

From Providence Medical Group — July 11, 2016

Ohio statute concerning medical records.

Excerpt from Am. Sub. H.B. 508

The act

Under the act, the medical records statute is modified as follows:

(1) The requirement that a hospital prepare a finalized medical record for each patient treated at the hospital is removed.

(2) Application of the statute is expanded to include the medical records generated and maintained by health care providers rather than only hospitals, as is the case under prior law. "Health care provider," as defined in the act, means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, dentist, dental hygienist, registered or licensed practical nurse, optometrist, dispensing optician, pharmacist, physician, physician assistant, certified practitioner of a limited branch of medicine, psychologist, chiropractor, hearing aid dealer or fitter, occupational therapist, occupational therapy assistant, speech-language pathologist, audiologist, physical therapist, physical therapy assistant, professional clinical counselor, professional counselor, social worker, independent social worker, social work assistant, dietitian, respiratory care professional, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic. The definition of "medical record" is expanded to mean "data in any form" rather than "any document or combination of documents," as was the case under prior law.

(3) A "patient's representative" is also permitted to submit a request to examine or obtain a copy of a patient's medical record, as long as the request is signed by the patient. If the health care provider fails to furnish the medical record, the patient's representative may bring a civil action to enforce the patient's right of access to the record. "Patient's representative" is defined as a person to whom a patient has given written authorization to act on the patient's behalf regarding the patient's medical records. If the patient is deceased, the term means the executor or administrator of the patient's estate or the person responsible for the patient's estate if it is not to be probated. Sickness and accident insurers and health insuring corporations are excluded from the definition.

(4) The definition of "patient" is expanded to include either an individual who received health care treatment from a health care provider or that individual's guardian.

(5) A patient or patient's representative may request that the copy of the patient's medical record be sent to the patient's physician or chiropractor or to the patient's representative (in addition to the patient's residence, as is provided in continuing law).

Charges for medical records (secs. 3701.74(A)(4) and (B) and 3701.741)

Under prior law the medical records statute did not specify the amount of money a patient could be charged for examining or obtaining a copy of the patient's medical record. Under the act, a health care provider must permit a patient to examine the patient's medical record without charge. Health care providers and medical records companies must provide copies of medical records, as follow:

--One copy, without charge, the Bureau of Workers' Compensation, the Industrial Commission, and the Department of Job and Family Services, in accordance with the Ohio statutes and administrative rules that govern each of those agencies. The act stipulates that this provision does not supersede any administrative rule of the Bureau, Commission, or Department.

--One copy, without charge, to a patient or patient's representative, if the record is necessary to support a claim for Social Security disability benefits and the request is accompanied by documentation that the claim has been filed.

--For all other purposes, the health care provider or medical records company may charge not more than the sum of the following:

[The following text through item (4) differs from the original Act to reflect costs for calendar year 2012 based on a 2.3% increase in the Consumer Price Index associated with providing medical records in accordance with Ohio Revised Code Section 3701.742]

(1) An initial fee of \$16.78, which compensates for the records search;

(2) With respect to data recorded on paper:

(a) \$2.92 per page for the first 10 pages;

(b) \$0.61 per page for pages 11-50;

(c) \$0.25 per page for pages 51 and higher.

(3) With respect to data recorded other than on paper, \$1.87 per page;

(4) The actual cost of related postage incurred by the health care provider or medical records company.

However, the act allows a health care provider or medical records company to enter into a contract with a patient's representative, or an insurance company for the copying of medical records at a fee other than as cited above.

"Medical records company" is defined by the act as a person who stores, locates, or copies medical records for a health care provider, or is compensated for doing so by a health care provider, and charges a fee for providing medical records to a

patient or patient's representative.)

Exemptions for the act (secs. 3701.74(D)(1) and 3701.741 (F) and (G))

The act adds that the medical records statute (3701.74) does not apply to medical records whose release is covered by Ohio's Long-Term Care Ombudsman Program (sec.173.20), by the statutory rights granted to residents of nursing homes (sec.3721.13), or by the federal requirements for certain long-term care facilities (42 C.F.R. 483.10).

In addition, the act's provisions establishing maximum fees that a health care provider or medical records company may charge for providing copies of medical records do not apply to either of the following:

(1) Copies of medical records provided to sickness and accident insurers authorized to do business in this state or to health insuring corporations holding a certificate of authority under Ohio law:

(2) Medical records the copying of which is covered by Ohio's Long-Term Care Ombudsman Program (sec. 173.20) or by the federal requirements for certain long-term care facilities (42 C.F.R. 483.10). Lastly the act states that its provisions governing the copying of medical records neither require nor preclude the distribution of medical records at any particular cost or fee to sickness and accident insurers or health insuring corporations.

Application of the Consumer Price Index formula if the act's "sunset" is extended (sec.3701.742)

As mentioned above, the act's provisions governing the copying of medical records are scheduled to "sunset" on December 31, 2004. If that date is amended to reflect a date that January 1 of each year thereafter, the maximum fees that health care providers or medical records companies may charge shall be in accordance with the consumer price index formula. Under this formula, the Director of Health is to adjust the maximum charges in effect for the prior year by the average percentage of increase or decrease in the Consumer Price index for all urban consumers (United States city average, all items) prepared by the United States Department of Labor, Bureau of Labor Statistics. The Director must provide a list of the adjusted amounts to any party upon request.