

# STATE OF NEW YORK

2869--A

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2017-2018 Regular Sessions

## IN ASSEMBLY

January 23, 2017

Introduced by M. of A. GOTTFRIED, ABINANTI, SEPULVEDA, D'URSO, McDONOUGH, COLTON -- read once and referred to the Committee on Health -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 322 of the laws of 2017, is amended to read as follows:

4 § 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 non-  
11 clinical personal notes of the [~~said physician or hospital~~] health care  
12 provider, copies of all [~~x-rays, medical~~] requested health records [~~and~~  
13 ~~test records including all laboratory tests~~] regarding that patient to  
14 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.

21 [~~Either the physician or hospital~~] 2. A health care provider incurring  
22 the expense of providing copies of [~~x-rays, medical~~] health records [~~and~~  
23 ~~test records including all laboratory tests~~] pursuant to the provisions

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

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1 of this section may impose a reasonable charge to be paid by the person  
2 requesting the release and deliverance of such records as reimbursement  
3 [~~for such~~] not to exceed the health care provider's actual expenses,  
4 provided, however, that the [~~physician or hospital~~] health care provider  
5 may not impose a charge for copying an original mammogram when the  
6 original has been released or delivered to any competent patient, parent  
7 or guardian of an infant, a guardian appointed pursuant to article  
8 eighty-one of the mental hygiene law, or a conservator of a conservatee  
9 and provided, further, that any charge for delivering an original mammo-  
10 gram pursuant to this section shall not exceed the documented actual  
11 costs associated therewith[~~, However, the reasonable charge~~], which for  
12 paper copies shall not exceed seventy-five cents per page. A release of  
13 records under this section shall not be denied solely because of inabil-  
14 ity to pay. No charge may be imposed under this section for providing,  
15 releasing, or delivering medical records or copies of medical records  
16 where requested for the purpose of supporting an application, claim or  
17 appeal for any government benefit or program, provided that, where a  
18 provider maintains medical records in electronic form, it shall provide  
19 the copy in either electronic or paper form, as required by the govern-  
20 ment benefit or program, or at the patient's request.

21 3. Where a health care provider provides health care professional  
22 services as an employee of or under contract with another health care  
23 provider, compliance with this section shall be the responsibility of  
24 the health care provider that employs or contracts for the services of  
25 the other health care provider, unless the terms of the employment or  
26 contract explicitly provide otherwise. If a health care provider  
27 receives a request under this section and compliance is the responsibil-  
28 ity of a different health care provider under this subdivision, the  
29 health care provider receiving the request shall immediately inform the  
30 requesting party to which health care provider the request should be  
31 directed.

32 4. For the purposes of this section the [~~term "laboratory tests" shall~~  
33 include] following terms shall have the following meanings:

34 (a) "Health record" includes any patient information as defined in  
35 section eighteen of this title, X-rays and other images, and records of  
36 laboratory tests including but not [~~be~~] limited to tests and examina-  
37 tions administered in clinical laboratories or blood banks as those  
38 terms are defined in section five hundred seventy-one of this chapter.

39 (b) "Health care provider" and "health care practitioner" have the  
40 same meanings as defined in section eighteen of this title.

41 (c) "Professional health care services" means the services of a health  
42 care provider examining, assessing, treating or consulting in relation  
43 to a patient or patient's condition, within the scope of practice of a  
44 health care practitioner.

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

51 (c) "Health care facility" or "facility" means a hospital as defined  
52 in article twenty-eight of this chapter, a home care services agency as  
53 defined in article thirty-six of this chapter, a hospice as defined in  
54 article forty of this chapter, a health maintenance organization as  
55 defined in article forty-four of this chapter, [~~and~~] a shared health  
56 facility as defined in article forty-seven of this chapter; or an entity

1 that provides the health care professional services of a health care  
 2 provider by employing or contracting for the health care professional  
 3 services of a health care provider.

4 (d) "Health care practitioner" or "practitioner" means a person  
 5 licensed under article one hundred thirty-one (medicine), one hundred  
 6 thirty-one-B (physician assistants), one hundred thirty-one-C (special-  
 7 ist assistant), one hundred thirty-two (chiropractic), one hundred thir-  
 8 ty-three (dentistry and dental hygiene), one hundred thirty-four  
 9 (licensed perfusionists), one hundred thirty-six (physical therapy and  
 10 physical therapy assistants), one hundred thirty-seven (pharmacy), one  
 11 hundred thirty-nine (nursing), one hundred forty (professional midwifery  
 12 practice), one hundred forty-one (podiatry), one hundred forty-three  
 13 (optometry), one hundred forty-four (ophthalmic dispensing), one hundred  
 14 fifty-three (psychology), one hundred fifty-four (social work), one  
 15 hundred fifty-five (massage therapy), one hundred fifty-six [~~or~~] (occu-  
 16 pational therapy, one hundred fifty-seven (dietetics and nutrition), one  
 17 hundred fifty-nine (speech-language pathologists or audiologists), one  
 18 hundred sixty (acupuncture), one hundred sixty-two (athletic trainers),  
 19 one hundred sixty-three (mental health practitioners), one hundred  
 20 sixty-four (respiratory therapists and respiratory therapy technicians),  
 21 one hundred sixty-five (clinical laboratory technology practice), one  
 22 hundred sixty-six (medical physics practice), or one hundred sixty-seven  
 23 (applied behavior analysis) of the education law [~~or a person certified~~  
 24 ~~under section twenty-five hundred sixty of this chapter~~].

25 (e) (i) "Patient information" or "information" means: any information  
 26 or health record concerning or relating to the examination, health  
 27 assessment including, but not limited to, a health assessment for insur-  
 28 ance and employment purposes [~~or~~], consulting in relation to treatment  
 29 of providing drugs or devices, or providing professional health care  
 30 services pertaining to an identifiable subject maintained or possessed  
 31 by a health care [~~facility or health care practitioner who~~] provider  
 32 which has provided or is providing services [~~for assessment of a health~~  
 33 ~~condition including, but not limited to, a health assessment for insur-~~  
 34 ~~ance and employment purposes or has treated or is treating such subject,~~  
 35 ~~except (i)~~]. It shall include X-rays and other images, and records of  
 36 laboratory tests including but not limited to tests and examinations  
 37 administered in clinical laboratories or blood banks as those terms are  
 38 defined in section five hundred seventy-one of this chapter. It shall  
 39 include records of charges to, and payments received from, the patient  
 40 or identifiable subject or any other party on behalf of the patient or  
 41 identifiable subject, for any such services, drugs or devices.

42 (ii) "Patient information" or "information" shall not include (A)  
 43 information and clinical records subject to the provisions of section  
 44 [~~23.05 or~~] 33.13 of the mental hygiene law[~~, (ii)~~]; (B) non-clinical  
 45 personal notes and observations of a health care practitioner, provided  
 46 that such personal notes and observations are maintained by the practi-  
 47 tioner and not disclosed by the practitioner to any other person after  
 48 January first, nineteen hundred eighty-seven[~~, (iii)~~]; (C) information  
 49 maintained by a practitioner, concerning or relating to the prior exam-  
 50 ination or treatment of a subject received from another practitioner,  
 51 provided however, that such information may be requested by the subject  
 52 directly from such other practitioner in accordance with the provisions  
 53 of this section, and provided further that this clause does not apply to  
 54 any referral, order, authorization, or prescription received from the  
 55 other practitioner; and [~~(iv)~~] (D) data disclosed to a practitioner in  
 56 confidence by other persons on the basis of an express condition that

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

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

32 (j) "Professional health care services" means the services of a health  
33 care provider examining, assessing, treating or consulting in relation  
34 to an identifiable subject of an identifiable subject's condition, with-  
35 in the scope of practice of a health care practitioner.

36 § 3. Paragraph (e) of subdivision 2 of section 18 of the public health  
37 law, as amended by chapter 322 of the laws of 2017, is amended and a new  
38 paragraph (j) is added to read as follows:

39 (e) The provider may impose a reasonable charge for all inspections  
40 and copies, not exceeding the reasonable and actual costs incurred by  
41 such provider, provided, however, that a provider may not impose a  
42 charge for copying an original mammogram when the original has been  
43 furnished to any qualified person and provided, further, that any charge  
44 for furnishing an original mammogram pursuant to this section shall not  
45 exceed the documented costs associated therewith[~~. However, the reason-~~  
46 able charge], which for paper copies shall not exceed seventy-five cents  
47 per page. A qualified person shall not be denied access to patient  
48 information solely because of inability to pay. No charge may be imposed  
49 under this section for providing, releasing, or delivering patient  
50 information or copies of patient information where requested for the  
51 purpose of supporting an application, claim or appeal for any government  
52 benefit or program, provided that, where a provider maintains patient  
53 information in electronic form, it shall provide the copy in either  
54 electronic or paper form, as required by the government benefit or  
55 program, or at the patient's request.

1 (j) Where a health care provider provides health care professional  
2 services as an employee of or under contract with another health care  
3 provider, compliance with this section shall be the responsibility of  
4 the health care provider that employs or contracts for the services of  
5 the other health care provider, unless the terms of the employment or  
6 contract explicitly provide otherwise. If a health care provider  
7 receives a request under this section and compliance is the responsibil-  
8 ity of a different health care provider under this subdivision, the  
9 health care provider receiving the request shall immediately inform the  
10 requesting party to which health care provider the request should be  
11 directed.

12 § 4. Paragraphs 1, 3 and 4 of subdivision (a) of section 33.16 of the  
13 mental hygiene law, paragraphs 1 and 4 as amended by chapter 226 of the  
14 laws of 1991, and paragraph 3 as amended by chapter 37 of the laws of  
15 2011, are amended to read as follows:

16 1. "Clinical record" means any information concerning or relating to  
17 the examination or treatment of, consulting in relation to treatment of,  
18 providing drugs or devices, or providing professional mental or behav-  
19 ioral health care services pertaining to an identifiable patient or  
20 client maintained or possessed by a facility which has treated or is  
21 treating such patient or client, except data disclosed to a practitioner  
22 in confidence by other persons on the basis of an express condition that  
23 such data would never be disclosed to the patient or client or other  
24 persons, provided that such data has never been disclosed by the practi-  
25 tioner or a facility to any other person. If at any time such data is  
26 disclosed, it shall be considered clinical records for the purposes of  
27 this section. For purposes of this subdivision, "disclosure to any  
28 other person" shall not include disclosures made pursuant to section  
29 33.13 of this article, to practitioners as part of a consultation or  
30 referral during the treatment of the patient or client, to the statewide  
31 planning and research cooperative system, or to the committee or a court  
32 pursuant to the provisions of this section or to an insurance carrier  
33 insuring, or an attorney consulted by, a facility. Clinical record  
34 shall include X-rays and other images, and records of laboratory tests  
35 including but not limited to tests and examinations administered in  
36 clinical laboratories or blood banks as those terms are defined in  
37 section five hundred seventy-one of the public health law. 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 3. "Facility" means a facility as defined in section 1.03 of this  
42 chapter, a program requiring approval for operation pursuant to article  
43 thirty-two of this chapter, institutions offering training in psychoth-  
44 erapy, psychoanalysis and related areas chartered pursuant to section  
45 two hundred sixteen of the education law, or, notwithstanding section  
46 1.03 of this chapter, any provider of services for persons with mental  
47 illness or developmental disabilities which is operated by, under  
48 contract with, receives funding from, or is otherwise approved to render  
49 services by, a director of community services pursuant to article  
50 forty-one of this chapter or one or both of the offices, including any  
51 such provider which is exempt from the requirement for an operating  
52 certificate under article sixteen or article thirty-one of this chapter;  
53 or an entity that provides mental or behavioral health professional  
54 services by employing or contracting for the professional services of a  
55 mental health practitioner.

1 4. "Mental health practitioner" or "practitioner" means a person  
2 employed by or rendering a service at a facility maintaining the clin-  
3 ical record who is licensed under article one hundred thirty-one of the  
4 education law (medicine) who practices psychiatry or a person licensed  
5 under article one hundred thirty-nine (nursing), one hundred fifty-three  
6 [~~or~~] (psychology), one hundred fifty-four (social work), one hundred  
7 sixty-three (mental health practitioners), or one hundred sixty-seven  
8 (applied behavior analysis) of the education law or any other person not  
9 prohibited by law from providing mental health or developmental disabili-  
10 ties services.

11 § 5. Paragraph 6 of subdivision (b) of section 33.16 of the mental  
12 hygiene law, as amended by chapter 322 of the laws of 2017, is amended  
13 to read as follows:

14 6. The facility may impose a reasonable charge for all inspections and  
15 copies, not exceeding the documented actual costs incurred by such  
16 provider[~~-. However, the reasonable charge~~] which for paper copies shall  
17 not exceed seventy-five cents per page. A qualified person shall not be  
18 denied access to the clinical record solely because of inability to pay.  
19 No charge may be imposed under this section for providing, releasing, or  
20 delivering clinical records or copies of clinical records where  
21 requested for the purpose of supporting an application, claim or appeal  
22 for any government benefit or program, provided that, where a provider  
23 maintains clinical records in electronic form, it shall provide the copy  
24 in either electronic or paper form, as required by the government bene-  
25 fit or program, or at the patient's request.

26 § 6. Section 33.16 of the mental hygiene law is amended by adding a  
27 new subdivision (1) to read as follows:

28 (1) This section shall not be construed to supplant or diminish a  
29 right or benefit that any patient, qualified person or person acting on  
30 behalf of a patient under sections seventeen or eighteen of the public  
31 health law has under either such sections of the public health law.

32 § 7. This act shall take effect on the first of January next succeed-  
33 ing the date on which it shall have become a law.