOT CHARGE A FEE FOR THE INSPECTION OF MEDICAL RECORDS.

SECTION 4. In Colorado Revised Statutes, **amend** 25-1-803 as follows:

25-1-803. Effect of this part 8 on similar rights of a patient. (1) Nothing in this part 8: ~~shall be construed so as to:~~

(a) ~~Limit~~ LIMITS the right of a patient, ~~or the patient's designated~~ PERSONAL representative, OR A PERSON WHO REQUESTS THE MEDICAL RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT AUTHORIZATION, A VALID SUBPOENA, OR A COURT ORDER to inspect the patient's medical or mental health data pursuant to section 24-72-204 (3) (a) (I), C.R.S.; or

(b) ~~Limit~~ LIMITS OR EXPANDS a right to inspect the patient's records ~~which~~ THAT is otherwise granted by state statute to the patient, ~~or his designated~~ THE PATIENT'S PERSONAL representative, OR A PERSON WHO REQUESTS THE MEDICAL RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT AUTHORIZATION, A VALID SUBPOENA, OR A COURT ORDER.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 18, 2014