

PATIENT MEDICAL RECORD ACCESS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the fee an entity may charge for providing medical records if the medical records are not provided in a certain amount of time.

Highlighted Provisions:

This bill:

► modifies the fee an entity may charge for providing medical records if the medical records are not provided in a certain amount of time.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-5-618, as last amended by Laws of Utah 2022, Chapter 327

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

Section 1. Section **78B-5-618** is amended to read:

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

(1) As used in this section:



28 (a) "Health care provider" means the same as that term is defined in Section
29 78B-3-403.

30 (b) "Indigent individual" means an individual whose household income is at or below
31 100% of the federal poverty level as defined in Section 26-18-3.9.

32 (c) "Inflation" means the unadjusted Consumer Price Index, as published by the Bureau
33 of Labor Statistics of the United States Department of Labor, that measures the average
34 changes in prices of goods and services purchased by urban wage earners and clerical workers.

35 (d) "Qualified claim or appeal" means a claim or appeal under any:

36 (i) provision of the Social Security Act as defined in Section 67-11-2; or

37 (ii) federal or state financial needs-based benefit program.

38 (2) Pursuant to Standards for Privacy of Individually Identifiable Health Information,
39 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or
40 receive a copy of the patient's records from a health care provider when that health care
41 provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

42 (3) When a health care provider is not governed by Standards for Privacy of
43 Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164, a patient or a
44 patient's personal representative may inspect or receive a copy of the patient's records unless
45 access to the records is restricted by law or judicial order.

46 (4) A health care provider who provides a paper or electronic copy of a patient's
47 records to the patient or the patient's personal representative:

48 (a) shall provide the copy within the deadlines required by the Health Insurance
49 Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec.
50 164.524(b); and

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

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

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

56 (5) Except for records provided by a health care provider under Section 26-1-37, a
57 health care provider who provides a copy of a patient's records to a patient's attorney, legal
58 representative, or other third party authorized to receive records:

59 (a) shall provide the copy within 30 days after ~~[receipt of notice]~~ the day notice is
60 received; and

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

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

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

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

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

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

70 (c) Notwithstanding the provisions of Subsection (5)(b), in the event the requested
71 records are not received by the requestor under this Subsection (5):

72 (i) within 30 days after the day notice is received by the health care provider, the health
73 care provider shall waive 50% of the fee; or

74 (ii) within 60 days after the day notice is received by the health care provider, the
75 health care provider must provide the requested records free of charge to the requestor.

76 (d) Time periods for a health care provider's performance under this Subsection (5)
77 shall be extended for periods of time during which the health care provider's performance is
78 prevented due to circumstances beyond the health care provider's control, such as fires, floods,
79 earthquakes, acts of God, lockouts, ransomware, or strikes.

80 (6) (a) Except for records provided under Section 26-1-37, a contracted third party
81 service that provides medical records, other than a health care provider under Subsections (4)
82 and (5), who provides a copy of a patient's records to a patient's attorney, legal representative,
83 or other third party authorized to receive records:

84 ~~[(a)]~~ (i) shall provide the copy within 30 days after the request; and

85 ~~[(b)]~~ (ii) may charge a reasonable fee for paper or electronic copies, but may not
86 exceed the following rates:

87 ~~[(i)]~~ (A) \$30 per request for locating a patient's records;

88 ~~[(ii)]~~ (B) reproduction charges may not exceed 53 cents per page for the first 40 pages
89 and 32 cents per page for each additional page;

90 [(iii)] (C) the cost of postage when the requester has requested the copy be mailed;

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

93 [(v)] (E) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

94 (b) Notwithstanding the provisions of Subsection (6)(a)(ii), if the requested records are
95 not received by the requestor under this Subsection (6):

96 (i) within 30 days after the day notice is received by the health care provider, the
97 third-party service must waive 50% of the fee; or

98 (ii) within 60 days after the day notice is received by the health care provider, the
99 third-party service must provide the requested records free of charge to the requestor.

100 (iii) Time periods for a third-party service's performance under this Subsection (6) shall
101 be extended for periods of time during which the third-party service's performance is prevented
102 due to circumstances beyond control of the third-party service, such as fires, floods,
103 earthquakes, acts of God, lockouts, ransomware, or strikes.

104 (7) A health care provider or the health care provider's contracted third party service
105 shall deliver the medical records in the electronic medium customarily used by the health care
106 provider or the health care provider's contracted third party service or in a universally readable
107 image such as portable document format:

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

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

111 (8) (a) Except as provided in Subsections (8)(b) [~~and (c);~~] through (d) the per page fee
112 in Subsections (4)[~~, (5), and~~] through (6) applies to medical records reproduced electronically
113 or on paper.

114 (b) The per page fee for producing a copy of records in an electronic medium shall be
115 50% of the per page fee otherwise provided in this section, regardless of whether the original
116 medical records are stored in electronic format.

117 (c) (i) A health care provider or a health care provider's contracted third party service
118 shall deliver the medical records in the electronic medium customarily used by the health care
119 provider or the health care provider's contracted third party service or in a universally readable
120 image, such as portable document format, if the patient, patient's personal representative,

121 patient's attorney, legal representative, or a third party authorized to receive the records,
122 requests the records be delivered in an electronic medium.

123 (ii) An entity providing requested information under Subsection (8)(c)(i):

124 (A) shall provide the requested information within 30 days; and

125 (B) may not charge a fee for the electronic copy that exceeds \$150 regardless of the
126 number of pages and regardless of whether the original medical records are stored in electronic
127 format.

128 (d) In the event the requested records under this Subsection (8) are not received by the
129 requestor:

130 (i) within 30 days after the day notice is received by the health care provider, the entity
131 providing requested information may not charge a fee for the electronic copy that exceeds \$75
132 regardless of the number of pages and regardless of whether the original medical records are
133 stored in electronic format; or

134 (ii) within 60 days after the day notice is received by the health care provider, the entity
135 providing requested information must provide the requested records free of charge to the
136 requestor.

137 (e) Time periods for the performance of an entity providing the requested information
138 under this Subsection (8) shall be extended for periods of time during which the entity's
139 performance is prevented due to circumstances beyond their control, such as fires, floods,
140 earthquakes, acts of God, lockouts, ransomware, or strikes.

141 (9) (a) On January 1 of each year, the state treasurer shall adjust the following fees for
142 inflation:

143 (i) the fee for providing patient's records under:

144 (A) Subsections (5)(b)(i) [~~through~~] and (ii); and

145 (B) Subsections (6)(b)(i) [~~through~~] and (ii); and

146 (ii) the maximum amount that may be charged for an electronic copy under Subsection
147 (8)(c)(ii)(B).

148 (b) On or before January 30 of each year, the state treasurer shall:

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

151 (ii) notify the Administrative Office of the Courts of the information described in

152 Subsection (9)(b)(i) for posting on the court's website.

153 (10) Notwithstanding Subsections (4) through (6), if a request for a medical record is
154 accompanied by documentation of a qualified claim or appeal, a health care provider or the
155 health care provider's contracted third party service:

156 (a) may not charge a fee for the first copy of the record for each date of service that is
157 necessary to support the qualified claim or appeal in each calendar year;

158 (b) for a second or subsequent copy in a calendar year of a date of service that is
159 necessary to support the qualified claim or appeal, may charge a reasonable fee that may not:

160 (i) exceed 60 cents per page for paper photocopies;

161 (ii) exceed a reasonable cost for copies of X-ray photographs and other health care
162 records produced by similar processes;

163 (iii) include an administrative fee or additional service fee related to the production of
164 the medical record; or

165 (iv) exceed the fee provisions for an electronic copy under Subsection (8)(c); and

166 (c) shall provide the health record within 30 days after the day on which the request is
167 received by the health care provider.

168 (11) (a) Except as otherwise provided in Subsections (4) through (6), a health care
169 provider or the health care provider's contracted third party service shall waive all fees under
170 this section for an indigent individual.

171 (b) A health care provider or the health care provider's contracted third party service
172 may require the indigent individual or the indigent individual's authorized representative to
173 provide proof that the individual is an indigent individual by executing an affidavit.

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

177 (ii) Any request for additional copies in addition to the one copy allowed under
178 Subsection (11)(c) is subject to the fee provisions described in Subsection (10).

179 (12) By January 1, 2023, a health care provider and all of the health care provider's
180 contracted third party health related services shall accept a properly executed form described in
181 Title 26, Chapter 70, Standard Health Record Access Form.