S T A T E O F N E W Y O R K

2628

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to fees charged by medical record custodians for production of records pursuant to subpoena duces tecum; and to amend the public health law, in relation to access by an adverse party to medical records

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 2306 of the civil practice law and rules is amended by adding a new subdivision (c) to read as follows:

(C) FEES. NOTWITHSTANDING THE PROVISIONS OF THE PUBLIC HEALTH LAW, NO FEE, OTHER THAN THOSE AUTHORIZED BY SUBDIVISION (A) OF SECTION TWENTY-THREE HUNDRED THREE OF THIS ARTICLE, MAY BE EXACTED OR LEVIED FOR THE PRODUCTION OF RECORDS RELATING TO THE CONDITION OR TREATMENT OF A PATIENT.

S 2. Section 18 of the public health law, as added by chapter 800 of the laws of 1986, is renumbered section 18-b.

S 3. Paragraph (g) of subdivision 1 of section 18 of the public health law, as amended by chapter 634 of the laws of 2004, is amended to read as follows:

(g) "Qualified person" means any properly identified subject; OR AN ADVERSE PARTY; or a guardian appointed under article eighty-one of the mental hygiene law; or a parent of an infant; or a guardian of an infant appointed under article seventeen of the surrogate's court procedure act or other legally appointed guardian of an infant who may be entitled to request access to a clinical record under paragraph (c) of subdivision two of this section; or a distributee of any deceased subject for whom no personal representative, as defined in the estates, powers and trusts law, has been appointed; or an attorney representing a qualified person or the subject's estate who holds a power of attorney from the qualified person or the subject's estate explicitly authorizing the holder to

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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execute a written request for patient information under this section. A qualified person shall be deemed a "personal representative of the individual" for purposes of the federal health insurance portability and accountability act of 1996 and its implementing regulations.

S 4. Subdivision 1 of section 18 of the public health law is amended by adding two new paragraphs (j) and (k) to read as follows:

(J) "ADVERSE PARTY" MEANS A PERSON OR ENTITY WHO MAY HAVE LEGAL FINANCIAL LIABILITY DUE TO THE SUBJECT'S MEDICAL CONDITION OR TREATMENT AND INCLUDES SUCH PERSON'S OR ENTITY'S REPRESENTATIVE, INCLUDING THEIR ATTORNEY OR INSURANCE COMPANY, WHO MAY HAVE LEGAL FINANCIAL LIABILITY DUE TO THE SUBJECT'S MEDICAL CONDITION OR TREATMENT.

(K) "WRITTEN REQUEST OF ANY QUALIFIED PERSON" MEANS A WRITTEN AUTHORIZATION SIGNED AND ACKNOWLEDGED BY THE SUBJECT PERMITTING THE RELEASE OF MEDICAL RECORDS OR SUBPOENA DUCES TECUM SERVED BY OR ON BEHALF OF A QUALIFIED PERSON.

S 5. Subdivision 8 of section 18 of the public health law, as added by chapter 497 of the laws of 1986, is amended to read as follows:

8. Challenges to accuracy. A qualified person, OTHER THAN AN ADVERSE PARTY, may challenge the accuracy of information maintained in the patient information and may require that a brief written statement prepared by him or her concerning the challenged information be inserted into the patient information. This statement shall become a permanent part of the patient information and shall be released whenever the information at issue is released. This subdivision shall apply only to factual statements and shall not include a provider's observations, inferences or conclusions.

A facility may place reasonable restrictions on the time and frequency of any challenges to accuracy.

S 6. This act shall take effect immediately and shall apply to all subpoenas duces tecum for production of records relating to the condition or treatment of a patient which are served on the effective date of this act; and shall further apply to all requests for patient information that are pending on the effective date of this act.