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

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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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 information, medical records and clinical records

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

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

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

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

(g) "Qualified person" means any properly identified subject; 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

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

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representative, as defined in the estates, powers and trusts law, has been appointed; or an attorney representing [a] ANY OF THE ABOVE qualified [person] PERSONS 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 execute a written request for patient information OR TO OBTAIN MEDICAL RECORDS under this section; OR THE DESIGNEE OF THE HOLDER OF THE POWER OF ATTORNEY, WHO SHALL BE AN ATTORNEY OR AN AGENT OF AN ATTORNEY. 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.

(J) "AGENT" MEANS A CONTRACTOR, SUBCONTRACTOR, AFFILIATE OR SUBSIDIARY OF A HEALTH CARE PROVIDER WHICH BY CONTRACT OR OTHERWISE RECEIVES, MAINTAINS, COPIES OR TRANSMITS PATIENT INFORMATION OR MEDICAL RECORDS FOR THE HEALTH CARE PROVIDER.

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

(e) [The provider may impose a reasonable charge for all inspections and copies, not exceeding the costs incurred by such provider, provided, however, that a provider may not impose a charge for copying an original mammogram when the original has been furnished to any qualified person and provided, further, that any charge for furnishing an original mammogram pursuant to this section shall not exceed the documented costs associated therewith. However, the reasonable charge for paper copies shall not exceed seventy-five cents per page. A qualified person shall not be denied access to patient information solely because of inability to pay.] (I) THE PROVIDER MAY IMPOSE A CHARGE FOR ALL INSPECTIONS AND COPIES OF PATIENT INFORMATION; PROVIDED, HOWEVER, THAT A PROVIDER SHALL NOT IMPOSE A CHARGE FOR COPYING AN ORIGINAL MAMMOGRAM WHEN THE ORIGINAL HAS BEEN FURNISHED TO ANY QUALIFIED PERSON; AND PROVIDED, FURTHER, THAT ANY CHARGE FOR FURNISHING AN ORIGINAL MAMMOGRAM PURSUANT TO THIS SECTION SHALL NOT EXCEED THE DOCUMENTED COSTS ASSOCIATED THEREWITH. 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.

(II) FOR COPIES, OTHER THAN COPIES OF IMAGING, REQUESTED BY A QUALIFIED PERSON FOR PURPOSES OTHER THAN TO FACILITATE THE PATIENT'S ONGOING HEALTH CARE: (A) 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: (B) FOR COPIES PRODUCED FROM MICROFILM OR MICROFICHE, THE FEE SHALL BE THREE DOLLARS PER PAGE FOR THE FIRST FIFTEEN PAGES AND THEREAFTER SHALL BE TWO DOLLARS PER PAGE, PLUS POSTAGE OR SHIPPING AND SALES TAX, IF APPLICABLE. THE FEES AUTHORIZED BY THIS SUBPARAGRAPH SHALL APPLY ONLY IF THE COPIES ARE PROVIDED WITHIN SIXTY DAYS OF RECEIPT OF A REQUEST. FOR COPIES NOT PROVIDED WITHIN SIXTY DAYS OF RECEIPT OF A REQUEST, THE FEE ESTABLISHED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL APPLY.

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

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

C. ON AND AFTER JANUARY FIRST, TWO THOUSAND TWELVE, THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF 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.

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

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

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

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

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