



NEW JERSEY STATE BAR ASSOCIATION

June 22, 2022

Via Electronic Mail

The Honorable Nicholas P. Scutari
67 Walnut Avenue
Clark, New Jersey 07066

The Honorable Sterley S. Stanley
197 State Highway 18, Suite 102 North
East Brunswick, New Jersey 08816

RE: S2253 (Scutari)/A3656 (Stanley) – Limits fees charged for copies of medical and billing records

Dear Senator Scutari and Assemblyman Stanley:

On behalf of the New Jersey State Bar Association, I write to convey our recommendations on S2253 (Scutari)/A3656 (Stanley), which limits the fees charged for copies of medical and billing records. The NJSBA supports the underlying aim of the bill, but recommends amendments for your consideration in order to provide equal access to both plaintiffs and defendants and the relative parties seeking records.

We offer the following recommendations for your consideration:

- Request that the Office of Legislative Services review this bill to ensure conformity to the Health Insurance Portability and Accountability Act (HIPAA);
- Clarify the definition of “individual admission records” as contained within the most recent version of the bill;
- Remove the limitation in “legally authorized representative” to automobile insurers and broaden access to all insurers;
- Provide for a cap on medical records sought by “a patient, a legally authorized representative, or an authorized third party.”

Our recommendations above are sought in the interest of providing fairness in the process. With respect to the recommendation to ensure conformity to HIPAA, we recommend a thorough review to ensure there are no preemption issues with respect to this statute and HIPAA. This review may also resolve the second issue listed above with respect to clarification of the definition of “individual admission records.” Under HIPAA, the term “designated record set” is defined at 45 CFR 164.501. To the extent that this is the set of records that is the subject of this bill, we urge clarification by way of a definition or cross reference to HIPAA’s definition here.

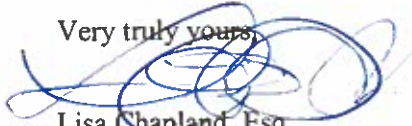
With respect to the definition of “legally authorized representative,” the limitation to automobile insurers leaves out other insurers that may qualify as a legally authorized representative. We recommend broadening the definition of “legally authorized representative” to include all of the patient’s insurers.

Finally, it is the recommendation of the NJSBA to amend this bill to apply the fee cap to any party seeking records, including the defense, insurers, self-insureds, and defense attorneys. As you may be aware, our members consist of attorneys who represent various entities that may seek records. The recommendations made herein reflect the desire to provide equal access to these records in order to prevent unintended consequences by way of offsetting charges to those entities that would not be subject to such limitations. To effectuate this change, we recommend the following language amendment:

- Amend 1(a)(1)(a) to read “for a request by a patient, a legally authorized representative, or an authorized third party...”
- Delete 1(a)(1)(d);
- Amend 1(a)(6) to leave in “or an authorized third party.”

We are grateful of your consideration of these recommendations and are committed to working with you on this issue. We would be grateful for an opportunity to meet with you on this bill. If you have any questions or would like to discuss this further, feel free to contact me at (732) 214-8510 (o), (732) 239-3356 (c), or by email at lchapland@njsba.com. Thank you for your leadership.

Very truly yours,



Lisa Chapland, Esq.

Senior Managing Director, Government Affairs

cc: The Honorable Nellie Pou (via electronic mail)
The Honorable Nilsa I. Cruz-Perez (via electronic mail)
The Honorable Angela V. McKnight (via electronic mail)
The Honorable Dan R. Benson (via electronic mail)
The Honorable Mila M. Jasey (via electronic mail)
The Honorable Craig J. Coughlin (via electronic mail)
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