

Representative James A. Dunnigan proposes the following substitute bill:

PATIENT MEDICAL RECORD ACCESS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the fee an entity may charge for providing medical records if the medical records are not provided in a certain amount of time;
- ▶ requires the Division of Professional Licensing to maintain an index of third party services that provide medical records on behalf of health care providers; and
- ▶ makes technical and conforming changes.

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



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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:

(a) "Force majeure event" means an event or circumstance beyond the control of the health care provider or the health care provider's third-party service, including fires, floods, earthquakes, acts of God, lockouts, ransomware, or strikes.

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

(c) "History of poor payment" means three or more invoices where payment is more than 30 days late within a 12-month period.

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

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

~~(f)~~ (f) "Qualified claim or appeal" means a claim or appeal under any:

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

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

(g) "Third-party service" means a service that has entered into a contract with a health care provider to provide patient records on behalf of a health care provider.

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

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

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

59 (a) shall provide the copy within the deadlines required by the Health Insurance
60 Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec.
61 164.524(b); and

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

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

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

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

71 [~~(a)~~] (i) shall provide the copy within 30 days after receipt of notice; [~~and~~]

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

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

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

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

78 [~~(iv)~~] (D) if requested, the [~~health care provider~~] person fulfilling the request will
79 certify the record as a duplicate of the original for a fee of \$20; and

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

81 (iii) may charge an expedition fee of \$20 if:

82 (A) the requester's notice explicitly requests an expedited response; and

83 (B) the person fulfilling the request postmarks or otherwise makes the record available
84 electronically within 15 days from the day the person fulfilling the request receives notice of
85 the request.

86 (b) Notwithstanding the provisions of Subsection (5)(a)(ii) and subject to Subsection
87 (5)(c), in the event the requested records are not postmarked or otherwise made available

88 electronically by the person fulfilling the request:

89 (i) within 30 days after the day on which notice is received by the person fulfilling the
90 request, the person fulfilling the request shall waive 50% of the fee; or

91 (ii) within 60 days after the day on which notice is received by the person fulfilling the
92 request, the person fulfilling the request shall provide the requested records free of charge to
93 the requester.

94 (c) Performance under Subsection (5)(b) shall be extended in accordance with
95 Subsection (5)(d) if the person fulfilling the request notifies the requester of:

96 (i) the occurrence of a force majeure event within 10 days from the day:

97 (A) the force majeure event occurs; or

98 (B) the person fulfilling the request receives notice of the request; and

99 (ii) the termination of the force majeure event within 10 days from the day the force
100 majeure event terminates.

101 (d) In accordance with Subsection (5)(c), for a force majeure event:

102 (i) that lasts less than eight days, the person fulfilling the request shall, if the records
103 are not postmarked or otherwise made available electronically within:

104 (A) 30 days of the day the force majeure event ends, waive 50% of the fee for
105 providing the records; and

106 (B) 60 days of the day the force majeure event ends, waive the entire fee for providing
107 the records;

108 (ii) that lasts at least eight days but less than 30 days, the person fulfilling the request
109 shall, if the records are not postmarked or otherwise made available electronically within:

110 (A) 60 days of the day the force majeure event ends, waive 50% of the fee for
111 providing the records; and

112 (B) 90 days of the day the force majeure event ends, waive the entire fee for providing
113 the records; and

114 (iii) that lasts more than 30 days, the person fulfilling the request shall, if the records
115 are not postmarked or otherwise made available electronically within:

116 (A) 90 days of the day the force majeure event ends, waive 50% of the fee for
117 providing the records; and

118 (B) 120 days of the day the force majeure event ends, waive the entire fee for providing

119 the records.

120 (e) (i) A third-party service may require prepayment before sending records for a
121 request under this Subsection (5) if the third-party service:

122 (A) determines the requester has a history of poor payment; and

123 (B) notifies the requester, within the time periods described in Subsection (5)(b)(i) and
124 (ii), that the records will be sent as soon as the request has been prepaid.

125 (ii) The fee reductions described in Subsection (5)(d) do not apply if a third-party
126 service complies with Subsection (5)(e)(i).

127 (f) If a third-party service does not possess or have access to the data necessary to
128 fulfill a request, the third-party service shall notify:

129 (i) the requester that the request cannot be fulfilled; and

130 (ii) state the reasons for the third-party service's inability to fulfill the request within 30
131 days from the day on which the request is received by the third-party service.

132 (g) A patient's attorney, legal representative, or other third party authorized to receive
133 records may request patient records directly from a third-party service.

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

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

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

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

142 ~~[(ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and~~
143 ~~32 cents per page for each additional page;]~~

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

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

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

148 (6) (a) A health care provider that contracts with a third-party service to fulfill the
149 health care provider's medical record requests shall file a statement with the Division of

150 Professional Licensing containing:

151 (i) the name of the third-party service;

152 (ii) the phone number of the third-party service; and

153 (iii) the fax number, email address, website portal address, if applicable, and mailing

154 address for the third-party service where medical record requests can be sent for fulfillment.

155 (b) A health care provider described in Subsection (6)(a) shall update the filing

156 described in Subsection (6)(a) as necessary to ensure that the information is accurate.

157 (c) The Division of Professional Licensing shall develop a form for a health care

158 provider to complete that provides the information required by Subsection (6)(a).

159 (d) The Division of Professional Licensing shall:

160 (i) maintain an index of statements described in Subsection (6)(a) arranged

161 alphabetically by entity; and

162 (ii) make the index available to the public electronically on the Division of

163 Professional Licensing's website.

164 (7) A health care provider or the health care provider's [~~contracted third party~~]

165 third-party service shall deliver the medical records in the electronic medium customarily used

166 by the [~~health care provider or the health care provider's contracted third party service~~] person

167 fulfilling the request or in a universally readable image such as portable document format:

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

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

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

174 (b) The per page fee for producing a copy of records in an electronic medium shall be
175 50% of the per page fee otherwise provided in this section, regardless of whether the original
176 medical records are stored in electronic format.

177 (c) (i) A health care provider or a health care provider's [~~contracted third party~~]
178 third-party service shall deliver the medical records in the electronic medium customarily used
179 by the health care provider or the health care provider's [~~contracted third party~~] third-party
180 service or in a universally readable image, such as portable document format, if the patient,

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

183 (ii) ~~[An entity providing requested information]~~ A person fulfilling the request under
184 Subsection (8)(c)(i):

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

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

189 (d) Subject to Subsection (8)(e), in the event the requested records under Subsection
190 (8)(c)(i) are not postmarked or otherwise made available electronically by the person fulfilling
191 the request:

192 (i) within 30 days after the day notice is received by the person fulfilling the request,
193 the person fulfilling the request may not charge a fee for the electronic copy that exceeds \$75
194 regardless of the number of pages and regardless of whether the original medical records are
195 stored in electronic format; or

196 (ii) within 60 days after the day notice is received by the person fulfilling the request,
197 the person fulfilling the request shall provide the requested records free of charge to the
198 requester.

199 (e) Performance under Subsection (8)(d) shall be extended in accordance with
200 Subsection (8)(f) if the person fulfilling the request notifies the requester of:

201 (i) the occurrence of a force majeure event within 10 days from the day:

202 (A) the force majeure event occurs; or

203 (B) the person fulfilling the request receives notice of the request; and

204 (ii) the termination of the force majeure event within 10 days from the day the force
205 majeure event terminates.

206 (f) In accordance with Subsection (8)(e), for a force majeure event:

207 (i) that lasts less than eight days, the person fulfilling the request, if the records are not
208 postmarked or otherwise made available electronically within:

209 (A) 30 days of the day the force majeure event ends, may not charge a fee for an
210 electronic copy that exceeds \$75 regardless of the number of pages and regardless of whether
211 the original medical records are stored in electronic format; and

212 (B) 60 days of the day the force majeure event ends, shall waive the entire fee for
213 providing the records;

214 (ii) that lasts at least eight days but less than 30 days, the person fulfilling the request,
215 if the records are not postmarked or otherwise made available electronically within:

216 (A) 60 days of the day the force majeure event ends, may not charge a fee for an
217 electronic copy that exceeds \$75 regardless of the number of pages and regardless of whether
218 the original medical records are stored in electronic format; and

219 (B) 90 days of the day the force majeure event ends, shall waive the entire fee for
220 providing the records; and

221 (iii) that lasts more than 30 days, the person fulfilling the request, if the records are not
222 postmarked or otherwise made available electronically within:

223 (A) 90 days of the day the force majeure event ends, may not charge a fee for an
224 electronic copy that exceeds \$75 regardless of the number of pages and regardless of whether
225 the original medical records are stored in electronic format; and

226 (B) 120 days of the day the force majeure event ends, shall waive the entire fee for
227 providing the records.

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

230 (i) the fee for providing patient's records under[:] Subsections (5)(a)(ii)(A) and (B); and
231 [(A) Subsections (5)(b)(i) through (ii); and]

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

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

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

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

238 (ii) notify the Administrative Office of the Courts of the information described in
239 Subsection (9)(b)(i) for posting on the court's website.

240 (10) Notwithstanding Subsections (4) through (6), if a request for a medical record is
241 accompanied by documentation of a qualified claim or appeal, a health care provider or the
242 health care provider's [~~contracted third party~~] third-party service:

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

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

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

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

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

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

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

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

258 (b) A health care provider or the health care provider's ~~contracted third party~~
259 third-party service may require the indigent individual or the indigent individual's authorized
260 representative to provide proof that the individual is an indigent individual by executing an
261 affidavit.

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

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

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