

Senator Karen Mayne proposes the following substitute bill:

MEDICAL RECORDS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This bill amends provisions relating to access to medical records.

Highlighted Provisions:

This bill:

- clarifies certain provisions relating to access to medical records;
- enacts new requirements relating to requests for medical records in an electronic format; and
- requires a health care provider to waive certain fees for a request for medical records for an indigent individual and an individual making a qualified claim.

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 2015, Chapter 217

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



Section 1. Section **78B-5-618** is amended to read:

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

(1) 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) 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) 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]~~ patient's personal representative has requested the copy be mailed.

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

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

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

(i) ~~[\$21.16]~~ \$30 ~~→~~ per request ~~←~~ for locating a patient's records~~[, per request]~~;

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

(iii) the cost of postage when the ~~[third party]~~ requester has requested the copy be mailed; ~~[and]~~

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

~~[(iv)]~~ (v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

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

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

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

(i) ~~[\$21.16]~~ \$30 per request for locating a patient's records;

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

(iii) the cost of postage when the ~~[third party]~~ requester has requested the copy be mailed; ~~[and]~~

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

~~[(iv)]~~ (v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

(6) A health care provider or ~~[its]~~ ~~Ō→~~ **[a] the** ~~←Ō~~ health care provider's contracted third party service

shall deliver the medical records in the ~~[digital or]~~ electronic medium customarily used by the

health care provider or ~~[its]~~ ~~Ō→~~ **[a] the** ~~←Ō~~ 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 ~~[a digital or]~~ an electronic medium; and

(b) the original medical record is readily producible in ~~[a digital or]~~ an electronic medium.

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

~~[(b) For record requests made on or before June 30, 2018, the per page fee for~~

88 ~~producing a copy of records on a digital or electronic medium shall be 60% of the per page fee~~
89 ~~otherwise provided in this section, regardless of whether the original medical records are stored~~
90 ~~in electronic format.]~~

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

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

102 (ii) An entity providing requested information under Subsection (7)(c)(i):

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

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

107 (8) (a) ~~[Beginning January 1, 2016, the fee for providing patient's records shall be~~
108 ~~adjusted annually as specified in this section based on the most recent changes to the]~~ As used
109 in this section, "inflation" means the unadjusted Consumer Price Index, as published by the
110 Bureau of Labor Statistics of the United States Department of Labor, that measures the average
111 changes in prices of goods and services purchased by urban wage earners~~[, clerical workers'~~
112 ~~families, and single workers living alone]~~ and clerical workers.

113 (b) Beginning January 1, 2022, and on January 1 of each year thereafter, the state
114 treasurer shall adjust the following fees for inflation:

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

116 (A) Subsections (4)(b)(i) through (ii); and

117 (B) Subsections (5)(b)(i) through (ii); and

118 (ii) the maximum amount that may be charged for an electronic copy under Subsection

119 (7)(c)(ii)(B).

119a §→ (c) On or before January 30, 2022, and on or before January 30 of each year thereafter,
119b the state treasurer shall:

119c (i) certify the inflation-adjusted fees and maximum amounts calculated under this section; and

119d (ii) notify the Administrative Office of the Courts of the information described in Subsection

119e (8)(c)(i) for posting on the court's website. ←§

120 (9) (a) As used in this Subsection (9), "qualified claim or appeal" means a claim or
121 appeal under any:

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

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

124 (b) Notwithstanding Subsections (3) through (5), if a request for a medical record is
125 accompanied by documentation of a qualified claim or appeal, a health care provider or the
126 health care provider's contracted third party service:

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

129 (ii) for a second or subsequent copy in a calendar year of a date of service that is
130 necessary to support the qualified claim or appeal, may charge a reasonable fee that may not:

131 (A) exceed 60 cents per page for paper photocopies;

132 (B) exceed a reasonable cost for copies of X-ray photographs and other health care
133 records produced by similar processes;

134 (C) include an administrative fee or additional service fee related to the production of
135 the medical record; or

136 (D) exceed the fee provisions for an electronic copy under Subsection (7)(c); and

137 (iii) shall provide the health record within 30 days after the day on which the request is
138 received by the health care provider.

139 (10) (a) As used in this Subsection (10), "indigent individual" means an individual
140 whose household income is at or below 100% of the federal poverty level as defined in Section
141 [26-18-3.9](#).

142 (b) Except as otherwise provided in Subsections (3) through (5), a health care provider
143 or the health care provider's contracted third party service shall waive all fees under this section
144 for an indigent individual.

145 (c) A health care provider or the health care provider's contracted third party service
146 may require the indigent individual or the indigent individual's authorized representative to
147 provide proof that the individual is an indigent individual by executing an affidavit.

148 (d) (i) An indigent individual that receives copies of a medical record at no charge
149 under this Subsection (10) is limited to one copy for each date of service for each health care

150 provider, or the health care provider's contracted third party service, in each calendar year.
151 (ii) Any request for additional copies in addition to the one copy allowed under
152 Subsection (10)(d)(i) is subject to the fee provisions described in Subsection (9).