

JAN 17 2024

A BILL FOR AN ACT

RELATING TO MEDICAL RECORDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that over thirty thousand
2 disabled adults and children currently receive social security
3 benefits in Hawai'i with hundreds more applying each year,
4 ranging from children with congenital birth defects to ordinary,
5 hard-working people who are suddenly afflicted by a disabling
6 back condition, Parkinson's disease, cancer, severe mental
7 illness, or another career-ending condition.

8 Many applicants for social security benefits are unable to
9 work and earn an income because of their disability.
10 Consequently, many applicants are indigent, homeless, or near
11 homeless and may receive general assistance benefits from the
12 State. Under section 346-57, Hawaii Revised Statutes, the
13 State's general assistance program will be repaid by the federal
14 government for the welfare money it pays out to those who are
15 granted disability benefits.

16 To apply for and receive social security benefits, an
17 applicant is required to provide medical records to the Social



1 Security Administration, not only at the outset of the
2 application, but also for each continuing disability review that
3 is conducted every few years. These medical records for
4 disabled applicants can often amount to hundreds of pages, if
5 not more.

6 For requests of medical records, while some medical
7 providers in the State are willing to accept either a flat fee
8 of \$15.60 or offer copies for free, many more medical providers
9 will charge fees for processing, retrieving, or reviewing the
10 medical records or a per-page charge for copying the medical
11 records. These charges would be prohibited under rules
12 promulgated pursuant to The Health Insurance Portability and
13 Accountability Act of 1996 (HIPAA) if the patient had requested
14 the medical records themselves; however, according to the
15 federal General Accountability Office, because they are
16 requested by a representative at the request of the patient, the
17 medical providers are not limited by HIPAA's reasonable, cost-
18 based standard for access requests and are instead governed by
19 state laws, regulations, and other requirements.

20 As these charges to obtain medical records can be
21 exorbitant for a disabled, indigent applicant, the applicant is



1 either without representation or cannot afford to send the
2 medical records to the Social Security Administration for a
3 determination of disability benefits. Without the medical
4 records to support the claim for disability benefits under title
5 20 Code of Federal Regulations, sections 404.1516 and 416.916,
6 the Social Security Administration will automatically dismiss
7 the claims for disability. Therefore, many applicants for
8 disability benefits have their claims dismissed because of the
9 cost associated with obtaining and sending medical records.

10 If the claim for disability benefits is dismissed, not only
11 may applicants struggle to obtain a livable income or affordable
12 health insurance, but also the State is unable to recoup its
13 general assistance outlay.

14 Other states, including Arizona, Connecticut, Illinois,
15 Massachusetts, Nevada, New Jersey, New York, Ohio, Oregon, Rhode
16 Island, Texas, Utah, Vermont, and Washington, have addressed the
17 issue of exorbitant fees associated with obtaining medical
18 records by allowing applicants and those undergoing disability
19 reviews, or their representatives, a free copy of their medical
20 records to ensure that benefits are provided or continued where
21 warranted.



1 Therefore, to ensure those with disabilities can obtain
2 their medical records for the purposes of claiming social
3 security benefits, and to ensure that the State is able to be
4 reimbursed for the aid Hawai'i gives these residents, the purpose
5 of this Act is to establish fees that medical providers may
6 charge for medical records and impose penalties.

7 SECTION 2. Chapter 323B, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§323B- Fees; requests; medical records. (a) When a
11 patient or a family member, caregiver, or representative of a
12 patient requests medical records, a medical provider may assess
13 fees for obtaining medical records as follows:

14 (1) For medical records that are maintained
15 electronically, the medical provider may assess a flat
16 fee of not more than \$2.00 per request to prepare and
17 send the records electronically. If the records are
18 to be provided by means other than email, the actual
19 cost for the labor and supplies used to provide the
20 electronic medical records may be assessed;



1 (2) For medical records that are maintained on paper, the
2 medical provider may assess a flat fee of not more
3 than two cents per ten pages per request in addition
4 to the cost of postage to mail the records;

5 (3) A patient or a family member, caregiver, or
6 representative of a patient who is picking up paper
7 copies of medical records in person shall not be
8 charged a postage fee; and

9 (4) Fees including per page fees, fees for reviewing,
10 assessing, or searching for records, or other fees not
11 listed in this subsection are prohibited.

12 (b) All requests for medical records shall be completed by
13 the medical provider within thirty days of receiving the request
14 from a patient or a family member, caregiver, or representative
15 of a patient.

16 (c) Any medical provider found to have violated
17 subsections (a) and (b) of this section shall be fined not more
18 than:

- 19 (1) \$500 for a first violation; and
20 (2) \$1000 for a second violation.

21 (d) For the purposes of this section:



1 "Family member" has the same meaning as in 45 Code of
2 Federal Regulations section 160.103, as may be amended.

3 "Representative" means any person or entity appointed by an
4 individual to represent the individual's interest in obtaining
5 medical records."

6 SECTION 3. New statutory material is underscored.

7 SECTION 4. This Act shall take effect upon its approval.

8

INTRODUCED BY:



S.B. NO. 2136

Report Title:

Fees; Medical Records; Social Security Disability Benefits;
Requests; Medical Provider

Description:

Establishes fees that medical providers may charge for medical records and imposes civil penalties.

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