

August 18, 2021

House Bill 714/PA 102-0183 (Sen. Laura Fine/Rep. Jennifer Gong-Gershowitz) has been signed by the Governor. Effective January 1, 2022, this new law will expand the circumstances that a healthcare facility must provide a patient one complete copy of their medical records free of charge.

Unless otherwise directed by applicable federal or state law, Article VIII, Part 20 of the Illinois Code of Civil Procedure ("CCP") establishes the maximum fees that a healthcare facility or its independent copy service provider may charge for copies of records under Illinois law (adjusted annually for inflation). A healthcare facility under the CCP is a public or private hospital, ambulatory surgical treatment center, nursing home, independent practice association, physician-hospital organization, or any other entity providing health care services to any person, but excludes a healthcare practitioner.

Current law requires a healthcare facility to provide a patient (or a person, entity, or organization presenting a valid authorization by the patient or the patient's legally authorized representative) one free copy of their medical record if: (1) the patient is an indigent homeless veteran and (2) the request supports a claim for federal veterans' disability benefits [735 ILCS 5/8-2001(h)].

HB714 expands the eligible individuals who can receive a free copy of the patient's medical record to include the patient or a person, entity, attorney registered representative or organization presenting a valid, signed patient authorization, if the medical record request is for the purpose of supporting a claim for: (1) federal veterans' disability benefits; (2) federal Social Security or Supplemental Security Income benefits, or both, under any title of the Social Security Act; or (3) Aid to the Aged, Blind, or Disabled benefits. Under HB714, the patient or their "authorized representative" may also obtain updated medical records not included in the original medical record free of charge under the same circumstances. If the patient is deceased, the patient's documented legally authorized representative or other requester authorized by statute can request a free copy. In addition, HB714 eliminates the requirement that a patient be indigent to receive a free copy of the patient's medical record.

Please note that Illinois law has established a number of circumstances that a healthcare facility may not charge the maximum fees as well as provides that some statutory provisions explicitly supersede the provisions of the CCP. For example, a healthcare facility cannot collect a handling charge from the patient or the patient's personal representative who obtains copies of records of a deceased patient under Section 8-2001.5 of the CCP. Additionally, the CCP is not applicable to workers compensation cases (see *Clayton v. Ingalls Memorial Hospital*, 311 Ill. App. 3d 135, 724 N.E.2d 222 (2000)) or to the records of patients, inmates, or persons being examined, observed, or treated in any institution, division, program, or service under the jurisdiction of the Department of Human Services. Finally, the Mental Health and Developmental Disabilities Confidentiality Act and subsection (bb) of Section 30-5 of the Substance Use Disorder Act supersede (or control over) the CCP in event of a conflict.

Please also note the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA") apply to most healthcare facilities and (directly or indirectly) to their independent copy service providers (as defined or used in the CCP). When HIPAA's requirements or standards are "contrary" to the CCP, a healthcare facility must follow HIPAA's requirements and not the CCP. Similarly, the provisions of federal law concerning the confidentiality of alcohol and drug abuse records at 42 C.F.R. Part 2 supersedes the CCP.

If you have any questions please contact the IHA's Department of Legal Affairs at L@team-ih.org.

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