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2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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Introduced by M. of A. GOTTFRIED -- read once and referred to the  
Committee on Health

AN ACT to amend the public health law, the mental hygiene law and the  
civil practice law and rules, in relation to access to patient infor-  
mation, medical records and clinical records

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

1     Section 1. Paragraphs (b), (d) and (g) of subdivision 1 of section 18  
2     of the public health law, paragraphs (b) and (d) as added by chapter 497  
3     of the laws of 1986 and paragraph (g) as amended by chapter 634 of the  
4     laws of 2004, are amended and a new paragraph (j) is added to read as  
5     follows:

6     (b) "Health care provider" or "provider" means a ["health care facili-  
7     ty" or a "health care practitioner" as defined by this subdivision]  
8     HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER, OR AN AGENT THEREOF.

9     (d) "Health care practitioner" or "practitioner" means a person  
10    licensed under article one hundred thirty-one, one hundred thirty-one-B,  
11    one hundred thirty-two, one hundred thirty-three, one hundred thirty-  
12    six, ONE HUNDRED THIRTY-SEVEN, one hundred thirty-nine, ONE HUNDRED  
13    FORTY, one hundred forty-one, one hundred forty-three, one hundred  
14    forty-four, one hundred fifty-three, one hundred fifty-four, one hundred  
15    fifty-six or one hundred fifty-nine of the education law [or a person  
16    certified under section twenty-five hundred sixty of this chapter].

17    (g) "Qualified person" means any properly identified subject; or a  
18    guardian appointed under article eighty-one of the mental hygiene law;  
19    or a parent of an infant; or a guardian of an infant appointed under  
20    article seventeen of the surrogate's court procedure act or other legal-  
21    ly appointed guardian of an infant who may be entitled to request access  
22    to a clinical record under paragraph (c) of subdivision two of this  
23    section; or a distributee of any deceased subject for whom no personal

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

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1 representative, as defined in the estates, powers and trusts law, has  
2 been appointed; or an attorney representing [a] ANY OF THE ABOVE quali-  
3 fied [person] PERSONS or the subject's estate who holds a power of  
4 attorney from the qualified person or the subject's estate explicitly  
5 authorizing the holder to execute a written request for patient informa-  
6 tion OR TO OBTAIN MEDICAL RECORDS under this section; OR THE DESIGNEE  
7 OF THE HOLDER OF THE POWER OF ATTORNEY, WHO SHALL BE AN ATTORNEY OR AN  
8 AGENT OF AN ATTORNEY. A qualified person shall be deemed a "personal  
9 representative of the individual" for purposes of the federal health  
10 insurance portability and accountability act of 1996 and its implement-  
11 ing regulations.

12 (J) "AGENT" MEANS A CONTRACTOR, SUBCONTRACTOR, AFFILIATE OR SUBSIDIARY  
13 OF A HEALTH CARE PROVIDER WHICH BY CONTRACT OR OTHERWISE RECEIVES, MAIN-  
14 TAINS, COPIES OR TRANSMITS PATIENT INFORMATION OR MEDICAL RECORDS FOR  
15 THE HEALTH CARE PROVIDER.

16 S 2. Paragraph (e) of subdivision 2 of section 18 of the public health  
17 law, as amended by chapter 576 of the laws of 1998, is amended to read  
18 as follows:

19 (e) [The provider may impose a reasonable charge for all inspections  
20 and copies, not exceeding the costs incurred by such provider, provided,  
21 however, that a provider may not impose a charge for copying an original  
22 mammogram when the original has been furnished to any qualified person  
23 and provided, further, that any charge for furnishing an original mammo-  
24 gram pursuant to this section shall not exceed the documented costs  
25 associated therewith. However, the reasonable charge for paper copies  
26 shall not exceed seventy-five cents per page. A qualified person shall  
27 not be denied access to patient information solely because of inability  
28 to pay.] (I) THE PROVIDER MAY IMPOSE A CHARGE FOR ALL INSPECTIONS AND  
29 COPIES OF PATIENT INFORMATION; PROVIDED, HOWEVER, THAT A PROVIDER SHALL  
30 NOT IMPOSE A CHARGE FOR COPYING AN ORIGINAL MAMMOGRAM WHEN THE ORIGINAL  
31 HAS BEEN FURNISHED TO ANY QUALIFIED PERSON; AND PROVIDED, FURTHER, THAT  
32 ANY CHARGE FOR FURNISHING AN ORIGINAL MAMMOGRAM PURSUANT TO THIS SECTION  
33 SHALL NOT EXCEED THE DOCUMENTED COSTS ASSOCIATED THEREWITH. THE CHARGE  
34 FOR PAPER COPIES SHALL BE SEVENTY-FIVE CENTS PER PAGE FOR COPIES OF  
35 PATIENT INFORMATION REQUESTED BY A QUALIFIED PERSON TO FACILITATE THE  
36 PATIENT'S ONGOING HEALTH CARE, PLUS POSTAGE OR SHIPPING AND SALES TAX,  
37 IF APPLICABLE.

38 (II) FOR COPIES, OTHER THAN COPIES OF IMAGING, REQUESTED BY A QUALI-  
39 FIED PERSON FOR PURPOSES OTHER THAN TO FACILITATE THE PATIENT'S ONGOING  
40 HEALTH CARE: (A) FOR PAPER COPIES, THE FEE SHALL BE TWO DOLLARS PER PAGE  
41 FOR THE FIRST FIFTEEN PAGES AND THEREAFTER SHALL BE ONE DOLLAR PER PAGE,  
42 PLUS POSTAGE OR SHIPPING AND SALES TAX, IF APPLICABLE: (B) FOR COPIES  
43 PRODUCED FROM MICROFILM OR MICROFICHE, THE FEE SHALL BE THREE DOLLARS  
44 PER PAGE FOR THE FIRST FIFTEEN PAGES AND THEREAFTER SHALL BE TWO DOLLARS  
45 PER PAGE, PLUS POSTAGE OR SHIPPING AND SALES TAX, IF APPLICABLE. THE  
46 FEES AUTHORIZED BY THIS SUBPARAGRAPH SHALL APPLY ONLY IF THE COPIES ARE  
47 PROVIDED WITHIN SIXTY DAYS OF RECEIPT OF A REQUEST. FOR COPIES NOT  
48 PROVIDED WITHIN SIXTY DAYS OF RECEIPT OF A REQUEST, THE FEE ESTABLISHED  
49 IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL APPLY.

50 (III) FOR COPIES OF IMAGING, OTHER THAN ORIGINAL MAMMOGRAMS FURNISHED  
51 TO A QUALIFIED PERSON, THE CHARGE SHALL NOT EXCEED THE REASONABLE COST  
52 OF REPRODUCTION. FOR PURPOSES OF THIS SECTION, THE TERM "IMAGING" SHALL  
53 MEAN: ANY X-RAY OR IMAGE PRODUCED BY CONVENTIONAL X-RAY OR RADIOGRAPH,  
54 FLUOROSCOPY, DIGITAL RADIOGRAPHY, COMPUTED TOMOGRAPHY, MAGNETIC RESO-  
55 NANCE IMAGING, NUCLEAR IMAGING, ULTRASONOGRAPHY, ANGIOGRAPHY, OR ANY  
56 OTHER SIMILAR MEDICAL IMAGING SERVICES.

(IV) ON AND AFTER JANUARY FIRST, TWO THOUSAND TWELVE, THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF MENTAL HEALTH, SHALL ADJUST ANNUALLY THE AMOUNTS SET FORTH IN THIS PARAGRAPH BASED ON THE MOST RECENT CHANGES IN THE CONSUMER PRICE INDEX REPORTED ANNUALLY BY THE BUREAU OF LABOR STATISTICS IN THE UNITED STATES DEPARTMENT OF LABOR.

(V) A QUALIFIED PERSON SHALL NOT BE DENIED ACCESS TO PATIENT INFORMATION SOLELY BECAUSE OF INABILITY TO PAY.

S 3. Section 18 of the public health law, as added by chapter 497 of the laws of 1986, is amended by adding three new subdivisions 3-a, 3-b and 3-c to read as follows:

3-A. A QUALIFIED PERSON SHALL REQUEST MEDICAL RECORDS UNDER THIS SECTION BY SUBMITTING A SIGNED WRITTEN STATEMENT WHICH SETS FORTH THE FACTS ESTABLISHING HIS OR HER QUALIFYING STATUS UNDER THIS SECTION.

3-B. WHERE THE WRITTEN REQUEST IS FROM THE HOLDER OF A POWER OF ATTORNEY, A COPY OF THE POWER OF ATTORNEY SHALL BE ATTACHED TO THE REQUEST. WHERE THE WRITTEN REQUEST IS FROM A DESIGNEE OF A HOLDER OF A POWER OF ATTORNEY, A COPY OF THE POWER OF ATTORNEY AND OF THE DESIGNATION SHALL BE ATTACHED TO THE REQUEST. A REQUEST UNDER THIS SUBDIVISION SHALL BE SUBJECT TO THE DURATION AND TERMS OF THE POWER OF ATTORNEY AND DESIGNATION, AS THE CASE MAY BE. A PERSON RECEIVING MEDICAL RECORDS UNDER THIS SUBDIVISION SHALL NOT USE OR DISCLOSE THE MEDICAL RECORDS OR ANY INFORMATION CONTAINED THEREIN EXCEPT FOR THE PURPOSE FOR WHICH THEY WERE AUTHORIZED TO BE RECEIVED.

3-C. THE RELEASE OF MEDICAL RECORDS SHALL BE SUBJECT TO: (I) ARTICLE TWENTY-SEVEN-F OF THIS CHAPTER IN THE CASE OF CONFIDENTIAL HIV-RELATED INFORMATION; (II) SECTION SEVENTEEN OF THIS TITLE AND SECTIONS TWENTY-THREE HUNDRED ONE, TWENTY-THREE HUNDRED SIX AND TWENTY-THREE HUNDRED EIGHT OF THIS CHAPTER IN THE CASE OF TERMINATION OF A PREGNANCY AND TREATMENT FOR SEXUALLY TRANSMITTED DISEASE; (III) ARTICLE THIRTY-THREE OF THE MENTAL HYGIENE LAW; AND (IV) ANY OTHER PROVISIONS OF LAW CREATING SPECIAL REQUIREMENTS RELATING TO THE RELEASE OF MEDICAL INFORMATION, INCLUDING THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND ITS IMPLEMENTING REGULATIONS.

S 4. Subdivision (a) of section 33.16 of the mental hygiene law is amended by adding a new paragraph 8 to read as follows:

8. "AGENT" MEANS A CONTRACTOR, SUBCONTRACTOR, AFFILIATE OR SUBSIDIARY OF A FACILITY WHO BY CONTRACT OR OTHERWISE, RECEIVES, MAINTAINS, COPIES OR TRANSMITS CLINICAL RECORDS FOR THE FACILITY.

S 5. Paragraph 6 of subdivision (b) of section 33.16 of the mental hygiene law, as amended by chapter 165 of the laws of 1991 and as renumbered by chapter 233 of the laws of 1991, is amended to read as follows:

6. [The facility may impose a reasonable charge for all inspections and copies, not exceeding the costs incurred by such provider. However, the reasonable charge for paper copies shall not exceed seventy-five cents per page. A qualified person shall not be denied access to the clinical record solely because of inability to pay.] A. THE FACILITY OR ITS AGENT MAY IMPOSE A CHARGE FOR ALL INSPECTIONS AND COPIES OF PATIENT INFORMATION. THE CHARGE FOR PAPER COPIES SHALL BE SEVENTY-FIVE CENTS PER PAGE FOR COPIES OF PATIENT INFORMATION REQUESTED BY A QUALIFIED PERSON TO FACILITATE THE PATIENT'S ONGOING HEALTH CARE, PLUS POSTAGE OR SHIPPING AND SALES TAX, IF APPLICABLE.

B. FOR COPIES REQUESTED BY A QUALIFIED PERSON FOR PURPOSES OTHER THAN TO FACILITATE THE PATIENT'S HEALTH CARE (I) FOR PAPER COPIES, THE FEE SHALL BE TWO DOLLARS PER PAGE FOR THE FIRST FIFTEEN PAGES AND THEREAFTER SHALL BE ONE DOLLAR PER PAGE, PLUS POSTAGE OR SHIPPING AND SALES TAX, IF APPLICABLE; AND (II) FOR COPIES PRODUCED FROM MICROFILM OR MICROFICHE,

1 THE FEE SHALL BE THREE DOLLARS PER PAGE FOR THE FIRST FIFTEEN PAGES AND  
2 THEREAFTER SHALL BE TWO DOLLARS PER PAGE, PLUS POSTAGE OR SHIPPING AND  
3 SALES TAX, IF APPLICABLE. THE FEES AUTHORIZED BY THIS SUBPARAGRAPH SHALL  
4 APPLY ONLY IF THE COPIES ARE PROVIDED WITHIN SIXTY DAYS OF RECEIPT OF A  
5 REQUEST. FOR COPIES NOT PROVIDED WITHIN SIXTY DAYS OF RECEIPT OF A  
6 REQUEST, THE FEE ESTABLISHED IN SUBPARAGRAPH A OF THIS PARAGRAPH SHALL  
7 APPLY.

8 C. ON AND AFTER JANUARY FIRST, TWO THOUSAND TWELVE, THE COMMISSIONER,  
9 IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, SHALL ADJUST ANNUALLY  
10 THE AMOUNTS SET FORTH IN THIS PARAGRAPH BASED ON THE MOST RECENT CHANGES  
11 IN THE CONSUMER PRICE INDEX REPORTED ANNUALLY BY THE BUREAU OF LABOR  
12 STATISTICS IN THE UNITED STATES DEPARTMENT OF LABOR.

13 D. A QUALIFIED PERSON SHALL NOT BE DENIED ACCESS TO PATIENT INFORMA-  
14 TION SOLELY BECAUSE OF INABILITY TO PAY.

15 S 6. Subdivision (d) of rule 3122 of the civil practice law and rules,  
16 as added by chapter 575 of the laws of 2002, is amended to read as  
17 follows:

18 (d) Unless the subpoena duces tecum directs the production of original  
19 documents for inspection and copying at the place where such items are  
20 usually maintained, it shall be sufficient for the custodian or other  
21 qualified person to deliver complete and accurate copies of the items to  
22 be produced. The reasonable production expenses of a non-party witness  
23 shall be defrayed by the party seeking discovery. THE CHARGES AND FEES  
24 AUTHORIZED BY SUBDIVISION TWO OF SECTION EIGHTEEN OF THE PUBLIC HEALTH  
25 LAW AND PARAGRAPH SIX OF SUBDIVISION (B) OF SECTION 33.16 OF THE MENTAL  
26 HYGIENE LAW, RELATIVE TO REQUESTS FOR INSPECTIONS AND COPYING OF MEDICAL  
27 RECORDS SHALL BE DEEMED TO BE REASONABLE PRODUCTION EXPENSES FOR  
28 PURPOSES OF THIS SUBDIVISION.

29 S 7. For the periods of time prior to the effective dates of sections  
30 one through six of this act, the provision of patient information,  
31 medical or clinical records pursuant to the provisions of section 18 of  
32 the public health law or section 33.16 of the mental hygiene law at a  
33 fee of seventy-five cents per page shall be deemed for all purposes to  
34 be compliant with such sections of law.

35 S 8. This act shall take effect immediately; provided, however, that  
36 sections one through five of this act shall take effect on the sixtieth  
37 day after this act shall have become a law.