

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 14-0371.01 Kristen Forrestal x4217

**HOUSE BILL 14-1186**

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**HOUSE SPONSORSHIP**

**Schafer,**

**SENATE SPONSORSHIP**

**Aguilar,**

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**House Committees**

Health, Insurance, & Environment

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING THE RELEASE OF MEDICAL RECORDS TO A PERSON OTHER**  
102 **THAN THE PATIENT, AND, IN CONNECTION THEREWITH, SETTING**  
103 **REASONABLE FEES TO BE PAID FOR THE RELEASE OF THE**  
104 **MEDICAL RECORDS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill clarifies that medical records in the custody of a health care facility or an individual health care provider may be released to a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

third party with a valid subpoena or other valid authorization. The bill requires the facility or provider to deliver the medical records in electronic format if requested and if there is no additional cost to the facility or provider. The bill defines what reasonable fees may be charged for the copies of the medical records.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds that:

4 (a) The state board of health recently repealed a rule that set the  
5 fees that may be charged to third parties for patient medical records;

6 (b) Having clearly established fees creates a stable and predictable  
7 business environment that allows for the provision of medical records at  
8 a reasonable price;

9 (c) The task of providing medical records is complex due to state  
10 and federal privacy laws that require the careful review of each record in  
11 order to protect patient privacy;

12 (d) The "Health Insurance Portability and Accountability Act of  
13 1996", Pub.L. 104-191, as amended ("HIPAA"), has had a significant  
14 impact on the provision of medical records and patient privacy.

15 (2) Therefore, it is the intent of the general assembly to establish  
16 in statute maximum reasonable fees that may be charged to third parties,  
17 other than patients and their personal representatives, that were previously  
18 set by rule of the state board of health. These maximum fees are intended  
19 to apply only to third parties and not, under any circumstances, to patients  
20 or their personal representatives, because HIPAA governs those fees.

21 **SECTION 2.** In Colorado Revised Statutes, 25-1-801, **amend**  
22 (1) (a), (1) (b) (I), and (2); and **add** (5) as follows:

23 **25-1-801. Patient records in custody of health care facility -**

1 **definitions.** (1) (a) Every patient record in the custody of a health facility  
2 licensed or certified pursuant to section 25-1.5-103 (1) or article 3 of this  
3 title, or both, or any entity regulated under title 10, C.R.S., providing  
4 health care services, as defined in section 10-16-102 (33), C.R.S., directly  
5 or indirectly through a managed care plan, as defined in section  
6 10-16-102 (43), C.R.S., or otherwise shall be available for inspection to  
7 the patient or the patient's ~~designated~~ PERSONAL representative through  
8 the attending health care provider or ~~such~~ THE provider's designated  
9 representative at reasonable times and upon reasonable notice, except  
10 records pertaining to ~~mental health problems or notes by a physician that,~~  
11 ~~in the opinion of a licensed physician who practices psychiatry and is an~~  
12 ~~independent third party, would have significant negative psychological~~  
13 ~~impact upon the patient. Such independent third-party physician shall~~  
14 ~~consult with the attending physician prior to making a determination with~~  
15 ~~regard to the availability for inspection of any patient record and shall~~  
16 ~~report in writing findings to the attending physician and to the custodian~~  
17 ~~of said record~~ PSYCHOTHERAPY NOTES. A summary of records pertaining  
18 to a patient's mental health problems may, upon written request and  
19 signed and dated authorization, be made available to the patient or the  
20 patient's ~~designated~~ PERSONAL representative following termination of the  
21 treatment program.

22 (b) (I) (A) ~~Following any treatment, procedure, or health care~~  
23 ~~service rendered by~~ A health facility licensed or certified pursuant to  
24 section 25-1.5-103 (1) or article 3 of this title, or both, or ~~by~~ an entity  
25 regulated under title 10, C.R.S., providing health care services, as defined  
26 in section 10-16-102 (33), C.R.S., directly or indirectly through a  
27 managed care plan, as defined in section 10-16-102 (43), C.R.S., or

1 otherwise, MUST PROVIDE copies of said A PATIENT'S MEDICAL records,  
2 including X rays, shall be furnished to the patient OR THE PATIENT'S  
3 PERSONAL REPRESENTATIVE UPON REQUEST AND PAYMENT OF THE FEE A  
4 COVERED ENTITY MAY IMPOSE IN ACCORDANCE WITH THE "HEALTH  
5 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L.  
6 104-191, AS AMENDED, AND ANY RULES PROMULGATED PURSUANT TO THE  
7 ACT, OR TO A THIRD PERSON WHO REQUESTS THE RECORDS upon  
8 submission of a ~~written authorization request for records, dated and~~  
9 ~~signed by the patient~~ HIPAA-COMPLIANT AUTHORIZATION, VALID  
10 SUBPOENA, WRITTEN AUTHORIZATION SIGNED BY THE PATIENT, OR COURT  
11 ORDER and upon the payment of the reasonable costs FEES.

12 (B) THE HEALTH CARE FACILITY MUST DELIVER THE MEDICAL  
13 RECORDS IN ELECTRONIC FORMAT IF THE PERSON REQUESTS ELECTRONIC  
14 FORMAT, THE ORIGINAL MEDICAL RECORDS ARE STORED IN ELECTRONIC  
15 FORMAT, AND THE MEDICAL RECORDS ARE READILY PRODUCIBLE IN  
16 ELECTRONIC FORMAT.

17 (2) All requests by ~~patients~~ A PATIENT OR THE PATIENT'S PERSONAL  
18 REPRESENTATIVE for inspection of ~~their~~ THE PATIENT'S medical records  
19 made under this section shall be noted with the time and date of the  
20 ~~patient's~~ request and the time and date of inspection noted by the  
21 attending health care provider or his OR HER designated representative.  
22 The patient OR PERSONAL REPRESENTATIVE shall acknowledge the fact of  
23 ~~his~~ THE inspection by dating and signing ~~his~~ THE record file. A HEALTH  
24 CARE FACILITY SHALL NOT CHARGE A FEE FOR THE INSPECTION OF  
25 MEDICAL RECORDS.

26 (5) AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE  
27 REQUIRES:

1 (a) "HIPAA-COMPLIANT" MEANS IN COMPLIANCE WITH THE  
2 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",  
3 PUB.L. 104-191, AS AMENDED.

4 (b) "PERSONAL REPRESENTATIVE" HAS THE MEANING SET FORTH  
5 IN 45 CFR 164.502.

6 (c) "PSYCHOTHERAPY NOTES" HAS THE MEANING SET FORTH IN 45  
7 CFR 164.501.

8 (d) (I) "REASONABLE FEES" MEANS AN AMOUNT NOT TO EXCEED:

9 (A) SIXTEEN DOLLARS AND FIFTY CENTS FOR THE FIRST TEN PAGES,  
10 SEVENTY-FIVE CENTS PER PAGE FOR THE NEXT THIRTY PAGES, AND FIFTY  
11 CENTS PER PAGE FOR EACH ADDITIONAL PAGE; EXCEPT THAT, IF THE  
12 MEDICAL RECORDS ARE STORED ON MICROFILM, ONE DOLLAR AND FIFTY  
13 CENTS PER PAGE;

14 (B) FOR RADIOGRAPHIC STUDIES, ACTUAL REPRODUCTION COSTS  
15 FOR EACH COPY OF A RADIOGRAPH;

16 (C) IF THE AUTHORIZED PERSON REQUESTS CERTIFICATION OF THE  
17 MEDICAL RECORDS, A FEE OF TEN DOLLARS;

18 (D) ACTUAL POSTAGE AND ELECTRONIC MEDIA COSTS, IF  
19 APPLICABLE; AND

20 (E) APPLICABLE TAXES.

21 (II) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 8, IF  
22 A PATIENT RECORD IS REQUESTED FOR THE PURPOSE OF MAKING AN  
23 ELIGIBILITY DETERMINATION FOR DISABILITY BENEFITS, AS THAT TERM IS  
24 DEFINED IN SECTION 24-30-2202 (2), C.R.S., THE CUSTODIAN OF THE  
25 RECORD SHALL PROVIDE ONE COPY OF THE RECORD FREE OF CHARGE.

26 (III) BEGINNING IN 2019 AND EVERY FIVE YEARS THEREAFTER, THE  
27 EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL CALCULATE NEW

1 REASONABLE FEES BASED ON THE CONSUMER PRICE INDEX FOR  
2 DENVER-BOULDER-GREELEY, PUBLISHED BY THE UNITED STATES  
3 DEPARTMENT OF LABOR, IN EFFECT ON OCTOBER 1 OF THE CALENDAR  
4 YEAR IMMEDIATELY PRECEDING THE YEAR IN WHICH THE REQUEST IS  
5 MADE. THE NEW FEES REPLACE THE REASONABLE FEES LISTED IN  
6 SUBPARAGRAH (I) OF THIS PARAGRAPH (d). THE EXECUTIVE DIRECTOR  
7 SHALL POST THE FEES ON THE DEPARTMENT'S WEB SITE.

8 **SECTION 3.** In Colorado Revised Statutes, 25-1-802, **amend** (1)  
9 and (4) as follows:

10 **25-1-802. Patient records in custody of individual health care**  
11 **providers.** (1) (a) Every patient record in the custody of a podiatrist,  
12 chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse,  
13 optometrist, audiologist, acupuncturist, direct-entry midwife, or physical  
14 therapist required to be licensed under title 12, C.R.S., A NATUROPATHIC  
15 DOCTOR REQUIRED TO BE REGISTERED PURSUANT TO ARTICLE 37.3 OF  
16 TITLE 12, C.R.S., or a person practicing psychotherapy under the  
17 provisions of article 43 of title 12, C.R.S., ~~except records pertaining to~~  
18 ~~mental health problems, shall~~ PSYCHOTHERAPY NOTES, MUST be available  
19 to the patient OR THE PATIENT'S PERSONAL REPRESENTATIVE upon  
20 submission of a ~~written authorization request~~ VALID AUTHORIZATION for  
21 inspection of records, dated and signed by the patient, at reasonable times  
22 and upon reasonable notice. A summary of records pertaining to a  
23 patient's mental health problems may, upon written request ~~and~~  
24 ACCOMPANIED BY A signed and dated authorization, be made available to  
25 the patient or the patient's ~~designated~~ PERSONAL representative following  
26 termination of the treatment program.

27 (b) (I) (A) A copy of ~~such~~ THE records, including ~~X rays, shall~~

1 RADIOGRAPHIC STUDIES, MUST be made available to the patient or the  
2 patient's ~~designated~~ PERSONAL representative, upon ~~written~~  
3 ~~authorization-request for a copy of such records, dated and signed by the~~  
4 ~~patient, upon reasonable notice~~ REQUEST and payment of the FEE A  
5 COVERED ENTITY MAY IMPOSE IN ACCORDANCE WITH THE "HEALTH  
6 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L.  
7 104-191, AS AMENDED, OR TO A THIRD PERSON WHO REQUESTS THE  
8 MEDICAL RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT  
9 AUTHORIZATION, A VALID SUBPOENA, OR A COURT ORDER, AND PAYMENT  
10 OF reasonable ~~costs~~ FEES.

11 (B) THE HEALTH CARE PROVIDER MUST PROVIDE THE MEDICAL  
12 RECORDS IN ELECTRONIC FORMAT IF THE PERSON REQUESTS ELECTRONIC  
13 FORMAT, THE ORIGINAL MEDICAL RECORDS ARE STORED IN ELECTRONIC  
14 FORMAT, AND THE MEDICAL RECORDS ARE READILY PRODUCIBLE IN  
15 ELECTRONIC FORMAT.

16 (II) ~~In the event that~~ IF a licensed health care professional  
17 determines that a copy of ~~any~~ A RADIOGRAPHIC STUDY, INCLUDING AN X  
18 ray, mammogram, CT SCAN, MRI, or other film is not sufficient for  
19 diagnostic or other treatment purposes, the podiatrist, chiropractor,  
20 dentist, doctor of medicine, doctor of osteopathy, nurse, optometrist,  
21 audiologist, acupuncturist, direct-entry midwife, or physical therapist  
22 required to be licensed under title 12, C.R.S., or, subject to the provisions  
23 of section 25-1-801 (1) (a) and paragraph (a) of this subsection (1), the  
24 person practicing psychotherapy under ~~the provisions of~~ article 43 of title  
25 12, C.R.S., shall make the original of any ~~such film~~ RADIOGRAPHIC STUDY  
26 available to the patient, THE PATIENT'S PERSONAL REPRESENTATIVE, A  
27 PERSON AUTHORIZED BY THE PATIENT, or another health care professional

1 or facility as specifically directed by the patient, PERSONAL  
2 REPRESENTATIVE, AUTHORIZED PERSON, OR HEALTH CARE PROFESSIONAL  
3 OR FACILITY pursuant to a written authorization-request for films and  
4 upon the payment of the reasonable costs FEES for such film THE  
5 RADIOGRAPHIC STUDY. If a practitioner releases an original film  
6 RADIOGRAPHIC STUDY pursuant to this subparagraph (II), the practitioner  
7 shall IS not be responsible for any loss, damage, or other consequences as  
8 a result of such THE release. Any original X ray, mammogram, CT SCAN,  
9 MRI, or other film RADIOGRAPHIC STUDY made available pursuant to this  
10 subparagraph (II) shall MUST be returned upon request to the lending  
11 practitioner within thirty days.

12 (4) All requests by patients A PATIENT OR THE PATIENT'S PERSONAL  
13 REPRESENTATIVE for inspection of their HIS OR HER medical records made  
14 under this section shall be noted with the time and date of the patient's  
15 request and the time and date of inspection noted by the health care  
16 provider or his OR HER designated representative. The patient OR THE  
17 PATIENT'S PERSONAL REPRESENTATIVE shall acknowledge the fact of his  
18 THE inspection by dating and signing his THE record file. A HEALTH CARE  
19 PROVIDER SHALL NOT CHARGE A FEE FOR THE INSPECTION OF MEDICAL  
20 RECORDS.

21 **SECTION 4.** In Colorado Revised Statutes, amend 25-1-803 as  
22 follows:

23 **25-1-803. Effect of this part 8 on similar rights of a patient.**

24 (1) Nothing in this part 8: shall be construed so as to:

25 (a) Limit LIMITS the right of a patient, or the patient's designated  
26 PERSONAL representative, OR A PERSON WHO REQUESTS THE MEDICAL  
27 RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT AUTHORIZATION, A

1 VALID SUBPOENA, A WRITTEN AUTHORIZATION SIGNED BY THE PATIENT, OR  
2 A COURT ORDER to inspect the patient's medical or mental health data  
3 pursuant to section 24-72-204 (3) (a) (I), C.R.S.; or

4 (b) ~~Limit~~ LIMITS OR EXPANDS a right to inspect the patient's  
5 records ~~which~~ THAT is otherwise granted by state statute to the patient, or  
6 ~~his designated~~ THE PATIENT'S PERSONAL representative, OR A PERSON WHO  
7 REQUESTS THE MEDICAL RECORDS UPON SUBMISSION OF A  
8 HIPAA-COMPLIANT AUTHORIZATION, A VALID SUBPOENA, A WRITTEN  
9 AUTHORIZATION SIGNED BY THE PATIENT, OR A COURT ORDER; OR

10 (c) LIMITS, PROHIBITS, OR REQUIRES THE CUSTOMARY PRACTICE  
11 FOR PHYSICIANS TO PROVIDE COPIES OF RECORDS TO ANOTHER PHYSICIAN'S  
12 OFFICE FREE OF CHARGE WHEN A PATIENT IS TRANSFERRING CARE.

13 **SECTION 5. Safety clause.** The general assembly hereby finds,  
14 determines, and declares that this act is necessary for the immediate  
15 preservation of the public peace, health, and safety.