

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 14-0371.01 Kristen Forrestal x4217

HOUSE BILL 14-1186

HOUSE SPONSORSHIP

Schafer,

SENATE SPONSORSHIP

Aguilar,

House Committees
Health, Insurance, & Environment

Senate Committees

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.**

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.

HOUSE
Amended 2nd Reading
March 5, 2014

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.

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4 (a) The state board of health recently repealed a rule that set the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, OR COURT ORDER and upon the payment of the reasonable
11 ~~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) EIGHTEEN DOLLARS AND FIFTY-THREE CENTS FOR THE FIRST
10 TEN PAGES, EIGHTY-FIVE CENTS PER PAGE FOR THE NEXT THIRTY PAGES,
11 AND FIFTY-SEVEN CENTS PER PAGE FOR EACH ADDITIONAL PAGE; EXCEPT
12 THAT, IF THE MEDICAL RECORDS ARE STORED ON MICROFILM, ONE DOLLAR
13 AND FIFTY 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:

22 (A) IF A PATIENT RECORD IS REQUESTED BY A THIRD-PARTY ENTITY
23 UNDER THE "LAURA HERSHEY DISABILITY-BENEFIT SUPPORT ACT", PART
24 22 OF ARTICLE 30 OF TITLE 24, C.R.S., THE THIRD PARTY MAY OBTAIN ONE
25 FREE COPY OF THE RECORD FOR THE APPLICATION PROCESS OR FOR AN
26 APPEAL OR REAPPLICATION WHEN REQUIRED BY THE DISABILITY BENEFIT
27 ADMINISTRATOR; AND

1 (B) IF MAXIMUM RATES HAVE ALREADY BEEN ESTABLISHED BY
2 STATUTE OR RULE FOR A STATE OR LOCAL GOVERNMENT ENTITY, THOSE
3 RATES PREVAIL OVER THE RATES SET FORTH IN THIS PART 8.

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

6 25-1-802. Patient records in custody of individual health care
7 providers. (1) (a) Every patient record in the custody of a podiatrist,
8 chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse,
9 optometrist, audiologist, acupuncturist, direct-entry midwife, or physical
10 therapist required to be licensed under title 12, C.R.S., A NATUROPATHIC
11 DOCTOR REQUIRED TO BE REGISTERED PURSUANT TO ARTICLE 37.3 OF
12 TITLE 12, C.R.S., or a person practicing psychotherapy under the
13 provisions of article 43 of title 12, C.R.S., except records pertaining to
14 mental health problems, shall PSYCHOTHERAPY NOTES, MUST be available
15 to the patient OR THE PATIENT'S PERSONAL REPRESENTATIVE upon
16 submission of a written authorization-request VALID AUTHORIZATION for
17 inspection of records, dated and signed by the patient, at reasonable times
18 and upon reasonable notice. A summary of records pertaining to a
19 patient's mental health problems may, upon written request and
20 ACCOMPANIED BY A signed and dated authorization, be made available to
21 the patient or the patient's designated PERSONAL representative following
22 termination of the treatment program.

23 (b) (I) (A) A copy of such THE records, including X rays, shall
24 RADIOGRAPHIC STUDIES, MUST be made available to the patient or the
25 patient's designated PERSONAL representative, upon written
26 authorization-request for a copy of such records, dated and signed by the
27 patient, upon reasonable notice REQUEST and payment of the FEE A

1 COVERED ENTITY MAY IMPOSE IN ACCORDANCE WITH THE "HEALTH
2 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L.
3 104-191, AS AMENDED, OR TO A THIRD PERSON WHO REQUESTS THE
4 MEDICAL RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT
5 AUTHORIZATION, A VALID SUBPOENA, OR A COURT ORDER, AND PAYMENT
6 OF reasonable costs FEES.

7 (B) THE HEALTH CARE PROVIDER MUST PROVIDE THE MEDICAL
8 RECORDS IN ELECTRONIC FORMAT IF THE PERSON REQUESTS ELECTRONIC
9 FORMAT, THE ORIGINAL MEDICAL RECORDS ARE STORED IN ELECTRONIC
10 FORMAT, AND THE MEDICAL RECORDS ARE READILY PRODUCIBLE IN
11 ELECTRONIC FORMAT.

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

1 reasonable ~~costs~~ FEES for ~~such film~~ THE RADIOGRAPHIC STUDY. If a
2 practitioner releases an original ~~film~~ RADIOGRAPHIC STUDY pursuant to
3 this subparagraph (II), the practitioner ~~shall~~ IS not ~~be~~ responsible for any
4 loss, damage, or other consequences as a result of ~~such~~ THE release. Any
5 original ~~X ray, mammogram, CT SCAN, MRI, or other film~~
6 RADIOGRAPHIC STUDY made available pursuant to this subparagraph (II)
7 ~~shall~~ MUST be returned upon request to the lending practitioner within
8 thirty days.

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

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

20 **25-1-803. Effect of this part 8 on similar rights of a patient.**

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

22 (a) ~~Limit~~ LIMITS the right of a patient, ~~or the patient's designated~~
23 PERSONAL representative, OR A PERSON WHO REQUESTS THE MEDICAL
24 RECORDS UPON SUBMISSION OF A HIPAA-COMPLIANT AUTHORIZATION, A
25 VALID SUBPOENA, OR A COURT ORDER to inspect the patient's medical or
26 mental health data pursuant to section 24-72-204 (3) (a) (I), C.R.S.; or

27 (b) ~~Limit~~ LIMITS OR EXPANDS a right to inspect the patient's

1 records ~~which~~ THAT is otherwise granted by state statute to the patient, or
2 ~~his designated~~ THE PATIENT'S PERSONAL representative, OR A PERSON WHO
3 REQUESTS THE MEDICAL RECORDS UPON SUBMISSION OF A
4 HIPAA-COMPLIANT AUTHORIZATION, A VALID SUBPOENA, OR A COURT
5 ORDER.

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