

2010

STATE OF NEBRASKA

STATUTES RELATING TO MEDICAL RECORDS



Department of Health and Human Services
Division of Public Health
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MEDICAL RECORDS

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STATUTES PERTAINING TO MEDICAL RECORDS

71-8401. Legislative findings. The Legislature finds that medical records contain personal and sensitive information that if improperly used or released may do significant harm to a patient's interests. Patients need access to their own medical records as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

Source: Laws 1999, LB 17, § 1. Effective date August 28, 1999.

71-8402. Terms, defined. For purposes of sections 71-8401 to 71-8407:

- (1) Medical records means a provider's record of a patient's health history and treatment rendered;
 - (2) Mental health medical records means medical records or parts thereof created by or under the direction or supervision of a licensed psychiatrist, a licensed psychologist, or a mental health practitioner licensed or certified pursuant to the Mental Health Practice Act;
 - (3) Patient includes a patient or former patient;
 - (4) Patient request or request of a patient includes the request of a patient's guardian or other authorized representative;
- and
- (5) Provider means a physician, psychologist, chiropractor, dentist, hospital, clinic, and any other licensed or certified health care practitioner or entity.

Source: Laws 1999, LB 17, § 2; Laws 2007, LB247, § 56; Laws 2007, LB463, § 1306. The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-8403. Access to medical records. (1) A patient may request a copy of the patient's medical records or may request to examine such records. Access to such records shall be provided upon request pursuant to sections 71-8401 to 71-8407, except that mental health medical records may be withheld if any treating physician, psychologist, or mental health practitioner determines in his or her professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. The request and any authorization shall be in writing. If an authorization does not contain an expiration date or specify an event the occurrence of which causes the authorization to expire, the authorization shall expire twelve months after the date the authorization was executed by the patient.

(2) Upon receiving a written request for a copy of the patient's medical records under subsection (1) of this section, the provider shall furnish the person making the request a copy of such records not later than thirty days after the written request is received.

(3) Upon receiving a written request to examine the patient's medical records under subsection (1) of this section, the provider shall, as promptly as required under the circumstances but no later than ten days after receiving the request: (a) Make the medical records available for examination during regular business hours; (b) inform the patient if the records do not exist or cannot be found; (c) if the provider does not maintain the records, inform the patient of the name and address of the provider who maintains such records, if known; or (d) if unusual circumstances have delayed handling the request, inform the patient in writing of the reasons for the delay and the earliest date, not later than twenty-one days after receiving the request, when the records will be available for examination. The provider shall furnish a copy of medical records to the patient as provided in subsection (2) of this section if requested.

(4) This section does not require the retention of records or impose liability for the destruction of records in the ordinary course of business prior to receipt of a request made under subsection (1) of this section. A provider shall not be required to disclose confidential information in any medical record concerning another patient or family member who has not consented to the release of the record.

Source: Laws 1999, LB 17, § 3; Laws 2010, LB849, § 28. Operative Date: April 14, 2010.

71-8404. Access; charges. Except as provided in sections 71-8405 and 71-8407, for medical records provided under section 71-8403 or under subpoena by a patient or his or her authorized representative a provider may charge no more than twenty dollars as a handling fee and may charge no more than fifty cents per page as a copying fee. A provider may charge for the reasonable cost of all duplications of medical records which cannot routinely be copied or duplicated on a standard photocopy machine. A provider may charge an amount necessary to cover the cost of labor and materials for furnishing a copy of an X-ray or similar special medical record. If the provider does not have the ability to reproduce X-rays or other records requested, the person making the request may arrange, at his or her expense, for the reproduction of such records.

Source: Laws 1999, LB 17, § 4. Effective date August 28, 1999.

71-8405. Charges; exemptions. (1) A provider shall not charge a fee for medical records requested by a patient for use in supporting an application for disability or other benefits or assistance or an appeal relating to the denial of such benefits or assistance under:

- (a) Sections 43-501 to 43-536 regarding assistance for certain children;
- (b) The Medical Assistance Act relating to the medical assistance program;

- (c) Title II of the federal Social Security Act, as amended, 42 U.S.C. 401 et seq.;
- (d) Title XVI of the federal Social Security Act, as amended, 42 U.S.C. 1382 et seq.; or
- (e) Title XVIII of the federal Social Security Act, as amended, 42 U.S.C. 1395 et seq.

(2) Unless otherwise provided by law, a provider may charge a fee as provided in section 71-8404 for the medical records of a patient requested by a state or federal agency in relation to the patient's application for benefits or assistance or an appeal relating to denial of such benefits or assistance under subsection (1) of this section.

(3) A request for medical records under this section shall include a statement or document from the department or agency that administers the issuance of the assistance or benefits which confirms the application or appeal.

Source: Laws 1999, LB 17, § 5; Laws 2006, LB 1248, § 81. Operative date July 1, 2006.

71-8406. Provider; immunity. A provider who transfers or submits information in good faith to a patient's medical record shall not be liable in damages to the patient or any other person for the disclosure of such medical records as provided in sections 71-8401 to 71-8407.

Source: Laws 1999, LB 17, § 6. Effective date August 28, 1999.

71-8407. Sections; applicability. Sections 71-8401 to 71-8407 do not apply to the release of medical records under the Nebraska Workers' Compensation Act.

Source: Laws 1999, LB 17, § 7. Effective date August 28, 1999.