

912

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. WEPRIN -- Multi-Sponsored by -- M. of A. GIBSON,
QUART, ROBERTS, STEVENSON -- 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 pursu-
ant 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 2306 of the civil practice law and rules is amended
2 by adding a new subdivision (c) to read as follows:
3 (C) FEES. NOTWITHSTANDING THE PROVISIONS OF THE PUBLIC HEALTH LAW, NO
4 FEE, OTHER THAN THOSE AUTHORIZED BY SUBDIVISION (A) OF SECTION
5 TWENTY-THREE HUNDRED THREE OF THIS ARTICLE, MAY BE EXACTED OR LEVIED FOR
6 THE PRODUCTION OF RECORDS RELATING TO THE CONDITION OR TREATMENT OF A
7 PATIENT.
8 S 2. Section 18 of the public health law, as added by chapter 800 of
9 the laws of 1986, is renumbered section 18-b.
10 S 3. Paragraph (g) of subdivision 1 of section 18 of the public health
11 law, as amended by chapter 634 of the laws of 2004, is amended to read
12 as follows:
13 (g) "Qualified person" means any properly identified subject; OR AN
14 ADVERSE PARTY; or a guardian appointed under article eighty-one of the
15 mental hygiene law; or a parent of an infant; or a guardian of an infant
16 appointed under article seventeen of the surrogate's court procedure act
17 or other legally appointed guardian of an infant who may be entitled to
18 request access to a clinical record under paragraph (c) of subdivision
19 two of this section; or a distributee of any deceased subject for whom
20 no personal representative, as defined in the estates, powers and trusts
21 law, has been appointed; or an attorney representing a qualified person

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

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1 or the subject's estate who holds a power of attorney from the qualified
2 person or the subject's estate explicitly authorizing the holder to
3 execute a written request for patient information under this section. A
4 qualified person shall be deemed a "personal representative of the indi-
5 vidual" for purposes of the federal health insurance portability and
6 accountability act of 1996 and its implementing regulations.

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

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

14 (K) "WRITTEN REQUEST OF ANY QUALIFIED PERSON" MEANS A WRITTEN AUTHORI-
15 ZATION SIGNED AND ACKNOWLEDGED BY THE SUBJECT PERMITTING THE RELEASE OF
16 MEDICAL RECORDS OR SUBPOENA DUCES TECUM SERVED BY OR ON BEHALF OF A
17 QUALIFIED PERSON.

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

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

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

31 S 6. This act shall take effect immediately and shall apply to all
32 subpoenas duces tecum for production of records relating to the condi-
33 tion or treatment of a patient which are served on the effective date of
34 this act; and shall further apply to all requests for patient informa-
35 tion that are pending on the effective date of this act.