

MEDICAL RECORDS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to access to medical records.

Highlighted Provisions:

This bill:

- ▶ clarifies that certain provisions relating to patient access to medical records:
 - extend to a patient's attorney or legal representative; and
 - apply to requests for paper copies;
- ▶ 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.

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, including a patient's attorney or legal 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, including a patient's attorney or legal 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 copy of a patient's records to the patient or the patient's personal representative, including the patient's attorney or legal 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 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 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 copies, but may not exceed the following rates:
 - (i) \$21.16 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 has requested the copy be mailed; and

(iv) 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 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 copies, but may not exceed the following rates:

(i) \$21.16 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 has requested the copy be mailed; and

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

(6) A health care provider or its contracted third party service shall deliver the medical records in the digital or electronic medium customarily used by the health care provider or its contracted third party service or in a 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 electronic medium; and

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

(7) (a) The per page fee in Subsections (3), (4), and (5) applies to medical records reproduced on paper.

(b) For record requests made on or before June 30, 2018, the per page fee for producing a copy of records on a digital or electronic medium shall be 60% of the per page fee otherwise provided in this section, regardless of whether the original medical records are stored in electronic format.

(c) For record requests made on or after July 1, 2018, the per page fee for producing a copy of records on a digital or 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.

(d) (i) For electronic record requests made on or after July 1, 2021, a health care provider or a 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 the health care provider's contracted third party service or in a portable document format if the patient, patient's personal representative, including a patient's attorney or legal representative, or a third party authorized to receive the records, requests the records be delivered in a digital electronic medium.

(ii) An entity providing requested information under Subsection (7)(d)(i) shall provide:

(A) the requested information within 30 days; and

(B) the electronic copy at a flat fee of \$25 regardless of the number of pages and regardless of whether the original medical records are stored in electronic format.

(8) Beginning January 1, 2016, the fee for providing patient's records shall be adjusted annually as specified in this section based on the most recent changes to the 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, clerical workers' families, and single workers living alone.

(9) (a) As used in this Subsection (9), "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.

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

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

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

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

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

(C) include an administrative fee or additional service fee of any kind; or

121 (D) exceed the fee provisions for an electronic copy under Subsection (7)(d); and
122 (iii) shall provide the health record within 30 days after the day on which the request is
123 received by the health care provider.

124 (10) (a) As used in this Subsection (10), "indigent individual" means an individual
125 whose household income is at or below 100% of the federal poverty level as defined in Section
126 26-18-3.9.

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

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

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

136 (ii) Any request for additional copies in addition to the one copy allowed under
137 Subsection (10)(d)(i) is subject to the fee provisions described in Subsection (9).