

House Bill 832

By: Representatives Burchett of the 176th, Gunter of the 8th, Leverett of the 33rd, and Kelley of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 33 of Title 31 of the Official Code of Georgia Annotated, relating to
2 health records, so as to revise definitions; to revise provisions relating to the furnishing of
3 copies of health records; to provide for penalties for noncompliance; to revise provisions
4 relating to the costs for copying health records; to revise provisions relating to electronic
5 health records; to provide for related matters; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 33 of Title 31 of the Official Code of Georgia Annotated, relating to health records,
10 is amended by revising Code Section 31-33-1, relating to definitions, as follows:

11 "31-33-1.

12 As used in this chapter, the term:

13 (1) 'Authorized person' means:

14 (A) Where the patient is alive, the patient or a person entitled to have access to the
15 patient's record under a signed medical authorization, an advance directive for health
16 care, or a durable power of attorney for health care for such patient;

17 (B) Where the patient is deceased:

18 (i) The executor, administrator, or temporary administrator for the decedent patient's
19 estate, if such person has been appointed;

20 (ii) The surviving spouse of the decedent patient, if an executor, administrator, or
21 temporary administrator for the decedent patient's estate has not been appointed;

22 (iii) Any surviving child of the decedent patient, if there is no surviving spouse, and
23 an executor, administrator, or temporary administrator for the decedent patient's estate
24 has not been appointed; and

25 (iv) Any parent of the decedent patient, if there is no surviving child, no surviving
26 spouse, and an executor, administrator, or temporary administrator for the decedent
27 patient's estate has not been appointed; and

28 (C) A real party in interest to an action requesting the patient's record pursuant to Code
29 Section 9-11-34.

30 (2) 'Metadata' means the information about the native file that is embedded or generated
31 in the native file that is not typically viewable to a user viewing the output display of the
32 native file, whether on screen or as a printout.

33 (3) 'Native file' means an electronic record that has not been altered or converted to a
34 digital image.

35 ~~(1)~~(4) 'Patient' means any person who has received health care services from a provider.

36 ~~(2)~~(5) 'Provider' means all hospitals, including public, private, osteopathic, and
37 tuberculosis hospitals; other special care units, including podiatric facilities, skilled
38 nursing facilities, and kidney disease treatment centers, including freestanding
39 hemodialysis units; intermediate care facilities; ambulatory surgical or obstetrical
40 facilities; health maintenance organizations; and home health agencies. It shall also mean
41 any person licensed to practice under Chapter 9, 11, 26, 34, 35, or 39 of Title 43.

42 ~~(3)~~(6) 'Record' means a patient's health record, including, but not limited to, evaluations,
43 diagnoses, prognoses, laboratory reports, biopsy slides, X-rays, prescriptions, and other

44 such items or technical information used in assessing the patient's condition, ~~or~~ the
 45 pertinent portion of the record relating to a specific condition or a summary of the record,
 46 or medical bills for health care services provided to the patient by the provider."

47 **SECTION 2.**

48 Said chapter is further amended by revising Code Section 31-33-2, relating to furnishing
 49 copy of health records, as follows:

50 "31-33-2.

51 ~~(a)(1)(A)~~ A provider having custody and control of any ~~evaluation, diagnosis, prognosis,~~
 52 ~~laboratory report, or biopsy slide~~ item in a patient's record shall:

53 (1) Retain ~~retain~~ such item for a period of not less than ten years from the date such item
 54 was created, except where:

55 ~~(B) The requirements of subparagraph (A) of this paragraph shall not apply to:~~

56 ~~(i)(A)~~ An individual provider ~~who~~ has retired from or sold his or her professional
 57 practice, if such provider has notified the patient of such retirement or sale and offered
 58 to provide such items in the patient's record or copies thereof to another provider of the
 59 patient's choice and, if the patient so requests, to the patient; or

60 ~~(ii)(B)~~ A hospital which is an institution as defined in subparagraph (A) of paragraph
 61 (4) of Code Section 31-7-1, ~~which shall retain~~ is retaining patient records in accordance
 62 with rules and regulations for hospitals as issued pursuant to Code Section 31-7-2; and

63 ~~(2) Upon~~ Within 30 days, but no sooner than 20 days, of the date of receipt of a written
 64 ~~request from the patient or a person authorized to have access to the patient's record under~~
 65 ~~an advance directive for health care or a durable power of attorney for health care for~~
 66 ~~such patient, the provider having custody and control of~~ for the patient's record from an
 67 authorized person, shall furnish a complete and current copy of that record, in accordance
 68 ~~with the provisions of this Code section. If the patient is deceased, such request may be~~

69 ~~made by the following persons to that authorized person in electronic format, except~~
70 ~~where:~~

71 ~~(A) The written request expressly asks that the record be produced in paper format,~~
72 ~~then the provider shall furnish the patient's record in paper format as provided in this~~
73 ~~Code section;~~

74 ~~(B) The patient's record includes portions which are not in paper or electronic format,~~
75 ~~then the provider shall furnish the patient's record to the extent such record is in paper~~
76 ~~or electronic format as provided in this Code section and provide the remainder within~~
77 ~~a reasonable time not to exceed ten days after the date the record in paper or electronic~~
78 ~~format was due to the authorized person; or~~

79 ~~(C) The written request is from an authorized person as specified in subparagraph (C)~~
80 ~~of paragraph (1) of Code Section 31-33-1, and the provider receives, within 20 days of~~
81 ~~receipt of such written request, a copy of an objection to such written request from~~
82 ~~another authorized person, then the provider shall not furnish the requested patient's~~
83 ~~record until further order of the court as provided in Code Section 9-11-34.~~

84 ~~(A) The executor, administrator, or temporary administrator for the decedent's estate~~
85 ~~if such person has been appointed;~~

86 ~~(B) If an executor, administrator, or temporary administrator for the decedent's estate~~
87 ~~has not been appointed, by the surviving spouse;~~

88 ~~(C) If there is no surviving spouse, by any surviving child; and~~

89 ~~(D) If there is no surviving child, by any parent.~~

90 ~~(b) Any record requested under subsection (a) of this Code section shall within 30 days of~~
91 ~~the receipt of a request for records be furnished to the patient, any other provider~~
92 ~~designated by the patient, any person authorized by paragraph (2) of subsection (a) of this~~
93 ~~Code section to request a patient's or deceased patient's medical records, or any other~~
94 ~~person designated by the patient. Such Except for requests made by an authorized person~~

95 as specified in subparagraph (C) of paragraph (1) of Code Section 31-33-1, a record request
96 submitted pursuant to subsection (a) of this Code section shall be accompanied by:

97 (1) An authorization in compliance with the federal Health Insurance Portability and
98 Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations
99 implementing such act; and

100 (2) A signed written authorization as specified in subsection ~~(d)~~(e) of this Code section.

101 (c) Receipt of a request for records pursuant to this Code section shall be deemed
102 conclusive by any of the following:

103 (1) A signed return receipt for certified mail correctly addressed;

104 (2) Confirmation of a facsimile transmission to the correct telephone number; or

105 (3) Proof of delivery via overnight delivery service.

106 ~~(c)~~(d) If the provider reasonably determines that disclosure of the record to the patient will
107 be detrimental to the physical or mental health of the patient, the provider may refuse to
108 furnish the record; however, upon such refusal, the patient's record shall, upon written
109 request by the patient, be furnished to any other provider designated by the patient.

110 ~~(d)~~(e) A provider shall not be required to release records in accordance with this Code
111 section unless and until the requesting person has furnished the provider with a signed
112 written authorization indicating that he or she is ~~authorized~~ an authorized person entitled
113 to have access to the patient's records by paragraph (2) of subsection (a) of pursuant to this
114 Code section. Any provider shall be justified in relying upon such written authorization.

115 ~~(e)~~(f) Any provider or person who in good faith releases copies of medical records in
116 accordance with this Code section shall not be found to have violated any criminal law or
117 to be civilly liable to the patient, the deceased patient's estate, or to any other person.

118 (g) Except as provided in subsection (d) or (e) of this Code section, any provider that fails
119 to comply with subsection (a) of this Code section shall:

120 (1) Be subject to the following civil penalties:

121 (A) An amount of \$10.00 per day for each day that the record is not provided to the
122 authorized person after the date the record was due to the authorized person;
123 (B) An additional \$15.00 per day for each day the record is not provided to the
124 authorized person after 30 days from the date the record was due to the authorized
125 person; and
126 (C) An additional \$25.00 per day for each day the record is not provided to the
127 authorized person after 60 days from the date the record was due to the authorized
128 person; and
129 (2) Pay the civil penalty imposed pursuant to paragraph (1) of this subsection to the
130 authorized person who requested but was not provided the record in accordance with this
131 Code section.
132 (h) An authorized person shall have a right of action for the recovery of any civil penalty
133 arising under subsection (g) of this Code section and shall be entitled to an award of
134 reasonable attorney fees and expenses incurred in those efforts; provided, however, that
135 where a provider contracts with a third-party service to copy or provide records, such
136 third-party service shall be liable to the authorized person for the penalties arising under
137 subsection (g) of this Code section upon the provider providing evidence of such contract
138 to the authorized person requesting the records."

139 **SECTION 3.**

140 Said chapter is further amended by revising Code Section 31-33-3, relating to the costs of
141 copying and mailing health records, as follows:

142 "31-33-3.

143 (a) ~~The party~~ Except for a record requested in order to make or complete an application
144 for a disability benefits program, an authorized person requesting the patient's records shall
145 be responsible to the provider for the costs of ~~copying and mailing~~ producing the patient's

146 record. ~~A charge~~ Payment of such costs may be required by the provider prior to the record
147 being furnished:

148 (1) For producing a patient's record in an electronic format, including a native file, the
149 provider may charge a flat fee not to exceed \$50.00 for search, retrieval, or copying of
150 the patient's record to an electronic format, certification; media, postage; and other direct
151 administrative costs related to compliance with the request under this chapter;

152 (2) To the extent that the record request includes metadata that is not accessible in the
153 native file, such portions shall be produced in an easily accessible format, and the
154 provider may charge a flat fee not to exceed \$50.00 for search, retrieval, or copying of
155 the metadata to an electronic format, certification; media, postage; and other direct
156 administrative costs related to compliance with the request under this chapter;

157 (3) For producing a record in paper format, when expressly requested, the provider may
158 charge a fee of up to \$20.00 ~~may be collected~~ for search, retrieval, and other direct
159 administrative costs related to compliance with the request under this chapter. A fee for
160 certifying the medical records may also be charged not to exceed \$7.50 for each record
161 certified. The actual cost of postage incurred in mailing the requested records may also
162 be charged. In addition, copying costs for a record which is in paper form shall not
163 exceed \$.75 \$.25 per page for the first 20 pages of the patient's records which are copied;
164 \$.65 \$.15 per page for pages 21 through 100; and \$.50 \$.05 for each page copied in
165 excess of 100 pages. All of the fees allowed by this Code section may be adjusted
166 annually in accordance with the medical component of the consumer price index. The
167 Department of Community Health shall be responsible for calculating this annual
168 adjustment, which will become effective on July 1 of each year.; and

169 (4) To the extent that the record request for medical records includes portions of records
170 which are not in paper or electronic form, including but not limited to radiology films,
171 models, or fetal monitoring strips, the provider shall be entitled to recover the full
172 reasonable cost of such reproduction. Payment of such costs may be required by the

173 ~~provider prior to the records being furnished. This subsection shall not apply to records~~
174 ~~requested in order to make or complete an application for a disability benefits program.~~

175 (b) The rights granted to a patient or other authorized person under this chapter are in
176 addition to any other rights such patient or authorized person may have relating to access
177 to a patient's records; however, nothing in this chapter shall be construed as granting to a
178 patient or authorized person any right of ownership in the records, as such records are
179 owned by and are the property of the provider.

180 (c) This Code section shall apply to psychiatric, psychological, and other mental health
181 records of a patient."

182 **SECTION 4.**

183 Said chapter is further amended by revising Code Section 31-33-8, relating to electronic
184 health records, as follows:

185 "31-33-8.

186 (a) Notwithstanding any other provision of the law to the contrary, ~~any provider may, in~~
187 ~~its sole discretion, every provider shall~~ create, maintain, transmit, receive, and store records
188 created on or after January 1, 2022, in an electronic format within the meaning of Code
189 Section 10-12-2 and may, in its sole discretion, temporarily or permanently convert
190 existing tangible records into an electronic format.

191 (b) A provider shall not be required to maintain separate tangible copies of electronically
192 stored records.

193 (c) The other provisions of this chapter shall apply to electronic records to the same extent
194 as those provisions apply to tangible records.

195 (d) This Code section is subject to all applicable federal laws governing the security and
196 confidentiality of a patient's personal health information.

197 (e) A tangible copy of a record reproduced from an electronically stored record shall be
198 considered an original for purposes of providing copies to patients or other authorized

199 parties and for introduction of the records into evidence in administrative or court
200 proceedings.

201 (f) Except as provided otherwise under federal law, upon receiving a request for a copy
202 of a record from a patient or an authorized person under Code ~~Section~~ Sections 31-33-2 and
203 31-33-3, a provider shall provide copies of the record in ~~either tangible or~~ electronically
204 stored form, unless expressly requested in paper form, or in tangible form to the extent that
205 the record request includes portions which are not in paper or electronic form.

206 (g) Subsections (a), (b), (d), and (e) of this Code section shall apply to psychiatric,
207 psychological, or other mental health records of a patient."

208 **SECTION 5.**

209 This Act shall become effective on January 1, 2022.

210 **SECTION 6.**

211 All laws and parts of laws in conflict with this Act are repealed.