

STATE OF NEW YORK

1120

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. GOTTFRIED, ABINANTI, D'URSO, McDONOUGH, COLTON, GALEF -- read once and referred 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 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
24 of this section may impose a reasonable charge to be paid by the person
25 requesting the release and deliverance of such records as reimbursement

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

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

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

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

55 (j) Where a health care provider provides health care professional
56 services as an employee of or under contract with another health care

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

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

14 1. "Clinical record" means any information concerning or relating to
15 the examination or treatment of, consulting in relation to treatment of,
16 providing drugs or devices, or providing professional mental or behav-
17 ioral health care services pertaining to an identifiable patient or
18 client maintained or possessed by a facility which has treated or is
19 treating such patient or client, except data disclosed to a practitioner
20 in confidence by other persons on the basis of an express condition that
21 such data would never be disclosed to the patient or client or other
22 persons, provided that such data has never been disclosed by the practi-
23 tioner or a facility to any other person. If at any time such data is
24 disclosed, it shall be considered clinical records for the purposes of
25 this section. For purposes of this subdivision, "disclosure to any
26 other person" shall not include disclosures made pursuant to section
27 33.13 of this article, to practitioners as part of a consultation or
28 referral during the treatment of the patient or client, to the statewide
29 planning and research cooperative system, or to the committee or a court
30 pursuant to the provisions of this section or to an insurance carrier
31 insuring, or an attorney consulted by, a facility. Clinical record
32 shall include X-rays and other images, and records of laboratory tests
33 including but not limited to tests and examinations administered in
34 clinical laboratories or blood banks as those terms are defined in
35 section five hundred seventy-one of the public health law. It shall
36 include records of charges to, and payments received from, the patient
37 or identifiable subject or any other party on behalf of the patient or
38 identifiable subject, for any such services, drugs or devices.

39 3. "Facility" means a facility as defined in section 1.03 of this
40 chapter, a program requiring approval for operation pursuant to article
41 thirty-two of this chapter, institutions offering training in psychoth-
42 erapy, psychoanalysis and related areas chartered pursuant to section
43 two hundred sixteen of the education law, or, notwithstanding section
44 1.03 of this chapter, any provider of services for persons with mental
45 illness or developmental disabilities which is operated by, under
46 contract with, receives funding from, or is otherwise approved to render
47 services by, a director of community services pursuant to article
48 forty-one of this chapter or one or both of the offices, including any
49 such provider which is exempt from the requirement for an operating
50 certificate under article sixteen or article thirty-one of this chapter;
51 or an entity that provides mental or behavioral health professional
52 services by employing or contracting for the professional services of a
53 mental health practitioner.

54 4. "Mental health practitioner" or "practitioner" means a person
55 employed by or rendering a service at a facility maintaining the clin-
56 ical record who is licensed under article one hundred thirty-one of the

1 education law (medicine) who practices psychiatry or a person licensed
 2 under article one hundred thirty-nine (nursing), one hundred fifty-three
 3 [~~or~~] (psychology), one hundred fifty-four (social work), one hundred
 4 sixty-three (mental health practitioners), or one hundred sixty-seven
 5 (applied behavior analysis) of the education law or any other person not
 6 prohibited by law from providing mental health or developmental disabil-
 7 ities services.

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

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

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

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

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