

Representative James A. Dunnigan proposes the following substitute bill:

ACCESS TO PROTECTED HEALTH INFORMATION

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses third-party access to medical records.

Highlighted Provisions:

This bill:

- ▶ defines "payment and balance information";
- ▶ requires a person responding to a third-party's request for medical records to include certain information in the response; and
- ▶ establishes a procedure by which a person may request only payment and balance information, as opposed to medical records generally, with up to \$400 in penalties for failure to timely respond to the request.

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 2023, Chapters 287, 330



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

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

28 **78B-5-618. Patient access to medical records -- Third-party access to medical**
29 **records -- Medical records services -- Fees -- Standard form.**

30 (1) As used in this section:

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

34 (b) "Health care provider" means the same as that term is defined in Section
35 [78B-3-403](#).

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

38 (d) "Indigent individual" means an individual whose household income is at or below
39 100% of the federal poverty level as defined in Section [26B-3-113](#).

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

43 (f) "Payment and balance information" means information, or a summary of the
44 information, maintained by a health care provider during the normal course of business to track
45 a patient's financial obligations to the health care provider for the provision of health care, and
46 the satisfaction of those obligations:

47 (i) all payments the health care provider has received for providing health care to the
48 patient; and

49 (ii) the total balance owed to the health care provider for providing the health care to
50 the patient.

51 ~~[(f)]~~ (g) "Qualified claim or appeal" means a claim or appeal under any:

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

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

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

56 (2) Pursuant to Standards for Privacy of Individually Identifiable Health Information,

57 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or
58 receive a copy of the patient's records from a health care provider when that health care
59 provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

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

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

66 (a) shall provide the copy within the deadlines required by the Health Insurance
67 Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec.
68 164.524(b); and

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

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

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

74 (5) (a) Except for records provided under Section [26B-8-411](#), a health care provider or
75 a health care provider's third-party service that provides a copy of a patient's records to a
76 patient's attorney, legal representative, or other third party authorized to receive records:

77 (i) shall provide the copy within 30 days after receipt of notice;

78 (ii) shall, if the health care provider or the third-party service completing the request on
79 behalf of a health care provider will not comply with Subsection (5)(a)(i), provide a written
80 response that includes:

81 (A) contact information for the individual who the person making the request may
82 contact regarding the request; and

83 (B) the reason for not complying with Subsection (5)(a)(i);

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

86 (A) \$30 per request for locating a patient's records;

87 (B) reproduction charges may not exceed 53 cents per page for the first 40 pages and

88 32 cents per page for each additional page;

89 (C) the cost of postage when the requester has requested the copy be mailed;

90 (D) if requested, the person fulfilling the request will certify the record as a duplicate
91 of the original for a fee of \$20; and

92 (E) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act; and

93 ~~[(iii)]~~ (iv) may charge an expedition fee of \$20 if:

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

95 (B) the person fulfilling the request postmarks or otherwise makes the record available
96 electronically within 15 days from the day the person fulfilling the request receives notice of
97 the request.

98 (b) Notwithstanding the provisions of Subsection ~~[(5)(a)(ii)]~~ (5)(a)(iii) and subject to
99 Subsection (5)(c), in the event the requested records are not postmarked or otherwise made
100 available electronically by the person fulfilling the request:

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

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

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

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

109 (A) the force majeure event occurs; or

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

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

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

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

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

118 (B) 60 days of the day the force majeure event ends, waive the entire fee for providing

119 the records;

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

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

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

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

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

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

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

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

135 (B) notifies the requester, within the time periods described in ~~[Subsection]~~

136 Subsections (5)(b)(i) and (ii), that the records will be sent as soon as the request has been
137 prepaid.

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

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

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

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

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

147 (6) (a) A notice of request only for payment and balance information shall:

148 (i) clearly indicate that the request is only for payment and balance information; and

149 (ii) indicate the name, telephone number, email address, and address of the person or

150 entity making the request.

151 (b) A health care provider or third-party service fulfilling a request for only payment
152 and balance information from a patient's attorney, legal representative, or other third-party
153 representative, shall fulfill the request within 30 days after the day on which notice is received,
154 by:

155 (i) mailing a postmarked copy of the information to the requester; or

156 (ii) providing the information electronically or telephonically.

157 (c) A health care provider or third-party service that has access to the requested
158 payment and balance information but fails to:

159 (i) comply with Subsection (6)(b) shall pay, as a penalty, \$200; and

160 (ii) fulfill the request within 60 days shall pay, as a penalty, an additional \$200.

161 (d) A health care provider or third-party service obligated to pay a penalty under
162 Subsection (6)(c) shall pay it:

163 (i) to reduce any amount the patient owes to the health care provider for the provision
164 of health care, after any third-party obligations to pay, if the amount owed is more than the
165 penalty;

166 (ii) directly to the patient, if the requested payment and balance information to which
167 the health care provider or third-party service has access reflect that the patient owes no
168 amount to the health care provider for the provision of health care services; or

169 (iii) allocated between:

170 (A) a payment to satisfy the amount the patient owes to the health care provider for the
171 provision of health care, as indicated on the payment and balance information; and

172 (B) a payment in the amount of any remaining penalty obligation to the patient.

173 (7) A health care provider or third-party service shall, if the health care provider or the
174 third-party service completing the request on behalf of a health care provider will not comply
175 with Subsection (6)(b), provide a written response that includes:

176 (a) contact information for the individual who the person making the request may
177 contact regarding the request; and

178 (b) the reason for not complying with Subsection (5)(a)(i)

179 [~~(6)~~] (8) (a) (i) [~~A~~] Subject to Subsection (7)(a)(ii), a health care provider that contracts
180 with a third-party service to fulfill the health care provider's medical record requests shall file a

181 statement with the Division of Professional Licensing containing:

182 ~~[(i)]~~ (A) the name of the third-party service;

183 ~~[(ii)]~~ (B) the phone number of the third-party service; and

184 ~~[(iii)]~~ (C) the fax number, email address, website portal address, if applicable, and
185 mailing address for the third-party service where medical record requests can be sent for
186 fulfillment.

187 (ii) If an individual health care provider is an employee or contractor of an organization
188 that is a health care provider and that contracts with a third-party service to fulfill the medical
189 record requests for the individual health care provider, the organization may file the statement
190 under Subsection (6)(a)(i) on behalf of the organization's employees and contractors.

191 (b) A health care provider described in Subsection ~~[(6)(a)]~~ (7)(a) shall update the filing
192 described in Subsection ~~[(6)(a)]~~ (7)(a) as necessary to ensure that the information is accurate.

193 (c) The Division of Professional Licensing shall develop a form for a health care
194 provider to complete that provides the information required by Subsection ~~[(6)(a)]~~ (7)(a).

195 (d) The Division of Professional Licensing shall:

196 (i) maintain an index of statements described in Subsection ~~[(6)(a)]~~ (7)(a) arranged
197 alphabetically by entity; and

198 (ii) make the index available to the public electronically on the Division of
199 Professional Licensing's website.

200 ~~[(7)]~~ (9) A health care provider or the health care provider's third-party service shall
201 deliver the medical records in the electronic medium customarily used by the person fulfilling
202 the request or in a universally readable image such as portable document format:

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

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

206 ~~[(8)]~~ (10) (a) Except as provided in Subsections ~~[(8)(b)]~~ (9)(b) through (d), the per
207 page fee in Subsections (4) and (5) applies to medical records reproduced electronically or on
208 paper.

209 (b) The per page fee for producing a copy of records in an electronic medium shall be
210 50% of the per page fee otherwise provided in this section, regardless of whether the original
211 medical records are stored in electronic format.

212 (c) (i) A health care provider or a health care provider's third-party service shall deliver
213 the medical records in the electronic medium customarily used by the health care provider or
214 the health care provider's third-party service or in a universally readable image, such as
215 portable document format, if the patient, patient's personal representative, patient's attorney,
216 legal representative, or a third party authorized to receive the records, requests the records be
217 delivered in an electronic medium.

218 (ii) A person fulfilling the request under Subsection [~~(8)(c)(i)~~] (9)(c)(i):

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

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

223 (d) Subject to Subsection [~~(8)(e)~~] (9)(e), in the event the requested records under
224 Subsection [~~(8)(c)(i)~~] (9)(c)(i) are not postmarked or otherwise made available electronically by
225 the person fulfilling the request:

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

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

233 (e) Performance under Subsection [~~(8)(d)~~] (9)(d) shall be extended in accordance with
234 Subsection [~~(8)(f)~~] (9)(f) if the person fulfilling the request notifies the requester of:

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

236 (A) the force majeure event occurs; or

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

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

240 (f) In accordance with Subsection [~~(8)(e)~~] (9)(e), for a force majeure event:

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

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

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

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

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

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

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

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

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

262 [~~(9)~~] (11) (a) On January 1 of each year, the state treasurer shall adjust the following
263 fees for inflation:

264 (i) the fee for providing patient's records under Subsections (5)(a)(ii)(A) and (B); and

265 (ii) the maximum amount that may be charged for an electronic copy under Subsection
266 [~~(8)(c)(ii)(B)~~] (9)(c)(ii)(B).

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

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

270 (ii) notify the Administrative Office of the Courts of the information described in
271 Subsection [~~(9)(b)(i)~~] (10)(b)(i) for posting on the court's website.

272 [~~(10)~~] (12) Notwithstanding Subsections (4) through (6), if a request for a medical
273 record is accompanied by documentation of a qualified claim or appeal, a health care provider

274 or the health care provider's third-party service:

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

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

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

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

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

284 (iv) exceed the fee provisions for an electronic copy under Subsection [~~(8)(c)~~] (9)(c);

285 and

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

288 [~~(H)~~] (13) (a) Except as otherwise provided in Subsections (4) through [~~(6)~~] (7), a
289 health care provider or the health care provider's third-party service shall waive all fees under
290 this section for an indigent individual.

291 (b) A health care provider or the health care provider's third-party service may require
292 the indigent individual or the indigent individual's authorized representative to provide proof
293 that the individual is an indigent individual by executing an affidavit.

294 (c) (i) An indigent individual that receives copies of a medical record at no charge
295 under this Subsection [~~(H)~~] (12) is limited to one copy for each date of service for each health
296 care provider, or the health care provider's third-party service, in each calendar year.

297 (ii) Any request for additional copies in addition to the one copy allowed under
298 Subsection [~~(H)(c)~~] (12)(c) is subject to the fee provisions described in Subsection [~~(H)~~] (11).

299 [~~(12)~~] (14) By January 1, 2023, a health care provider and all of the health care
300 provider's contracted third party health related services shall accept a properly executed form
301 described in Section 26B-8-514.

302 Section 2. **Effective date.**

303 This bill takes effect on May 1, 2024.