P.L. 2022, CHAPTER 114, ***approved September 22, 2022***
Senate, No. 2253 ***(First Reprint)***

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:

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

(1) (a) For a request by a patient or the patient's legally authorized representative for a medical record, whether such record is stored electronically, on microfilm or microfiche, or on paper, the fee for reproducing the record shall not exceed $1 per page or $50 per individual admission record, whichever is less. The fee for reproducing a medical record shall not exceed $50 per individual admission or patient record, [1]**[**inclusive**]** exclusive[1] of any additional fees specified in paragraph (3) of this subsection;

(b) 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; **[**and**]**

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

(d) 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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate floor amendments adopted June 16, 2022.

fee for reproducing records stored on microfilm or microfiche shall be $1.50 per image; and

(e) 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.

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

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

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

(c) the record can be delivered electronically.

(3) In addition to per-page fees, a hospital **[**or a health care professional**]** shall apply the following charges **[1]**, provided that the total fees charged per individual admission record or patient record do not exceed $50**]**[1] for patients **[1]**and**]** ,[1] patients' legally authorized representatives [1], and authorized third parties[1] :

(a) a search fee of no more than **[**$10**]** $20 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 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;**]** (deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

(c) a fee for certification of a copy of a medical 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 records.

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

(6) The hospital **[**or the health care professional**]** shall establish a fee policy providing an incentive for the use of abstracts or summaries of medical records; however, a patient **[**,**]** and 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 **[**or the health care professional**]** shall not limit access to the record to a legally authorized representative of the patient, an authorized third party, or the patient's attending physician.

c. A hospital **[**or a health care professional**]** shall not assess any fees or charges for a copy of **[1]****[**a patient's medical**]** <u>individual admission</u>**[1]** 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) A health care practitioner;

(4) 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 **1[**the patient's medical**]** individual admission**1** records; or

(5) 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, who is not a legally authorized representative of the patient, with a valid authorization, subpoena, legal process, or court order granting access to a patient's medical or billing records.

["Health care professional" means an individual who, acting within the scope of the individual's licensure or certification, provides health care services, and includes, but is not limited to, a physician, dentist, nurse, pharmacist, or other health care professional whose professional practice is regulated pursuant to Title 45 of the Revised Statutes.**]**

"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 **1[**third party**]1** automobile insurer; or the patient's worker's compensation carrier, if the carrier is authorized to access to the patient's treatment or billing records by contract or law, provided that access by a worker's compensation carrier shall be limited only to that portion of the treatment or billing record that is relevant to the specific work-related incident at issue in the worker's compensation claim.

(cf: P.L.2021, c.427, s.1)

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

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**]** $50 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 regardless of whether such record is stored electronically, on microfilm or microfiche, or on paper; 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] $20 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, <u>who is not a legally authorized representative of the patient,</u> 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 **1[**third party**]1** automobile insurer; or the patient's worker's compensation carrier, if the carrier is authorized to access to the patient's treatment or billing records by contract or law, provided that access by a worker's compensation carrier shall be limited only to that portion of the treatment or billing record that is relevant to the specific work-related incident at issue in the worker's compensation claim.

l. 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.

(cf: P.L.2021, c.359, s.2)

3. This act shall take effect immediately.

Limits fees charged for copies of medical and billing records.