

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 20, 2014
Date

Committee on Health, Insurance, & Environment.

After consideration on the merits, the Committee recommends the following:

HB14-1186 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

5 (a) The state board of health recently repealed a rule that set the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

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

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

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

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

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

1 **25-1-801. Patient records in custody of health care facility -**
2 **definitions.** (1) (a) Every patient record in the custody of a health facility
3 licensed or certified pursuant to section 25-1.5-103 (1) or article 3 of this
4 title, or both, or any entity regulated under title 10, C.R.S., providing
5 health care services, as defined in section 10-16-102 (33), C.R.S., directly
6 or indirectly through a managed care plan, as defined in section
7 10-16-102 (43), C.R.S., or otherwise shall be available for inspection to
8 the patient or the patient's ~~designated~~ PERSONAL representative through
9 the attending health care provider or ~~such~~ THE provider's designated
10 representative at reasonable times and upon reasonable notice, except
11 records pertaining to ~~mental health problems or notes by a physician that,~~
12 ~~in the opinion of a licensed physician who practices psychiatry and is an~~
13 ~~independent third party, would have significant negative psychological~~
14 ~~impact upon the patient. Such independent third-party physician shall~~
15 ~~consult with the attending physician prior to making a determination with~~
16 ~~regard to the availability for inspection of any patient record and shall~~
17 ~~report in writing findings to the attending physician and to the custodian~~
18 ~~of said record~~ PSYCHOTHERAPY NOTES. A summary of records pertaining
19 to a patient's mental health problems may, upon written request and
20 signed and dated authorization, be made available to the patient or the
21 patient's ~~designated~~ PERSONAL representative following termination of the
22 treatment program.

23 (b) (I) (A) ~~Following any treatment, procedure, or health care~~
24 ~~service rendered by~~ A health facility licensed or certified pursuant to
25 section 25-1.5-103 (1) or article 3 of this title, or both, or ~~by~~ an entity
26 regulated under title 10, C.R.S., providing health care services, as defined
27 in section 10-16-102 (33), C.R.S., directly or indirectly through a
28 managed care plan, as defined in section 10-16-102 (43), C.R.S., or
29 otherwise, MUST PROVIDE copies of ~~said~~ A PATIENT'S MEDICAL records,
30 including X rays, ~~shall be furnished~~ to the patient OR THE PATIENT'S
31 PERSONAL REPRESENTATIVE UPON REQUEST AND PAYMENT OF THE FEE A
32 COVERED ENTITY MAY IMPOSE IN ACCORDANCE WITH THE "HEALTH
33 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L.
34 104-191, AS AMENDED, AND ANY RULES PROMULGATED PURSUANT TO THE
35 ACT, OR TO A THIRD PERSON WHO REQUESTS THE RECORDS upon
36 submission of a ~~written authorization request for records, dated and~~
37 ~~signed by the patient~~ HIPAA-COMPLIANT AUTHORIZATION, VALID
38 SUBPOENA, WRITTEN AUTHORIZATION SIGNED BY THE PATIENT, OR COURT
39 ORDER and upon the payment of the reasonable ~~costs~~ FEES.

40 (B) THE HEALTH CARE FACILITY MUST DELIVER THE MEDICAL
41 RECORDS IN ELECTRONIC FORMAT IF THE PERSON REQUESTS ELECTRONIC

1 FORMAT, THE ORIGINAL MEDICAL RECORDS ARE STORED IN ELECTRONIC
2 FORMAT, AND THE MEDICAL RECORDS ARE READILY PRODUCIBLE IN
3 ELECTRONIC FORMAT.

4 (2) All requests by ~~patients~~ A PATIENT OR THE PATIENT'S PERSONAL
5 REPRESENTATIVE for inspection of ~~their~~ THE PATIENT'S medical records
6 made under this section shall be noted with the time and date of the
7 ~~patient's~~ request and the time and date of inspection noted by the
8 attending health care provider or his OR HER designated representative.
9 The patient OR PERSONAL REPRESENTATIVE shall acknowledge the fact of
10 ~~his~~ THE inspection by dating and signing ~~his~~ THE record file. A HEALTH
11 CARE FACILITY SHALL NOT CHARGE A FEE FOR THE INSPECTION OF
12 MEDICAL RECORDS.

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

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

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

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

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

23 (A) SIXTEEN DOLLARS AND FIFTY CENTS FOR THE FIRST TEN PAGES,
24 SEVENTY-FIVE CENTS PER PAGE FOR THE NEXT THIRTY PAGES, AND FIFTY
25 CENTS PER PAGE FOR EACH ADDITIONAL PAGE; EXCEPT THAT, IF THE
26 MEDICAL RECORDS ARE STORED ON MICROFILM, ONE DOLLAR AND FIFTY
27 CENTS PER PAGE;

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

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

32 (D) ACTUAL POSTAGE AND ELECTRONIC MEDIA COSTS, IF
33 APPLICABLE; AND

34 (E) APPLICABLE TAXES.

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

40 (III) BEGINNING IN 2019 AND EVERY FIVE YEARS THEREAFTER, THE
41 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~~
28 RADIOGRAPHIC STUDIES, MUST be made available to the patient or the
29 patient's ~~designated~~ PERSONAL representative, upon ~~written~~
30 ~~authorization request for a copy of such records, dated and signed by the~~
31 ~~patient, upon reasonable notice~~ REQUEST and payment of the FEE A
32 COVERED ENTITY MAY IMPOSE IN ACCORDANCE WITH THE "HEALTH
33 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L.
34 104-191, AS AMENDED, OR TO A THIRD PERSON WHO REQUESTS THE
35 MEDICAL RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT
36 AUTHORIZATION, A VALID SUBPOENA, OR A COURT ORDER, AND PAYMENT
37 OF reasonable ~~costs~~ FEES.

38 (B) THE HEALTH CARE PROVIDER MUST PROVIDE THE MEDICAL
39 RECORDS IN ELECTRONIC FORMAT IF THE PERSON REQUESTS ELECTRONIC
40 FORMAT, THE ORIGINAL MEDICAL RECORDS ARE STORED IN ELECTRONIC
41 FORMAT, AND THE MEDICAL RECORDS ARE READILY PRODUCIBLE IN

1 ELECTRONIC FORMAT.

2 (II) ~~In the event that~~ IF a licensed health care professional
3 determines that a copy of ~~any~~ A RADIOGRAPHIC STUDY, INCLUDING AN X
4 ray, mammogram, CT SCAN, MRI, or other film is not sufficient for
5 diagnostic or other treatment purposes, the podiatrist, chiropractor,
6 dentist, doctor of medicine, doctor of osteopathy, nurse, optometrist,
7 audiologist, acupuncturist, direct-entry midwife, or physical therapist
8 required to be licensed under title 12, C.R.S., or, subject to the provisions
9 of section 25-1-801 (1) (a) and paragraph (a) of this subsection (1), the
10 person practicing psychotherapy under ~~the provisions of~~ article 43 of title
11 12, C.R.S., shall make the original of any ~~such film~~ RADIOGRAPHIC STUDY
12 available to the patient, THE PATIENT'S PERSONAL REPRESENTATIVE, A
13 PERSON AUTHORIZED BY THE PATIENT, or another health care professional
14 or facility as specifically directed by the patient, PERSONAL
15 REPRESENTATIVE, AUTHORIZED PERSON, OR HEALTH CARE PROFESSIONAL
16 OR FACILITY pursuant to a written authorization-request for films and
17 upon the payment of the reasonable ~~costs~~ FEES for ~~such film~~ THE
18 RADIOGRAPHIC STUDY. If a practitioner releases an original ~~film~~
19 RADIOGRAPHIC STUDY pursuant to this subparagraph (II), the practitioner
20 ~~shall~~ IS NOT BE responsible for any loss, damage, or other consequences as
21 a result of ~~such~~ THE release. Any original ~~X ray, mammogram, CT SCAN,~~
22 ~~MRI, or other film~~ RADIOGRAPHIC STUDY made available pursuant to this
23 subparagraph (II) ~~shall~~ MUST be returned upon request to the lending
24 practitioner within thirty days.

25 (4) All requests by ~~patients~~ A PATIENT OR THE PATIENT'S PERSONAL
26 REPRESENTATIVE for inspection of ~~their~~ HIS OR HER medical records made
27 under this section shall be noted with the time and date of the ~~patient's~~
28 request and the time and date of inspection noted by the health care
29 provider or his OR HER designated representative. The patient OR THE
30 PATIENT'S PERSONAL REPRESENTATIVE shall acknowledge ~~the fact of his~~
31 THE inspection by dating and signing ~~his~~ THE record file. A HEALTH CARE
32 PROVIDER SHALL NOT CHARGE A FEE FOR THE INSPECTION OF MEDICAL
33 RECORDS.

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

36 **25-1-803. Effect of this part 8 on similar rights of a patient.**

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

38 (a) ~~Limit~~ LIMITS the right of a patient, or the patient's ~~designated~~
39 PERSONAL representative, OR A PERSON WHO REQUESTS THE MEDICAL
40 RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT AUTHORIZATION, A
41 VALID SUBPOENA, A WRITTEN AUTHORIZATION SIGNED BY THE PATIENT, OR

1 A COURT ORDER to inspect the patient's medical or mental health data
2 pursuant to section 24-72-204 (3) (a) (I), C.R.S.; or
3 (b) ~~Limit~~ LIMITS OR EXPANDS a right to inspect the patient's
4 records ~~which~~ THAT is otherwise granted by state statute to the patient, or
5 ~~his designated~~ THE PATIENT'S PERSONAL representative, OR A PERSON WHO
6 REQUESTS THE MEDICAL RECORDS UPON SUBMISSION OF A
7 HIPAA-COMPLIANT AUTHORIZATION, A VALID SUBPOENA, A WRITTEN
8 AUTHORIZATION SIGNED BY THE PATIENT, OR A COURT ORDER; OR
9 (c) LIMITS, PROHIBITS, OR REQUIRES THE CUSTOMARY PRACTICE
10 FOR PHYSICIANS TO PROVIDE COPIES OF RECORDS TO ANOTHER PHYSICIAN'S
11 OFFICE FREE OF CHARGE WHEN A PATIENT IS TRANSFERRING CARE.
12 **SECTION 5. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety."

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