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Bill Analysis
Legislative Service Commission

Sub. H.B. 508

123rd General Assembly
(As Reported by H. Commerce and Labor)

Reps. Olman, Willamowski, Patton, Redfern, Allen, Terwilleger, Hartnett, Callender, D. Miller, Britton, Vesper, Perry, Jolivette, Logan, Ogg, Taylor, Gerberry, Peterson, R. Miller, Krupinski, J. Beatty, DePiero, Harris, Corbin, Hoops, Sutton, Hollister, Evans, Bender, Wilson, Womer Benjamin, Jones, Distel, Verich, Hartley

BILL SUMMARY

- Allows a patient or a patient's representative to request and receive from any health care provider copies of that patient's medical records as long as the request is properly executed and includes the patient's signature.
- Requires a health care provider to permit a patient who has made a proper request to examine the patient's medical records during normal business hours without charge.
- Specifies the conditions that govern and the maximum fee a health care provider or medical records company can charge a patient or patient's representative for copying the patient's medical record.
- Sunsets on December 31, 2004, the fee structure establishing the maximum fee that a health care provider or medical records company can charge a patient or patient's representative for copying of a patient's medical record.
- Requires the Director of Health to adjust certain medical record fees annually in accordance with the U.S. Consumer Price Index if the sunset date is amended to sunset the fee structure on a date subsequent to December 31, 2004.
- Exempts health insuring corporations and sickness and accident insurance companies from the fee structure established in the bill.

CONTENT AND OPERATION

Medical records requests

Current law

Current law requires a hospital to prepare a finalized medical record for each patient who receives health care treatment at the hospital. A medical record is "finalized" when the record is complete according to the hospital's bylaws. A patient who wishes to examine or obtain a copy of a finalized medical record is required to submit a signed, written request to the hospital. If the patient wants a copy of the record, the request must indicate whether the copy should be sent to the patient's residence or held for the patient at the hospital. Within a reasonable time after receiving the request, the hospital must permit the patient to examine the record or provide a copy of the record.

If a hospital does not furnish a medical record to which a patient is entitled, the patient may bring a civil action to examine or obtain a copy of the record. Sec. 3701.74.

The bill

Under the bill, application of the medical records statute is expanded as follows:

(1) It removes the requirement that medical records be "finalized" in order for the statute to apply.

(2) The statute applies to medical records generated and maintained by health care providers and medical records companies rather than only to hospitals, as is the case under current law. "Health care provider," as defined in the bill, means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, dentist and dentist hygienist, registered and licensed practical nurse, optometrist, lens dispensing optician, pharmacist, physician, physician assistant, certified practitioner of a limited branch of medicine, psychologist, chiropractor, hearing aid dealer or fitter, occupational therapist and occupational therapist assistant, speech-language pathologist, audiologist, physical therapist, physical therapy assistant, professional clinical counselor, professional counselor, social worker, independent social worker licensed, independent social worker registered, respiratory care professional, emergency medical technician-basic, emergency medical technician-intermediate, and an emergency medical technician-paramedic. Under the bill, a "medical records company" means 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. "Physician" is defined as a person authorized under Ohio law to practice medicine and surgery, osteopathic medicine and surgery, or podiatry.

(3) It permits a "patient's representative" to submit a request to examine and receive copies of a patient's medical records, but requires that the request be signed by the patient. "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) It requires a health care provider to permit the patient to examine the patient's records but does not include the patient's representative in this requirement. 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) It permits a patient or a patient's representative to 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. Currently, such records can only be sent to the patient's residence or held by the hospital for personal pick up.

Charges for medical records

Current law does not specify how much a patient can be charged for examining or copying the patient's medical record.

Under the bill, through December 31, 2004, the health care provider that has the patient's medical records must permit the patient to examine the record *without charge*. The bill also requires a health care provider or medical records company to provide the copy *without charge* to all of the following persons:

(1) The Bureau of Workers' Compensation, the Industrial Commission, and the Department of Job and Family Services in accordance with the administrative rules that govern each of those agencies. The bill stipulates that its provisions about free copies are not to be construed as superseding any administrative rule of the Bureau, Commission, or the Department;

(2) 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.

Also through December 31, 2004, for purposes other than those listed above, the health care provider or medical records company may charge not more than the sum of the following:

- (1) An initial fee of \$15 which compensates for the records search;
- (2) With respect to data recorded on paper, the following amounts:
 - (a) One dollar per page for the first 10 pages;
 - (b) 50 cents per page for pages 11-50;
 - (c) 20 cents per page for pages 51 and higher.
- (3) With respect to data recorded other than on paper, the actual cost of making a copy;
- (4) The actual cost of any related postage incurred by the health care provider or medical records company.

The bill allows for a health care provider or medical records company to enter into a contract with a patient, a patient's representative, or an insurance company for the copying of medical records at a fee other than for the fees cited above. Sec. 3701.741.

Exemptions from the fee structure established in the bill

The fee structure establishing fees that a health care provider or a medical records company may charge for a copy of a patient's medical record do not apply to either of the following:

- (1) Copies of medical records provided to insurers authorized under Ohio law to do the business of sickness and accident insurance 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 or federal law requirements for long-term care facilities. Sec. 3701.74(D)(1) and 3701.741(F).

The bill also states explicitly that the fee structure requirements established under the bill neither require nor preclude the distribution of medical records at any particular cost or fee to sickness and accident insurance companies or to health insuring corporations authorized to do business in Ohio. Sec. 3701.741(F).

Implication of the Consumer Price Index formula to determine the fees that may be charged for medical records

Under the bill, if the language in the bill that sunsets the statutory fee structure on December 31, 2004 is amended so as to sunset the fee structure on a date that is later than December 31, 2004, then not later than January 31, 2005, and annually thereafter, the amounts set forth in the bill that establish the maximum fees that health care providers or medical records companies may charge for copies of medical records must be adjusted in accordance with the consumer price index formula. Under this condition, the Director of Health must adjust any fee charges in effect for the prior year in accordance with the annual increase or decrease in the Consumer Price Index for urban consumers prepared by the United States Department of Labor, Bureau of Labor Statistics. The Director also must provide a list of the adjusted amounts to any party upon request. Sec. 3701.742. (See COMMENT.)

COMMENT

The bill attempts to place conditions upon any future amendment by the General Assembly of the fee structure established in the bill by requiring that a consumer price index formula instead be used if the sunset date is amended by the General Assembly in the future to sunset on a date later than December 31, 2004. A future General Assembly, however, would be free to eliminate the condition.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-23-99	p. 1373
Reported, H. Commerce and Labor	09-13-00	p. 2245

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