

2592

2015-2016 Regular Sessions

I N S E N A T E

January 26, 2015

Introduced by Sen. SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the mental hygiene law, in relation to patient health information and medical records

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

1 Section 1. Section 17 of the public health law, as amended by chapter
2 165 of the laws of 1991, the first undesignated paragraph as amended by
3 chapter 576 of the laws of 1998, is amended to read as follows:
4 S 17. Release of [medical] HEALTH records TO A DESIGNATED HEALTH CARE
5 PROVIDER. 1. Upon the written request of any competent patient, parent
6 or guardian of an infant, a guardian appointed pursuant to article
7 eighty-one of the mental hygiene law, or conservator of a conservatee,
8 [an examining, consulting or treating physician or hospital must] A
9 HEALTH CARE PROVIDER WHO HAS PROVIDED PROFESSIONAL HEALTH CARE SERVICES
10 PERTAINING TO A PATIENT SHALL release and deliver, exclusive of
11 NON-CLINICAL personal notes of the [said physician or hospital] HEALTH
12 CARE PROVIDER, copies of all [x-rays, medical] REQUESTED HEALTH records
13 [and test records including all laboratory tests] regarding that patient
14 to any other designated [physician or hospital provided, however, that]
15 HEALTH CARE PROVIDER. HOWEVER, such records concerning the treatment of
16 an infant patient for venereal disease or the performance of an abortion
17 operation upon such infant patient shall not be released or in any
18 manner be made available to the parent or guardian of such infant, and
19 provided, further, that original mammograms, rather than copies thereof,
20 shall be released and delivered. WHERE A HEALTH CARE PROVIDER MAINTAINS
21 A HEALTH RECORD IN ELECTRONIC FORM, IT MAY PROVIDE THE RECORD UNDER THIS
22 SECTION IN A REASONABLY USABLE ELECTRONIC FORM, AND SHALL PROVIDE IT IN
23 SUCH FORM IF REQUESTED BY THE PERSON MAKING THE REQUEST.
24 [Either the physician or hospital] 2. A HEALTH CARE PROVIDER incurring
25 the expense of providing copies of [x-rays, medical] HEALTH records [and

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

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1 test records including all laboratory tests] pursuant to the provisions
2 of this section may impose a reasonable charge to be paid by the person
3 requesting the release and deliverance of such records as reimbursement
4 [for such] NOT TO EXCEED THE HEALTH CARE PROVIDER'S ACTUAL expenses,
5 provided, however, that the [physician or hospital] HEALTH CARE PROVIDER
6 may not impose a charge for copying an original mammogram when the
7 original has been released or delivered to any competent patient, parent
8 or guardian of an infant, a guardian appointed pursuant to article
9 eighty-one of the mental hygiene law, or a conservator of a conservatee
10 and provided, further, that any charge for delivering an original mammo-
11 gram pursuant to this section shall not exceed the documented ACTUAL
12 costs associated therewith[. However, the reasonable charge], WHICH for
13 paper copies shall not exceed seventy-five cents per page. A release of
14 records under this section shall not be denied solely because of inabil-
15 ity to pay. NO CHARGE MAY BE IMPOSED UNDER THIS SECTION FOR PROVIDING,
16 RELEASING OR DELIVERING HEALTH RECORDS OR COPIES OF HEALTH RECORDS WHERE
17 REQUESTED FOR THE PURPOSE OF SUPPORTING A CLAIM OR APPEAL FOR ANY
18 GOVERNMENT BENEFIT OR PROGRAM.

19 3. WHERE A HEALTH CARE PROVIDER PROVIDES HEALTH CARE PROFESSIONAL
20 SERVICES AS AN EMPLOYEE OF OR UNDER CONTRACT WITH ANOTHER HEALTH CARE
21 PROVIDER, COMPLIANCE WITH THIS SECTION SHALL BE THE RESPONSIBILITY OF
22 THE HEALTH CARE PROVIDER THAT EMPLOYS OR CONTRACTS FOR THE SERVICES OF
23 THE OTHER HEALTH CARE PROVIDER, UNLESS THE TERMS OF THE EMPLOYMENT OR
24 CONTRACT EXPLICITLY PROVIDE OTHERWISE. IF A HEALTH CARE PROVIDER
25 RECEIVES A REQUEST UNDER THIS SECTION AND COMPLIANCE IS THE RESPONSIBIL-
26 ITY OF A DIFFERENT HEALTH CARE PROVIDER UNDER THIS SUBDIVISION, THE
27 HEALTH CARE PROVIDER RECEIVING THE REQUEST SHALL IMMEDIATELY INFORM THE
28 REQUESTING PARTY TO WHICH HEALTH CARE PROVIDER THE REQUEST SHOULD BE
29 DIRECTED.

30 4. For the purposes of this section the [term "laboratory tests" shall
31 include] FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

32 (A) "HEALTH RECORD" INCLUDES ANY PATIENT INFORMATION AS DEFINED IN
33 SECTION EIGHTEEN OF THIS TITLE, X-RAYS AND OTHER IMAGES, AND RECORDS OF
34 LABORATORY TESTS INCLUDING but not [be] limited to tests and examina-
35 tions administered in clinical laboratories or blood banks as those
36 terms are defined in section five hundred seventy-one of this chapter.

37 (B) "HEALTH CARE PROVIDER" AND "HEALTH CARE PRACTITIONER" HAVE THE
38 SAME MEANINGS AS DEFINED IN SECTION EIGHTEEN OF THIS TITLE.

39 (C) "PROFESSIONAL HEALTH CARE SERVICES" MEANS THE SERVICES OF A HEALTH
40 CARE PROVIDER EXAMINING, ASSESSING, TREATING OR CONSULTING IN RELATION
41 TO A PATIENT OR PATIENT'S CONDITION, WITHIN THE SCOPE OF PRACTICE OF A
42 HEALTH CARE PRACTITIONER.

43 S 2. Paragraphs (c), (d) and (e) of subdivision 1 of section 18 of the
44 public health law, paragraphs (c) and (d) as added by chapter 497 of the
45 laws of 1986, paragraph (e) as amended by chapter 2 of the laws of 1990,
46 and the closing paragraph of paragraph (e) as amended by chapter 576 of
47 the laws of 1998, are amended and a new paragraph (j) is added to read
48 as follows:

49 (c) "Health care facility" or "facility" means a hospital as defined
50 in article twenty-eight of this chapter, a home care services agency as
51 defined in article thirty-six of this chapter, a hospice as defined in
52 article forty of this chapter, a health maintenance organization as
53 defined in article forty-four of this chapter, [and] a shared health
54 facility as defined in article forty-seven of this chapter; OR AN ENTITY
55 THAT PROVIDES THE HEALTH CARE PROFESSIONAL SERVICES OF A HEALTH CARE

1 PROVIDER BY EMPLOYING OR CONTRACTING FOR THE HEALTH CARE PROFESSIONAL
2 SERVICES OF A HEALTH CARE PROVIDER.

3 (d) "Health care practitioner" or "practitioner" means a person
4 licensed under article one hundred thirty-one (MEDICINE), one hundred
5 thirty-one-B (PHYSICIAN ASSISTANTS), ONE HUNDRED THIRTY-ONE-C (SPECIAL-
6 IST ASSISTANT), one hundred thirty-two (CHIROPRACTIC), one hundred thir-
7 ty-three (DENTISTRY AND DENTAL HYGIENE), ONE HUNDRED THIRTY-FOUR
8 (LICENSED PERFUSIONISTS), one hundred thirty-six (PHYSICAL THERAPY AND
9 PHYSICAL THERAPY ASSISTANTS), ONE HUNDRED THIRTY-SEVEN (PHARMACY), one
10 hundred thirty-nine (NURSING), ONE HUNDRED FORTY (PROFESSIONAL MIDWIFERY
11 PRACTICE), one hundred forty-one (PODIATRY), one hundred forty-three
12 (OPTOMETRY), one hundred forty-four (OPHTHALMIC DISPENSING), one hundred
13 fifty-three (PSYCHOLOGY), one hundred fifty-four (SOCIAL WORK), ONE
14 HUNDRED FIFTY-FIVE (MASSAGE THERAPY), one hundred fifty-six [or] (OCCU-
15 PATIONAL THERAPY, ONE HUNDRED FIFTY-SEVEN (DIETETICS AND NUTRITION), one
16 hundred fifty-nine (SPEECH-LANGUAGE PATHOLOGISTS OR AUDIOLOGISTS), ONE
17 HUNDRED SIXTY (ACUPUNCTURE), ONE HUNDRED SIXTY-TWO (ATHLETIC TRAINERS),
18 ONE HUNDRED SIXTY-THREE (MENTAL HEALTH PRACTITIONERS), ONE HUNDRED
19 SIXTY-FOUR (RESPIRATORY THERAPISTS AND RESPIRATORY THERAPY TECHNICIANS),
20 ONE HUNDRED SIXTY-FIVE (CLINICAL LABORATORY TECHNOLOGY PRACTICE), ONE
21 HUNDRED SIXTY-SIX (MEDICAL PHYSICS PRACTICE), OR ONE HUNDRED SIXTY-SEVEN
22 (APPLIED BEHAVIOR ANALYSIS) of the education law [or a person certified
23 under section twenty-five hundred sixty of this chapter].

24 (e) (I) "Patient information" or "information" means: any information
25 OR HEALTH RECORD concerning or relating to the examination, health
26 assessment including, but not limited to, a health assessment for insur-
27 ance and employment purposes [or], CONSULTING IN RELATION TO treatment
28 of PROVIDING DRUGS OR DEVICES, OR PROVIDING PROFESSIONAL HEALTH CARE
29 SERVICES PERTAINING TO an identifiable subject maintained or possessed
30 by a health care [facility or health care practitioner who] PROVIDER
31 WHICH has provided or is providing services [for assessment of a health
32 condition including, but not limited to, a health assessment for insur-
33 ance and employment purposes or has treated or is treating such subject,
34 except (i)]. IT SHALL INCLUDE X-RAYS AND OTHER IMAGES, AND RECORDS OF
35 LABORATORY TESTS INCLUDING BUT NOT LIMITED TO TESTS AND EXAMINATIONS
36 ADMINISTERED IN CLINICAL LABORATORIES OR BLOOD BANKS AS THOSE TERMS ARE
37 DEFINED IN SECTION FIVE HUNDRED SEVENTY-ONE OF THIS CHAPTER. IT SHALL
38 INCLUDE RECORDS OF CHARGES TO, AND PAYMENTS RECEIVED FROM, THE PATIENT
39 OR IDENTIFIABLE SUBJECT OR ANY OTHER PARTY ON BEHALF OF THE PATIENT OR
40 IDENTIFIABLE SUBJECT, FOR ANY SUCH SERVICES, DRUGS OR DEVICES.

41 (II) "PATIENT INFORMATION" OR "INFORMATION" SHALL NOT INCLUDE (A)
42 information and clinical records subject to the provisions of section
43 [23.05 or] 33.13 of the mental hygiene law[, (ii)]; (B) NON-CLINICAL
44 personal notes and observations of a health care practitioner, provided
45 that such personal notes and observations are maintained by the practi-
46 tioner and not disclosed by the practitioner to any other person after
47 January first, nineteen hundred eighty-seven[, (iii)]; (C) information
48 maintained by a practitioner, concerning or relating to the prior exam-
49 ination or treatment of a subject received from another practitioner,
50 provided however, that such information may be requested by the subject
51 directly from such other practitioner in accordance with the provisions
52 of this section, AND PROVIDED FURTHER THAT THIS CLAUSE DOES NOT APPLY TO
53 ANY REFERRAL, ORDER, AUTHORIZATION, OR PRESCRIPTION RECEIVED FROM THE
54 OTHER PRACTITIONER; and [(iv)] (D) data disclosed to a practitioner in
55 confidence by other persons on the basis of an express condition that
56 such data would never be disclosed to the subject or other persons,

1 provided that such data has never been disclosed to any other person. If
2 at any time such personal notes and observations or such data is
3 disclosed, it shall be considered patient information for purposes of
4 this section. For purposes of this subdivision, "disclosure to any other
5 person" shall not include disclosures made to practitioners as part of a
6 consultation or referral during the treatment of the subject, to persons
7 reviewing information or records in the ordinary course of ensuring that
8 a provider is in compliance with applicable quality of care, licensure
9 or accreditation standards, to an employee or official of a federal,
10 state or local agency for the sole purpose of conducting an audit in the
11 course of his or her official duties, to the statewide planning and
12 research cooperative system, to other persons pursuant to a court order,
13 to governmental agencies, insurance companies licensed pursuant to the
14 insurance law and other third parties requiring information necessary
15 for payments to be made to or on behalf of patients, to qualified
16 researchers, to the [state board for professional medical conduct]
17 DEPARTMENT OF HEALTH OR THE DEPARTMENT OF EDUCATION when such [board]
18 requests such information in the exercise of its statutory function, to
19 an insurance carrier insuring, or an attorney consulted by, a health
20 care provider, or to a health maintenance organization certified pursu-
21 ant to article forty-four of this chapter or licensed pursuant to the
22 insurance law, or to the committee or a court pursuant to the provisions
23 of this section.

24 (III) For purposes of this subdivision treatment of a subject shall
25 not include diagnostic services, except mammography, performed by a
26 practitioner at the request of another health care practitioner
27 provided, however, that such information, and mammograms, may be
28 requested by the subject directly from the practitioner at whose request
29 such diagnostic services were performed, in accordance with the
30 provisions of this section.

31 (J) "PROFESSIONAL HEALTH CARE SERVICES" MEANS THE SERVICES OF A HEALTH
32 CARE PROVIDER EXAMINING, ASSESSING, TREATING OR CONSULTING IN RELATION
33 TO AN IDENTIFIABLE SUBJECT OF AN IDENTIFIABLE SUBJECT'S CONDITION, WITH-
34 IN THE SCOPE OF PRACTICE OF A HEALTH CARE PRACTITIONER.

35 S 3. Paragraphs (d) and (e) of subdivision 2 of section 18 of the
36 public health law, as amended by chapter 576 of the laws of 1998, are
37 amended and a new paragraph (j) is added to read as follows:

38 (d) Subject to the provisions of subdivision three of this section,
39 upon the written request of any qualified person, a health care provider
40 shall furnish to such person, within a reasonable time, a copy of any
41 patient information requested, and original mammograms requested, which
42 the person is authorized to inspect pursuant to this subdivision. WHERE
43 A HEALTH CARE PROVIDER MAINTAINS THE PATIENT INFORMATION IN ELECTRONIC
44 FORM, IT MAY PROVIDE THE PATIENT INFORMATION UNDER THIS SECTION IN A
45 REASONABLY USABLE ELECTRONIC FORM, AND SHALL PROVIDE IT IN SUCH FORM IF
46 REQUESTED BY THE PERSON MAKING THE REQUEST.

47 (e) The provider may impose a reasonable charge for all inspections
48 and copies, not exceeding the REASONABLE AND ACTUAL costs incurred by
49 such provider, provided, however, that a provider may not impose a
50 charge for copying an original mammogram when the original has been
51 furnished to any qualified person and provided, further, that any charge
52 for furnishing an original mammogram pursuant to this section shall not
53 exceed the documented costs associated therewith[. However, the reason-
54 able charge], WHICH for paper copies shall not exceed seventy-five cents
55 per page. A qualified person shall not be denied access to patient
56 information solely because of inability to pay. NO CHARGE MAY BE

1 IMPOSED UNDER THIS SECTION FOR PROVIDING, RELEASING OR DELIVERING
2 PATIENT INFORMATION OR COPIES OF PATIENT INFORMATION WHERE REQUESTED FOR
3 THE PURPOSE OF SUPPORTING A CLAIM OR APPEAL FOR ANY GOVERNMENT BENEFIT
4 OR PROGRAM.

5 (J) WHERE A HEALTH CARE PROVIDER PROVIDES HEALTH CARE PROFESSIONAL
6 SERVICES AS AN EMPLOYEE OF OR UNDER CONTRACT WITH ANOTHER HEALTH CARE
7 PROVIDER, COMPLIANCE WITH THIS SECTION SHALL BE THE RESPONSIBILITY OF
8 THE HEALTH CARE PROVIDER THAT EMPLOYS OR CONTRACTS FOR THE SERVICES OF
9 THE OTHER HEALTH CARE PROVIDER, UNLESS THE TERMS OF THE EMPLOYMENT OR
10 CONTRACT EXPLICITLY PROVIDE OTHERWISE. IF A HEALTH CARE PROVIDER
11 RECEIVES A REQUEST UNDER THIS SECTION AND COMPLIANCE IS THE RESPONSIBIL-
12 ITY OF A DIFFERENT HEALTH CARE PROVIDER UNDER THIS SUBDIVISION, THE
13 HEALTH CARE PROVIDER RECEIVING THE REQUEST SHALL IMMEDIATELY INFORM THE
14 REQUESTING PARTY TO WHICH HEALTH CARE PROVIDER THE REQUEST SHOULD BE
15 DIRECTED.

16 S 4. Paragraphs 1, 3 and 4 of subdivision (a) of section 33.16 of the
17 mental hygiene law, paragraphs 1 and 4 as amended by chapter 226 of the
18 laws of 1991, and paragraph 3 as amended by chapter 37 of the laws of
19 2011, are amended to read as follows:

20 1. "Clinical record" means any information concerning or relating to
21 the examination or treatment of, CONSULTING IN RELATION TO TREATMENT OF,
22 PROVIDING DRUGS OR DEVICES, OR PROVIDING PROFESSIONAL MENTAL OR BEHAV-
23 IORAL HEALTH CARE SERVICES PERTAINING TO an identifiable patient or
24 client maintained or possessed by a facility which has treated or is
25 treating such patient or client, except data disclosed to a practitioner
26 in confidence by other persons on the basis of an express condition that
27 such data would never be disclosed to the patient or client or other
28 persons, provided that such data has never been disclosed by the practi-
29 tioner or a facility to any other person. If at any time such data is
30 disclosed, it shall be considered clinical records for the purposes of
31 this section. For purposes of this subdivision, "disclosure to any
32 other person" shall not include disclosures made pursuant to section
33 33.13 of this article, to practitioners as part of a consultation or
34 referral during the treatment of the patient or client, to the statewide
35 planning and research cooperative system, or to the committee or a court
36 pursuant to the provisions of this section or to an insurance carrier
37 insuring, or an attorney consulted by, a facility. CLINICAL RECORD
38 SHALL INCLUDE X-RAYS AND OTHER IMAGES, AND RECORDS OF LABORATORY TESTS
39 INCLUDING BUT NOT LIMITED TO TESTS AND EXAMINATIONS ADMINISTERED IN
40 CLINICAL LABORATORIES OR BLOOD BANKS AS THOSE TERMS ARE DEFINED IN
41 SECTION FIVE HUNDRED SEVENTY-ONE OF THE PUBLIC HEALTH LAW. IT SHALL
42 INCLUDE RECORDS OF CHARGES TO, AND PAYMENTS RECEIVED FROM, THE PATIENT
43 OR IDENTIFIABLE SUBJECT OR ANY OTHER PARTY ON BEHALF OF THE PATIENT OR
44 IDENTIFIABLE SUBJECT, FOR ANY SUCH SERVICES, DRUGS OR DEVICES.

45 3. "Facility" means a facility as defined in section 1.03 of this
46 chapter, a program requiring approval for operation pursuant to article
47 thirty-two of this chapter, institutions offering training in psychoth-
48 erapy, psychoanalysis and related areas chartered pursuant to section
49 two hundred sixteen of the education law, or, notwithstanding section
50 1.03 of this chapter, any provider of services for persons with mental
51 illness or developmental disabilities which is operated by, under
52 contract with, receives funding from, or is otherwise approved to render
53 services by, a director of community services pursuant to article
54 forty-one of this chapter or one or both of the offices, including any
55 such provider which is exempt from the requirement for an operating
56 certificate under article sixteen or article thirty-one of this chapter;

1 OR AN ENTITY THAT PROVIDES MENTAL OR BEHAVIORAL HEALTH PROFESSIONAL
2 SERVICES BY EMPLOYING OR CONTRACTING FOR THE PROFESSIONAL SERVICES OF A
3 MENTAL HEALTH PRACTITIONER.

4 4. "Mental health practitioner" or "practitioner" means a person
5 employed by or rendering a service at a facility maintaining the clin-
6 ical record WHO IS licensed under article one hundred thirty-one of the
7 education law (MEDICINE) who practices psychiatry or a person licensed
8 under article one hundred thirty-nine (NURSING), one hundred fifty-three
9 [or] (PSYCHOLOGY), one hundred fifty-four (SOCIAL WORK), ONE HUNDRED
10 SIXTY-THREE (MENTAL HEALTH PRACTITIONERS), OR ONE HUNDRED SIXTY-SEVEN
11 (APPLIED BEHAVIOR ANALYSIS) of the education law or any other person not
12 prohibited by law from providing mental health or developmental disabil-
13 ities services.

14 S 5. Paragraphs 5 and 6 of subdivision (b) of section 33.16 of the
15 mental hygiene law, paragraph 5 as amended and paragraph 6 as renumbered
16 by chapter 233 of the laws of 1991, and paragraph 6 as amended by chap-
17 ter 165 of the laws of 1991, are amended to read as follows:

18 5. Subject to the provisions of this subdivision and subdivision (c)
19 of this section, upon the written request of any qualified person, a
20 facility shall furnish to such person, within a reasonable time, a copy
21 of any clinical record requested which the person is authorized to
22 inspect pursuant to this subdivision. WHERE A FACILITY MAINTAINS A
23 CLINICAL RECORD IN ELECTRONIC FORM, IT MAY PROVIDE THE RECORD UNDER THIS
24 SECTION IN A REASONABLY USABLE ELECTRONIC FORM, AND SHALL PROVIDE IT IN
25 SUCH FORM IF REQUESTED BY THE QUALIFIED PERSON MAKING THE REQUEST.

26 6. The facility may impose a reasonable charge for all inspections and
27 copies, not exceeding the DOCUMENTED ACTUAL costs incurred by such
28 provider[. However, the reasonable charge] WHICH for paper copies shall
29 not exceed seventy-five cents per page. A qualified person shall not be
30 denied access to the clinical record solely because of inability to pay.
31 NO CHARGE MAY BE IMPOSED UNDER THIS SECTION FOR PROVIDING, RELEASING OR
32 DELIVERING CLINICAL RECORDS OR COPIES OF CLINICAL RECORDS WHERE
33 REQUESTED FOR THE PURPOSE OF SUPPORTING A CLAIM OR APPEAL FOR ANY
34 GOVERNMENT BENEFIT OR PROGRAM.

35 S 6. Section 33.16 of the mental hygiene law is amended by adding a
36 new subdivision (l) to read as follows:

37 (L) THIS SECTION SHALL NOT BE CONSTRUED TO SUPPLANT OR DIMINISH A
38 RIGHT OR BENEFIT THAT ANY PATIENT, QUALIFIED PERSON OR PERSON ACTING ON
39 BEHALF OF A PATIENT UNDER SECTIONS SEVENTEEN OR EIGHTEEN OF THE PUBLIC
40 HEALTH LAW HAS UNDER EITHER SUCH SECTIONS OF THE PUBLIC HEALTH LAW.

41 S 7. This act shall take effect on the first of January next succeed-
42 ing the date on which it shall have become a law.