

BILL TEXT:

STATE OF NEW YORK

4355

2005-2006 Regular Sessions

IN ASSEMBLY

February 9, 2005

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to fees charged by medical record custodians for production of records pursuant to subpoena duces tecum; and to amend the public health law, in relation to access by an adverse party to medical records

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2306 of the civil practice law and rules is amended
2 by adding a new subdivision (c) to read as follows:

3 (c) Fees. Notwithstanding the provisions of the public health law, no
4 fee, other than those authorized by subdivision (a) of section twenty-
5 three hundred three of this article, may be exacted or levied for the
6 production of records relating to the condition or treatment of a
7 patient.

8 § 2. Section 18 of the public health law, as added by chapter 800 of
9 the laws of 1986, is renumbered section 18-b.

10 § 3. Paragraph (g) of subdivision 1 of section 18 of the public health
11 law, as amended by chapter 634 of the laws of 2004, is amended to read
12 as follows:

13 (g) "Qualified person" means any properly identified subject; or an
14 adverse party; or a guardian appointed under article eighty-one of the
15 mental hygiene law; or a parent of an infant; or a guardian of an infant
16 appointed under article seventeen of the surrogate's court procedure act
17 or other legally appointed guardian of an infant who may be entitled to
18 request access to a clinical record under paragraph (c) of subdivision
19 two of this section; or a distributee of any deceased subject for whom
20 no personal representative, as defined in the estates, powers and trusts
21 law, has been appointed; or an attorney representing a qualified person
22 or the subject's estate who holds a power of attorney from the qualified
23 person or the subject's estate explicitly authorizing the holder to

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 execute a written request for patient information under this section. A
 2 qualified person shall be deemed a "personal representative of the indi-
 3 vidual" for purposes of the federal health insurance portability and
 4 accountability act of 1996 and its implementing regulations.

5 § 4. Subdivision 1 of section 18 of the public health law is amended
 6 by adding two new paragraphs (j) and (k) to read as follows:

7 (j) "Adverse party" means a person or entity who may have legal finan-
 8 cial liability due to the subject's medical condition or treatment and
 9 includes such person's or entity's representative, including their
 10 attorney or insurance company, who may have legal financial liability
 11 due to the subject's medical condition or treatment.

12 (k) "Written request of any qualified person" means a written authori-
 13 zation signed and acknowledged by the subject permitting the release of
 14 medical records or subpoena duces tecum served by or on behalf of a
 15 qualified person.

16 § 5. Subdivision 8 of section 18 of the public health law, as added by
 17 chapter 497 of the laws of 1986, is amended to read as follows:

18 8. Challenges to accuracy. A qualified person, other than an adverse
 19 party, may challenge the accuracy of information maintained in the
 20 patient information and may require that a brief written statement
 21 prepared by him or her concerning the challenged information be inserted
 22 into the patient information. This statement shall become a permanent
 23 part of the patient information and shall be released whenever the
 24 information at issue is released. This subdivision shall apply only to
 25 factual statements and shall not include a provider's observations,
 26 inferences or conclusions.

27 A facility may place reasonable restrictions on the time and frequency
 28 of any challenges to accuracy.

29 § 6. This act shall take effect immediately and shall apply to all
 30 subpoenas duces tecum for production of records relating to the condi-
 31 tion or treatment of a patient which are served on the effective date of
 32 this act; and shall further apply to all requests for patient informa-
 33 tion that are pending on the effective date of this act.

SPONSORS MEMO:

NEW YORK STATE ASSEMBLY MEMORANDUM IN SUPPORT OF LEGISLATION submitted in accordance with Assembly Rule III, Sec 1(e)

BILL NUMBER: A4355

SPONSOR: Weprin

TITLE OF BILL: An act to amend the civil practice law and rules, in
 relation to fees charged by medical record custodians for production of
 records pursuant to subpoena duces tecum; and to amend the public health
 law, in relation to access by an adverse party to medical records

PURPOSE OR GENERAL IDEA OF BILL:

To assure that reasonable fees are charged to appropriate persons for
 the production of medical records.

SUMMARY OF SPECIFIC PROVISIONS

Adds an amendment to Section 2306 of the Civil Practice Law and Rules.

RETRIEVE BILL

The amendment provides that the only fees that can be exacted by a recipient of a subpoena are those already authorized by Section 2303(a) of the Civil Practice Law and Rules, that is, attendance fees and mileage fees.

Adds an amendment to Section 18 of the Public Health Law. The amendment would expand the definition of qualified persons to include an adverse party, that is, a person or entity who may have legal financial liability due to a patient's medical condition and/or treatment and includes such person's or entity's representatives such as an insurance company who may have legal financial liability due to the patient's medical condition and/or treatment or such person's or entity's attorney.

Also adds an amendment to Section 18 of the Public Health Law by defining a written request of any qualified person to include an authorization signed by the subject permitting the release of medical records and a subpoena duces tecum.

JUSTIFICATION:

Currently an injured person in a lawsuit may obtain a copy of his own medical records at a cost of \$0.75 per page pursuant to Public Health Law Section 18. An adverse party who requests records pursuant to an authorization provided by the injured party is often subjected to exorbitant copying charges and fees by medical providers and the custodians of medical records. This legislation resulted from reports of extreme charges by custodians of medical records, as for specific example, an invoice submitted on behalf of a hospital charging \$41.87 for six pages of medical records; an invoice in the amount of \$54.93 for nine pages of medical records; and, an invoice in the amount of \$54.26 for nine pages.

There is a conflict between Appellate Division departments as to whether an adverse party using an authorization signed by an injured party is a "qualified person" entitled to the \$0.75 per page fee. See,

MCCROSSAN

V. BUFFALO HEART GROUP, 265 A.D.2d 875 (4th Dept.), and

DAVENPORT V.

COUNTY OF NASSAU, 245 A.D. 2d 331 (2nd Dept). This legislation would eliminate the split in authority within the State.

The purpose of this amendment is to establish that an adverse party is not to be subjected to exorbitant fees for the production of medical and patient information.

PRIOR LEGISLATIVE HISTORY:

A6963 of 2002, A3346 of 2004

FISCAL IMPLICATIONS:

Enactment of this legislation will provide cost savings to the State of New York with regard to the cost of obtaining medical records of plaintiffs who commence personal injury actions in which the State of New York is a defendant.

EFFECTIVE DATE:

This act shall take effect immediately and shall apply to all subpoena duces tecum for production of records relating to the condition or treatment of a patient which are served as of the effective date of this act.

