

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/11/15
A Bill

SENATE BILL 150

By: Senator D. Johnson

For An Act To Be Entitled

AN ACT TO ALLOW PATIENTS TO RECEIVE THEIR MEDICAL RECORDS IN EITHER PAPER OR DIGITAL FORMATS; TO ESTABLISH A FEE FOR DIGITAL MEDICAL RECORDS; AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW PATIENTS TO RECEIVE THEIR MEDICAL RECORDS IN EITHER PAPER OR DIGITAL FORMATS; AND TO ESTABLISH A FEE FOR DIGITAL MEDICAL RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 6 is amended to add an additional subchapter to read as follows:

Subchapter 2 – Requests for Medical Records

20-6-201. Definitions.

As used in this subchapter:

(1) “Healthcare provider” means an individual, entity, facility, or institution licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession;

(2) “Medical record” means the healthcare and billing records about a patient maintained by or on behalf of a healthcare provider;

(3) “Patient” means the person who is the subject of a health record being requested; and



(4) "Personal representative" means an individual who has authority under Arkansas law to act on behalf of a patient in making decisions related to health care.

20-6-202. Applicability.

This subchapter applies only to requests for medical records submitted directly by a patient or the patient's personal representative to a healthcare provider.

20-6-203. Patient right to access to medical record.

(a)(1) A patient has the right to access his or her own medical record either directly or through his or her personal representative.

(2) For purposes of this subchapter, a personal representative shall be given the same right of access as the patient to those portions of the medical record that relate to the personal representative's authority to act on behalf of the patient in making healthcare decisions.

(b) A patient may request that copies of his or her medical record be sent:

(1) Directly to the patient; or

(2) To a designated third party, if the request is:

(A) Submitted in writing by the patient;

(B) Signed by the patient; and

(C) Clearly identifies the designated third party and the location to which the copy of the medical record is to be sent.

(c) The healthcare provider may provide the patient with a summary of the medical record requested in lieu of providing access to the medical record or may provide an explanation of the medical record to which access has been provided, if:

(1) The patient agrees in advance to receiving a summary or explanation of his or her medical record; and

(2) The patient agrees in advance to the fees imposed, if any, by the healthcare provider for the summary or explanation of his or her medical record.

(d)(1) A patient may request his or her medical record:

(A) In paper form; or

(B) If the record is available from the provider in

electronic form, in electronic form.

(2) Access to a medical record shall be provided by a healthcare provider according to the requirements of the patient access regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. § 164.524.

20-6-204. Fees.

(a) A healthcare provider may charge a patient or personal representative a reasonable, cost-based fee for copies of a patient's medical record.

(b) Subject to the limits under subsection (c) of this section, the reasonable cost-based fee may include only the cost of:

(1) Labor for copying the medical record requested by the patient, whether in paper or electronic form;

(2) Supplies for creating the paper copy or electronic media;

(3) Postage, if the individual has requested that the medical record be mailed; and

(4) Preparation of an explanation or summary of the medical record, if agreed to by the patient under § 20-6-203(c).

(c) The reasonable, cost-based fees assessed under subdivisions (b)(1) and (2) of this section shall not exceed:

(1) For a paper copy, the per-page charges set forth in § 16-46-106(a); or

(2) For a copy provided in electronic form, a total charge of twenty dollars (\$20.00).

20-6-205. Construction.

(a) This subchapter does not apply to a request for a patient's records by:

(1) The patient's attorney, which shall be governed by § 16-46-106; or

(2) A person or entity other than the patient or the patient's personal representative.

(b) This subchapter does not apply to the Department of Correction or the Department of Community Correction.

(c) This subchapter is not intended to nor shall it be construed to

create a private right of action against a healthcare provider or an employee or authorized agent of a healthcare provider.

SECTION 2. Arkansas Code § 16-46-106 is amended to read as follows:

16-46-106. Access to medical records.

(a)(1) In contemplation of, preparation for, or use in any legal proceeding, any person who is or has been a patient of a ~~doctor~~ physician, hospital, ambulance provider, medical health care provider, or other medical institution ~~shall be~~ is entitled to obtain access, ~~personally or~~ by and through his or her attorney, to the information in his or her medical records, upon request and with written patient authorization, and shall be furnished copies of all medical records pertaining to his or her case upon the tender of the expense of ~~such~~ the copy or copies.

(2)(A) Cost of each photocopy, excluding X rays, shall not exceed fifty cents (.50¢) per page for the first twenty-five (25) pages and twenty-five cents (.25¢) for each additional page.

(B)(i) A labor charge not exceeding fifteen dollars (\$15.00) may be added for each request for medical records under subdivision (a)(1) of this section, and the actual cost of any required postage may also be charged.

~~(3)(ii) Provided, however~~ However, in the alternative to the labor charge described in subdivision (a)(2)(B)(i) of this section, a reasonable retrieval fee for stored records of a hospital, a physician's office, or an ambulance provider may be added to the photocopy charges, only if the requested records are stored at a location other than the location of the hospital, physician's office, or ambulance provider.

~~(4)(3) Provided, further~~ However, this section ~~shall~~ does not prohibit reasonable fees for narrative medical reports or medical review when performed by the physician or medical institution subject to the request, but only if a narrative medical report or medical review is requested by the person or entity requesting the records.

(b)(1) If a ~~doctor~~ physician believes a patient should be denied access to his or her medical records for any reason, the ~~doctor must~~ physician shall provide the patient or the patient's guardian or attorney a written determination that disclosure of ~~such~~ the information would be detrimental to the individual's health or well-being.

(2)(A) ~~At such time~~ If a physician provides a written determination under subdivision (b)(1) of this section, the patient or the patient's guardian or attorney may select another ~~doctor~~ physician in the same type practice as the ~~doctor~~ physician subject to the request to review ~~such the~~ the information and determine if disclosure of ~~such the~~ the information would be detrimental to the patient's health or well-being.

(B) If the second ~~doctor~~ physician determines, based upon professional judgment, that disclosure of ~~such the~~ the information would not be detrimental to the health or well-being of the individual, the medical records shall be released to the patient or the patient's guardian or attorney.

(3) If the determination is that disclosure of ~~such the~~ the information would be detrimental, then it either ~~will~~ shall not be released or the objectionable material ~~will~~ shall be obscured before release.

(4) The cost of ~~this the~~ the review of the patient's record ~~will be borne by~~ shall be charged to the patient or the patient's guardian or attorney.

(c)(1) ~~Nothing in this section shall~~ The section does not preclude the existing subpoena process.

(2) ~~however~~ However, if a ~~patient~~ patient's attorney is compelled to use the subpoena process in order to obtain access to, or copies of, ~~their own~~ the patient's medical records under this section after reasonable requests have been made and a reasonable time has expired, then the court issuing the subpoena and having jurisdiction over the proceedings shall grant the patient a reasonable attorney's fee plus costs of court against the ~~doctor~~ physician, hospital, ambulance provider, medical health provider, or other medical institution.

(d) This section does not apply to the Department of Correction or the Department of Community Correction.

(e) This section does not apply to a request by a patient for the patient's own records, which shall be governed by § 20-6-201 et seq.

/s/D. Johnson