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## OLR Bill Analysis

### sHB 5411 (as amended by House "A")\*

#### ***AN ACT CONCERNING REQUESTS FOR HEALTH RECORDS AND THE FEES CHARGED FOR ACCESS TO SUCH RECORDS.***

#### **SUMMARY**

This bill makes various changes to deadlines, fees, and penalties related to patient health records requests. Principally, it:

1. authorizes workers' compensation administrative law judges to penalize physicians, or third-party vendors acting on their behalf, who fail to submit medical reports for workers' compensation cases within 30 days after they are completed;
2. allows an entity acting on a provider's or institution's behalf to fulfill a patient's written health records request instead of the provider or institution;
3. replaces current law's patient health records fee of 65 cents per page with fees that vary based on who requests the records, their format (i.e., paper or electronic), and number of pages;
4. allows providers, institutions, and entities acting on their behalf to charge an additional fee of \$100 if the requestor wants the records within 15 days after requesting them;
5. specifies that providers and institutions are not required to supply records under certain conditions (e.g., if doing so would violate HIPAA) and cannot charge records fees that exceed those allowed under HIPAA;
6. requires the Department of Public Health (DPH) commissioner to publish patient health records fees on the DPH website and, starting January 1, 2026, annually adjust the fees based on changes to the national consumer price index;

7. requires providers, institutions, and entities that represent them that fail to supply patient health records within 30 days after receiving a request to reduce the fees that they charge; and
8. prohibits providers and institutions from charging fees for health records requests needed to support workers' compensation claims.

The bill also makes technical and conforming changes.

\*House Amendment "A" replaces the underlying bill (File 514) and (1) allows, rather than requires, workers' compensation administrative law judges to impose specified penalties; (2) prohibits health care providers and institutions from charging fees for records requests related to workers' compensation claims; (3) establishes a new medical records fee structure based on the requestor and format of the records; (4) specifies conditions under which providers and entities are not required to supply health records; (5) increases the fee from \$50 to \$100 for certain expedited records requests and lengthens the amount of time providers have to respond to these requests from 72 hours to 15 days; (6) eliminates the requirement that providers, institutions, and entities give a requestor electronic copies of health records, if preferred; and (7) eliminates the additional \$50 fee for requests to make redactions to records.

EFFECTIVE DATE: October 1, 2024

## **§ 1 — WORKERS' COMPENSATION MEDICAL REPORTS**

The bill authorizes workers' compensation administrative law judges to penalize practicing physicians, or third-party vendors acting on their behalf, who fail to submit medical reports for workers' compensation cases within 30 days after they are completed as required under existing law. Under the bill, penalties may include the following:

1. a written noncompliance notice to the physician or third-party vendor or
2. an order requiring the physician or third-party vendor to appear

at a hearing and explain the reasons for not meeting the report deadline.

For the latter, the bill allows an administrative law judge to impose a fine of up to \$500 payable to the workers' compensation claimant if a physician or third-party vendor fails to appear at a hearing.

Existing law requires workers' compensation claimants, when seeking or receiving compensation, to submit to a physician evaluation when an administrative law judge orders it, or an employer reasonably requests it. Physicians must submit all medical reports for these claimants within 30 days after the date they are completed to the employer and the employee (claimant), or the employee's attorney.

## **§§ 2 & 3 — ACCESS TO PATIENT HEALTH RECORDS**

### ***Records Requests***

Under current law, patients (or their attorneys or authorized representatives) can generally obtain copies of their health records by asking a provider or health care institution (e.g., hospital, outpatient clinic, or long-term care facility) in writing. The bill replaces the term "authorized representative" with "personal representative" to align with federal regulations. (Under federal regulations, someone is a "personal representative" if they can legally act on a person's behalf in making health care decisions.)

Existing law requires providers and institutions to give the health records to the requestor within 30 days after the request is made. For institutions, if the request was received less than 30 days from the patient's discharge, they must provide the record when it is completed.

The bill requires records requests to be complete and in a form required by the provider or an entity acting on the provider's behalf if the form was given to the requestor.

Under current law and the bill, a provider, institution, or entity cannot refuse to return to a patient original or copied health records from another provider.

The bill specifies that providers and institutions are not (1) required to supply a requested health record until they receive a HIPAA-compliant medical authorization form (presumably from the patient, or patient's attorney or personal representative); (2) required to supply records in violation of HIPAA; (3) permitted to limit legally allowed disclosures; or (4) allowed to charge fees for health records that exceed those allowed under HIPAA.

By law, health records include bills, x-rays, copies of lab report results, prescriptions, contact lens specifications under certain conditions, and other technical information used to assess the patient's health condition.

### **Fees**

Current law allows a health care provider or institution to charge up to 65 cents per page, including any applicable research or handling fees, related costs, and first-class postage, to supply a patient's health record. Patients may also be charged an additional amount necessary to cover the cost of material for (1) providing a copy of an x-ray or (2) furnishing an original retained slide or tissue block or a new section cut from a retained tissue block.

The bill instead establishes fees based on who makes the request and the format in which the health record is provided as described below.

***Requests by Patients or Their Personal Representatives.*** If a written records request is made directly by the patient or patient's personal representative, the bill allows the provider or institution to charge the same fees as allowed under federal law. (Federal law allows charging reasonable, cost-based fees that include only the cost of related labor, supplies, and postage.) Under the bill, these fees cover the cost of material for providing copies of medical records and x-rays as well as furnishing tissue blocks as described above.

***Requests by Other Parties.*** For requests made from someone other than the patient or patient's personal representative, providers and institutions may charge up to the following amounts:

1. for paper copies, \$1 per page for the first 50 pages, an additional 50 cents per page for pages 51 and beyond, and the actual cost of postage, and
2. for electronic copies, \$1 per page for the first 50 pages, an additional 50 cents per page for pages 51 and beyond (up to a maximum of \$215), and the actual cost of any required postage.

**Reduction in Fees for Late Delivery.** Under the bill, providers, institutions, or entities acting on their behalf that fail to supply health records within 30 days after they receive the request must reduce the fees they charge as follows:

1. by 50%, if they fail to provide the records within 30 days after they receive the request;
2. by 75%, if they fail to do so within 60 days after they receive the request; and
3. by 90%, if they fail to do so within 90 days after they receive the request.

Under the bill, a provider, institution, or entity is exempt from the above fee reductions if good cause is shown.

**Expedited Requests.** The bill allows providers, institutions, or entities to charge an additional fee of up to \$100 if the requestor wants the records within 15 days after requesting them. An expedited records request must include a statement (1) that a statute of limitation or repose may expire within 120 days of the request or (2) showing other good cause for needing the expedited copy. If the provider, institution, or entity fails to provide the records within the expedited deadline, they must provide the records free of charge.

### **Workers' Compensation Claims**

The bill prohibits providers and institutions from charging fees for health records requests that are necessary to support a workers' compensation claim. Existing law already prohibits them from charging

fees for records requests that are necessary for a documented claim or appeal for Social Security or veterans' benefits.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 35 Nay 0 (04/01/2024)