

ACCESS TO MEDICAL RECORDS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill creates a standard form to request health records.

Highlighted Provisions:

This bill:

- defines terms;
- requires the department to create a standard form to request health records;
- requires a health care provider and the health care provider's contracted third party service provider to accept the standard form; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-5-618, as last amended by Laws of Utah 2021, Chapter 338

ENACTS:

26-69-101, Utah Code Annotated 1953

26-69-102, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-69-101** is enacted to read:

CHAPTER 69. STANDARD HEALTH RECORD ACCESS FORM

26-69-101. Definitions.

As used in this chapter:

(1) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.

(2) "Patient" means the individual whose information is being requested.

(3) "Personal representative" means an individual described in 45 C.F.R. Sec. 164.502(g).

Section 2. Section **26-69-102** is enacted to read:

26-69-102. Standard health record access form.

(1) Before December 31, 2022, the department shall create a standard form that:

(a) is compliant with HIPAA and 42 C.F.R. Part 2; and

(b) a patient or a patient's personal representative may use to request that a copy of the patient's health records be sent to any of the following:

(i) the patient;

(ii) the patient's personal representative;

(iii) the patient's attorney; or

(iv) a third party authorized by the patient.

(2) The form shall include fields for:

(a) the patient's name;

(b) the patient's date of birth;

(c) the patient's phone number;

(d) the patient's address;

(e) (i) the patient's signature and date of signature, which may not require notarization;

or

(ii) the signature of the patient's personal representative and date of signature, which may not require notarization;

(f) the name, address, and phone number of the person to which the information will be

disclosed;

(g) the records requested, including whether the patient is requesting paper or electronic records;

(h) the duration of time the authorization is valid; and

(i) the dates of service requested.

(3) The form shall include the following options for the field described in Subsection (2)(g):

(a) history and physical examination records;

(b) treatment plans;

(c) emergency room records;

(d) radiology and lab reports;

(e) operative reports;

(f) pathology reports;

(g) consultations;

(h) discharge summary;

(i) outpatient clinic records and progress notes;

(j) behavioral health evaluation;

(k) behavioral health discharge summary;

(l) mental health therapy records;

(m) financial information including an itemized billing statement;

(n) health insurance claim form;

(o) billing form; and

(p) other.

Section 3. Section **78B-5-618** is amended to read:

78B-5-618. Patient access to medical records -- Third party access to medical records.

(1) As used in this section:

(a) "Health care provider" means the same as that term is defined in Section

78B-3-403.

(b) "Indigent individual" means an individual whose household income is at or below 100% of the federal poverty level as defined in Section 26-18-3.9.

(c) "Inflation" means the unadjusted Consumer Price Index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

(d) "Qualified claim or appeal" means a claim or appeal under any:

(i) provision of the Social Security Act as defined in Section 67-11-2; or

(ii) federal or state financial needs-based benefit program.

~~[(1)]~~ (2) Pursuant to Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider ~~[as defined in Section 78B-3-403]~~ when that health care provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

~~[(2)]~~ (3) When a health care provider ~~[as defined in Section 78B-3-403]~~ is not governed by Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.

~~[(3)]~~ (4) A health care provider who provides a paper or electronic copy of a patient's records to the patient or the patient's personal representative:

(a) shall provide the copy within the deadlines required by the Health Insurance Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec. 164.524(b); and

(b) may charge a reasonable cost-based fee provided that the fee includes only the cost of:

(i) copying, including the cost of supplies for and labor of copying; and

(ii) postage, when the patient or patient's personal representative has requested the copy be mailed.

114 ~~[(4)]~~ (5) Except for records provided by a health care provider under Section 26-1-37, a
115 health care provider who provides a copy of a patient's records to a patient's attorney, legal
116 representative, or other third party authorized to receive records:

117 (a) shall provide the copy within 30 days after receipt of notice; and

118 (b) may charge a reasonable fee for paper or electronic copies, but may not exceed the
119 following rates:

120 (i) \$30 per request for locating a patient's records;

121 (ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32
122 cents per page for each additional page;

123 (iii) the cost of postage when the requester has requested the copy be mailed;

124 (iv) if requested, the health care provider will certify the record as a duplicate of the
125 original for a fee of \$20; and

126 (v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

127 ~~[(5)]~~ (6) Except for records provided under Section 26-1-37, a contracted third party
128 service ~~[which]~~ that provides medical records, other than a health care provider under
129 Subsections ~~[(3)]~~ (4) and ~~[(4)]~~ (5), who provides a copy of a patient's records to a patient's
130 attorney, legal representative, or other third party authorized to receive records:

131 (a) shall provide the copy within 30 days after the request; and

132 (b) may charge a reasonable fee for paper or electronic copies, but may not exceed the
133 following rates:

134 (i) \$30 per request for locating a patient's records;

135 (ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32
136 cents per page for each additional page;

137 (iii) the cost of postage when the requester has requested the copy be mailed;

138 (iv) if requested, the health care provider or the health care provider's contracted third
139 party service will certify the record as a duplicate of the original for a fee of \$20; and

140 (v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

141 ~~[(6)]~~ (7) A health care provider or the health care provider's contracted third party

service shall deliver the medical records in the electronic medium customarily used by the health care provider or the health care provider's contracted third party service or in a universally readable image such as portable document format:

(a) if the patient, patient's personal representative, or a third party authorized to receive the records requests the records be delivered in an electronic medium; and

(b) the original medical record is readily producible in an electronic medium.

~~[(7)]~~ (8) (a) Except as provided in Subsections ~~[(7)]~~ (8)(b) and (c), the per page fee in Subsections ~~[(3), (4), and (5)]~~ (4), (5), and (6) applies to medical records reproduced electronically or on paper.

(b) ~~[For record requests made on or after July 1, 2018, the]~~ The per page fee for producing a copy of records in an electronic medium shall be 50% of the per page fee otherwise provided in this section, regardless of whether the original medical records are stored in electronic format.

(c) (i) ~~[For electronic record requests made on or after July 1, 2021, a]~~ A health care provider or a health care provider's contracted third party service shall deliver the medical records in the electronic medium customarily used by the health care provider or the health care provider's contracted third party service or in a universally readable image, such as portable document format, if the patient, patient's personal representative, patient's attorney, legal representative, or a third party authorized to receive the records, requests the records be delivered in an electronic medium.

(ii) An entity providing requested information under Subsection ~~[(7)]~~ (8)(c)(i):

(A) shall provide the requested information within 30 days; and

(B) may not charge a fee for the electronic copy that exceeds \$150 regardless of the number of pages and regardless of whether the original medical records are stored in electronic format.

~~[(8) (a) As used in this section, "inflation" means the unadjusted Consumer Price Index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average changes in prices of goods and services purchased by urban wage~~

170 earners and clerical workers.]

171 ~~[(b)] (9) (a) [Beginning January 1, 2022, and on January 1 of each year thereafter,]~~ On
172 January 1 of each year, the state treasurer shall adjust the following fees for inflation:

173 (i) the fee for providing patient's records under:

174 (A) Subsections ~~[(4)]~~ (5)(b)(i) through (ii); and

175 (B) Subsections ~~[(5)]~~ (6)(b)(i) through (ii); and

176 (ii) the maximum amount that may be charged for an electronic copy under Subsection
177 ~~[(7)]~~ (8)(c)(ii)(B).

178 ~~[(c)] (b) [On or before January 30, 2022, and on or before January 30 of each year~~
179 thereafter] On or before January 30 of each year, the state treasurer shall:

180 (i) certify the inflation-adjusted fees and maximum amounts calculated under this
181 section; and

182 (ii) notify the Administrative Office of the Courts of the information described in
183 Subsection ~~[(8)(c)(i)]~~ (9)(b)(i) for posting on the court's website.

184 ~~[(9) (a) As used in this Subsection (9), "qualified claim or appeal" means a claim or~~
185 appeal under any:]

186 ~~[(i) provision of the Social Security Act as defined in Section 67-11-2; or]~~

187 ~~[(ii) federal or state financial needs-based benefit program.]~~

188 ~~[(b)]~~ (10) Notwithstanding Subsections ~~[(3) through (5)]~~ (4) through (6), if a request
189 for a medical record is accompanied by documentation of a qualified claim or appeal, a health
190 care provider or the health care provider's contracted third party service:

191 ~~[(i)]~~ (a) may not charge a fee for the first copy of the record for each date of service
192 that is necessary to support the qualified claim or appeal in each calendar year;

193 ~~[(ii)]~~ (b) for a second or subsequent copy in a calendar year of a date of service that is
194 necessary to support the qualified claim or appeal, may charge a reasonable fee that may not:

195 ~~[(A)]~~ (i) exceed 60 cents per page for paper photocopies;

196 ~~[(B)]~~ (ii) exceed a reasonable cost for copies of X-ray photographs and other health
197 care records produced by similar processes;

198 ~~[(C)]~~ (iii) include an administrative fee or additional service fee related to the
199 production of the medical record; or

200 ~~[(D)]~~ (iv) exceed the fee provisions for an electronic copy under Subsection ~~[(7)]~~
201 (8)(c); and

202 ~~[(iii)]~~ (c) shall provide the health record within 30 days after the day on which the
203 request is received by the health care provider.

204 ~~[(10)(a) As used in this Subsection (10), "indigent individual" means an individual~~
205 ~~whose household income is at or below 100% of the federal poverty level as defined in Section~~
206 ~~26-18-3.9.]~~

207 ~~[(b)]~~ (11)(a) Except as otherwise provided in Subsections ~~[(3) through (5)]~~ (4) through
208 (6), a health care provider or the health care provider's contracted third party service shall
209 waive all fees under this section for an indigent individual.

210 ~~[(e)]~~ (b) A health care provider or the health care provider's contracted third party
211 service may require the indigent individual or the indigent individual's authorized
212 representative to provide proof that the individual is an indigent individual by executing an
213 affidavit.

214 ~~[(d)]~~ (c) (i) An indigent individual that receives copies of a medical record at no charge
215 under this Subsection ~~[(10)]~~ (11) is limited to one copy for each date of service for each health
216 care provider, or the health care provider's contracted third party service, in each calendar year.

217 (ii) Any request for additional copies in addition to the one copy allowed under
218 Subsection ~~[(10)(d)(i)]~~ (11)(c) is subject to the fee provisions described in Subsection ~~[(9)]~~
219 (10).

220 (12) By January 1, 2023, a health care provider and all of the health care provider's
221 contracted third party health related services shall accept a properly executed form described in
222 Title 26, Chapter 69, Standard Health Record Access Form.