

1 **ACCESS TO MEDICAL RECORDS AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill creates a uniform HIPAA form.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ requires the Division of Family Health and Preparedness to create a uniform HIPAA

14 form;

- 15 ▶ requires a health care provider and the health care provider's contracted third party
- 16 service provider to accept the uniform HIPAA form; and

- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **78B-5-618**, as last amended by Laws of Utah 2021, Chapter 338

25 ENACTS:

26 **26-69-101**, Utah Code Annotated 1953

27 **26-69-102**, Utah Code Annotated 1953



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-69-101** is enacted to read:

CHAPTER 69. UNIFORM HIPAA FORM

26-69-101. Definitions.

As used in this chapter:

(1) "Division" means the Division of Family Health and Preparedness.

(2) "Patient" means the individual whose information is being requested.

Section 2. Section **26-69-102** is enacted to read:

26-69-102. Uniform HIPAA form.

(1) On or before June 30, 2022, the division shall create a uniform HIPAA form:

(a) for a patient to request the sharing of health records; and

(b) that is compliant with the Standards for Privacy of Individually Identifiable Health

Information, 45 C.F.R., Parts 160 and 164.

(2) The form shall include fields for:

(a) the patient's name;

(b) the patient's date of birth;

(c) the patient's phone number;

(d) the patient's address;

(e) (i) the patient's signature and date of signature, which may not require notarization;

or

(ii) the signature of the patient's legal representative as defined in Section [26-21-302](#),

and date of signature, which may not require notarization;

(f) the name, address, and phone number of the person to which the information will be

disclosed;

(g) the records requested, including whether the patient is requesting paper or

electronic records;

(h) the duration of time the authorization is valid; and

(i) the dates of service requested.

(3) The form shall include the following options for the field described in Subsection

(2)(g):

- 59 (a) history and physical examination records;
- 60 (b) treatment plans;
- 61 (c) emergency room records;
- 62 (d) radiology and lab reports;
- 63 (e) operative reports;
- 64 (f) pathology reports;
- 65 (g) consultations;
- 66 (h) discharge summary;
- 67 (i) outpatient clinic records and progress notes;
- 68 (j) behavioral health evaluation;
- 69 (k) behavioral health discharge summary;
- 70 (l) mental health therapy records;
- 71 (m) financial information including an itemized billing statement;
- 72 (n) health insurance claim form;
- 73 (o) billing form; and
- 74 (p) other.

75 Section 3. Section **78B-5-618** is amended to read:

76 **78B-5-618. Patient access to medical records -- Third party access to medical**
77 **records.**

78 (1) As used in this section:

- 79 (a) "Health care provider" means the same as that term is defined in Section
80 [78B-3-403](#).
- 81 (b) "Indigent individual" means an individual whose household income is at or below
82 100% of the federal poverty level as defined in Section [26-18-3.9](#).
- 83 (c) "Inflation" means the unadjusted Consumer Price Index, as published by the Bureau
84 of Labor Statistics of the United States Department of Labor, that measures the average
85 changes in prices of goods and services purchased by urban wage earners and clerical workers.
- 86 (d) "Qualified claim or appeal" means a claim or appeal under any:
 - 87 (i) provision of the Social Security Act as defined in Section [67-11-2](#); or
 - 88 (ii) federal or state financial needs-based benefit program.
- 89 [(+)] (2) Pursuant to Standards for Privacy of Individually Identifiable Health

90 Information, 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may
91 inspect or receive a copy of the patient's records from a health care provider [~~as defined in~~
92 ~~Section 78B-3-403~~]; when that health care provider is governed by the provisions of 45 C.F.R.,
93 Parts 160 and 164.

94 [~~(2)~~] (3) When a health care provider [~~as defined in Section 78B-3-403~~] is not
95 governed by Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R.,
96 Parts 160 and 164, a patient or a patient's personal representative may inspect or receive a copy
97 of the patient's records unless access to the records is restricted by law or judicial order.

98 [~~(3)~~] (4) A health care provider who provides a paper or electronic copy of a patient's
99 records to the patient or the patient's personal representative:

100 (a) shall provide the copy within the deadlines required by the Health Insurance
101 Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec.
102 164.524(b); and

103 (b) may charge a reasonable cost-based fee provided that the fee includes only the cost
104 of:

105 (i) copying, including the cost of supplies for and labor of copying; and

106 (ii) postage, when the patient or patient's personal representative has requested the copy
107 be mailed.

108 [~~(4)~~] (5) Except for records provided by a health care provider under Section 26-1-37, a
109 health care provider who provides a copy of a patient's records to a patient's attorney, legal
110 representative, or other third party authorized to receive records:

111 (a) shall provide the copy within 30 days after receipt of notice; and

112 (b) may charge a reasonable fee for paper or electronic copies, but may not exceed the
113 following rates:

114 (i) \$30 per request for locating a patient's records;

115 (ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32
116 cents per page for each additional page;

117 (iii) the cost of postage when the requester has requested the copy be mailed;

118 (iv) if requested, the health care provider will certify the record as a duplicate of the
119 original for a fee of \$20; and

120 (v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

121 ~~[(5)]~~ (6) Except for records provided under Section 26-1-37, a contracted third party
 122 service ~~[which]~~ that provides medical records, other than a health care provider under
 123 Subsections ~~[(3)]~~ (4) and ~~[(4)]~~ (5), who provides a copy of a patient's records to a patient's
 124 attorney, legal representative, or other third party authorized to receive records:

125 (a) shall provide the copy within 30 days after the request; and

126 (b) may charge a reasonable fee for paper or electronic copies, but may not exceed the
 127 following rates:

128 (i) \$30 per request for locating a patient's records;

129 (ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32
 130 cents per page for each additional page;

131 (iii) the cost of postage when the requester has requested the copy be mailed;

132 (iv) if requested, the health care provider or the health care provider's contracted third
 133 party service will certify the record as a duplicate of the original for a fee of \$20; and

134 (v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

135 ~~[(6)]~~ (7) A health care provider or the health care provider's contracted third party
 136 service shall deliver the medical records in the electronic medium customarily used by the
 137 health care provider or the health care provider's contracted third party service or in a
 138 universally readable image such as portable document format:

139 (a) if the patient, patient's personal representative, or a third party authorized to receive
 140 the records requests the records be delivered in an electronic medium; and

141 (b) the original medical record is readily producible in an electronic medium.

142 ~~[(7)]~~ (8) (a) Except as provided in Subsections ~~[(7)]~~ (8)(b) and (c), the per page fee in
 143 Subsections ~~[(3), (4), and (5)]~~ (4), (5), and (6) applies to medical records reproduced
 144 electronically or on paper.

145 (b) ~~[For record requests made on or after July 1, 2018, the]~~ The per page fee for
 146 producing a copy of records in an electronic medium shall be 50% of the per page fee
 147 otherwise provided in this section, regardless of whether the original medical records are stored
 148 in electronic format.

149 (c) (i) ~~[For electronic record requests made on or after July 1, 2021, a]~~ A health care
 150 provider or a health care provider's contracted third party service shall deliver the medical
 151 records in the electronic medium customarily used by the health care provider or the health care

152 provider's contracted third party service or in a universally readable image, such as portable
 153 document format, if the patient, patient's personal representative, patient's attorney, legal
 154 representative, or a third party authorized to receive the records, requests the records be
 155 delivered in an electronic medium.

156 (ii) An entity providing requested information under Subsection [~~(7)~~] (8)(c)(i):
 157 (A) shall provide the requested information within 30 days; and
 158 (B) may not charge a fee for the electronic copy that exceeds \$150 regardless of the
 159 number of pages and regardless of whether the original medical records are stored in electronic
 160 format.

161 [~~(8)(a) As used in this section, "inflation" means the unadjusted Consumer Price~~
 162 ~~Index, as published by the Bureau of Labor Statistics of the United States Department of Labor,~~
 163 ~~that measures the average changes in prices of goods and services purchased by urban wage~~
 164 ~~earners and clerical workers.]~~

165 [~~(b) (9)(a) [Beginning January 1, 2022, and on January 1 of each year thereafter,]~~ On
 166 January 1 of each year, the state treasurer shall adjust the following fees for inflation:

167 (i) the fee for providing patient's records under:
 168 (A) Subsections [~~(4)~~] (5)(b)(i) through (ii); and
 169 (B) Subsections [~~(5)~~] (6)(b)(i) through (ii); and
 170 (ii) the maximum amount that may be charged for an electronic copy under Subsection
 171 [~~(7)~~] (8)(c)(ii)(B).

172 [~~(e) (b) [On or before January 30, 2022, and on or before January 30 of each year~~
 173 ~~thereafter]~~ On or before January 30 of each year, the state treasurer shall:

174 (i) certify the inflation-adjusted fees and maximum amounts calculated under this
 175 section; and

176 (ii) notify the Administrative Office of the Courts of the information described in
 177 Subsection [~~(8)(e)(i)~~] (9)(b)(i) for posting on the court's website.

178 [~~(9)(a) As used in this Subsection (9), "qualified claim or appeal" means a claim or~~
 179 ~~appeal under any:~~

180 [~~(i) provision of the Social Security Act as defined in Section 67-11-2; or]~~

181 [~~(ii) federal or state financial needs-based benefit program.]~~

182 [~~(b) (10) Notwithstanding Subsections [~~(3) through (5)~~] (4) through (6), if a request~~

183 for a medical record is accompanied by documentation of a qualified claim or appeal, a health
 184 care provider or the health care provider's contracted third party service:

185 ~~[(i)]~~ (a) may not charge a fee for the first copy of the record for each date of service
 186 that is necessary to support the qualified claim or appeal in each calendar year;

187 ~~[(ii)]~~ (b) for a second or subsequent copy in a calendar year of a date of service that is
 188 necessary to support the qualified claim or appeal, may charge a reasonable fee that may not:

189 ~~[(A)]~~ (i) exceed 60 cents per page for paper photocopies;

190 ~~[(B)]~~ (ii) exceed a reasonable cost for copies of X-ray photographs and other health
 191 care records produced by similar processes;

192 ~~[(C)]~~ (iii) include an administrative fee or additional service fee related to the
 193 production of the medical record; or

194 ~~[(D)]~~ (iv) exceed the fee provisions for an electronic copy under Subsection ~~[(7)]~~

195 (8)(c); and

196 ~~[(iii)]~~ (c) shall provide the health record within 30 days after the day on which the
 197 request is received by the health care provider.

198 ~~[(10)(a) As used in this Subsection (10), "indigent individual" means an individual
 199 whose household income is at or below 100% of the federal poverty level as defined in Section
 200 26-18-3.9.]~~

201 ~~[(b)]~~ (11)(a) Except as otherwise provided in Subsections ~~[(3) through (5)]~~ (4) through
 202 (6), a health care provider or the health care provider's contracted third party service shall
 203 waive all fees under this section for an indigent individual.

204 ~~[(e)]~~ (b) A health care provider or the health care provider's contracted third party
 205 service may require the indigent individual or the indigent individual's authorized
 206 representative to provide proof that the individual is an indigent individual by executing an
 207 affidavit.

208 ~~[(d)]~~ (c) (i) An indigent individual that receives copies of a medical record at no charge
 209 under this Subsection ~~[(10)]~~ (11) is limited to one copy for each date of service for each health
 210 care provider, or the health care provider's contracted third party service, in each calendar year.

211 (ii) Any request for additional copies in addition to the one copy allowed under
 212 Subsection ~~[(10)(d)(i)]~~ (11)(c) is subject to the fee provisions described in Subsection ~~[(9)]~~
 213 (10).

214 (12) By July 1, 2022, a health care provider and all of the health care provider's
215 contracted third-party health related services shall accept a properly executed uniform HIPAA
216 form described in Title 26, Chapter 69, Uniform HIPAA Form.