

Senate Bill 189

By: Senators Cowser of the 46th, Kennedy of the 18th, Jones II of the 22nd, Stone of the 23rd and Jones of the 25th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 33 of Title 31 of the Official Code of Georgia Annotated, relating to
2 health records, so as to provide for costs for copying medical records; to provide for
3 electronic delivery of records unless paper is requested; to provide for penalties for not
4 providing records in a timely fashion; to provide for related matters; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 33 of Title 31 of the Official Code of Georgia Annotated, relating to health records,
9 is amended by revising subsections (a) and (b) of and adding a new subsection to Code
10 Section 31-33-2, relating to furnishing copy of health records, as follows:

11 "(a)(1)(A) A provider having custody and control of any evaluation, diagnosis,
12 prognosis, laboratory report, or biopsy slide in a patient's record shall retain such item
13 for a period of not less than ten years from the date such item was created.

14 (B) The requirements of subparagraph (A) of this paragraph shall not apply to:

15 (i) An individual provider who has retired from or sold his or her professional
16 practice if such provider has notified the patient of such retirement or sale and offered
17 to provide such items in the patient's record or copies thereof to another provider of
18 the patient's choice and, if the patient so requests, to the patient; or

19 (ii) A hospital which is an institution as defined in subparagraph (A) of paragraph (4)
20 of Code Section 31-7-1, which shall retain patient records in accordance with rules
21 and regulations for hospitals as issued pursuant to Code Section 31-7-2.

22 (2) Upon written request from the patient, a party to a civil lawsuit requesting records
23 via a request for production of documents pursuant to subsection (c) of Code Section
24 9-11-34, or a person authorized to have access to the patient's record under a signed
25 medical authorization, an advance directive for health care, or a durable power of
26 attorney for health care for such patient, the provider having custody and control of the

27 patient's record shall furnish a complete and current copy of that record in electronic
 28 format, unless specifically requested that it be produced in paper format, in accordance
 29 with the provisions of this Code section. If the patient is deceased, such request may be
 30 made by the following persons:

- 31 (A) The executor, administrator, or temporary administrator for the decedent's estate
- 32 if such person has been appointed;
- 33 (B) If an executor, administrator, or temporary administrator for the decedent's estate
- 34 has not been appointed, by the surviving spouse;
- 35 (C) If there is no surviving spouse, by any surviving child; and
- 36 (D) If there is no surviving child, by any parent.

37 (b) Any record requested under subsection (a) of this Code section shall within 30 days of
 38 the receipt of a request for records be furnished to the patient, any other provider
 39 designated by the patient, any person authorized by paragraph (2) of subsection (a) of this
 40 Code section to request a patient's or deceased patient's medical records, or any other
 41 person designated by the patient. Except for a party to a civil lawsuit requesting records
 42 via a request for production of documents pursuant to subsection (c) of Code Section
 43 9-11-34, such ~~Such~~ record request shall be accompanied by:

44 (1) An authorization in compliance with the federal Health Insurance Portability and
 45 Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations
 46 implementing such act; and

47 (2) A signed written authorization as specified in subsection (d) of this Code section."

48 "(f)(1) Any provider or person who violates subsection (b) of this Code section by not
 49 furnishing records requested pursuant to subsection (a) of this Code section within 30
 50 days of receiving a request for such records shall owe the following to the patient, any
 51 other provider designated by the patient, any person authorized by paragraph (2) of
 52 subsection (a) of this Code section to request a patient's or deceased patient's medical
 53 records, or any other person designated by the patient who requested the records pursuant
 54 to this Code section:

55 (A) Ten dollars per day for the first 30 days after the requested records are due;

56 (B) Twenty-five dollars per day for the second 30 days after the requested records are
 57 due; and

58 (C) Fifty dollars per day for all days the requested records are owed after 60 days from
 59 the date the requested records are due.

60 (2) Those individuals or entities to whom records are not timely provided in compliance
 61 with this Code section shall be entitled to pursue a civil action for the recovery of any
 62 funds owed as a result of any violation of any provision of this Code section."

63 **SECTION 2.**

64 Said chapter is further amended by revising Code Section 31-33-3, relating to the cost of
65 copying and mailing health records, as follows:

66 "31-33-3.

67 (a) The party requesting the patient's records, whether the patient, the patient's authorized
68 representative, or a party to a civil lawsuit requesting records via a request for production
69 of documents pursuant to subsection (c) of Code Section 9-11-34, shall be responsible to
70 the provider for the costs of copying and mailing producing, in electronic format, the
71 patient's record records, including all medical bills for medical services provided to the
72 patient by the health care provider. A charge of up to \$20.00 flat fee of \$26.50 may be
73 collected for search, retrieval, and other direct administrative costs related to compliance
74 with the request under this chapter. Alternatively, the provider may charge a reasonable
75 fee for the actual labor involved in copying the patient's records to an electronic file, the
76 cost of the media, and postage; the total of such charges shall not exceed \$50.00 and shall
77 be itemized for the requestor of the patient's records. A fee for certifying the medical
78 records may also not be charged, not to exceed \$7.50 for each record certified. The actual
79 cost of postage incurred in mailing the requested records may also be charged. In addition,
80 copying costs for a record which is in paper form shall not exceed \$.75 per page for the
81 first 20 pages of the patient's records which are copied; \$.65 per page for pages 21 through
82 100; and \$.50 for each page copied in excess of 100 pages. All of the fees allowed by this
83 Code section may be adjusted annually in accordance with the medical component of the
84 consumer price index. The Department of Community Health shall be responsible for
85 calculating this annual adjustment, which will become effective on July 1 of each year. To
86 the extent the request for medical records includes portions of records which are not in
87 paper form, Any items in the records, including, but not limited to, radiology films, models,
88 or fetal monitoring strips, shall be produced in an easily accessible format and the provider
89 shall be entitled to recover the full reasonable cost of such reproduction. Payment of such
90 costs may be required by the provider prior to the records being furnished. This subsection
91 shall not apply to records requested in order to make or complete an application for a
92 disability benefits program.

93 (b) If the requestor specifically requests that the patient's records be produced in paper
94 format, the provider may collect a fee of up to \$20.00 for search, retrieval, and other direct
95 administrative costs related to compliance with the request under this chapter. The actual
96 cost of postage incurred in mailing the requested records in paper format also may be
97 charged. In addition, copying costs for a record which is in paper form shall not exceed
98 \$.25 per page for the first 20 pages of the patient's records which are copied; \$.15 per page
99 for pages 21 through 100; and \$.05 for each page copied in excess of 100 pages.

100 ~~(b)~~(c) The rights granted to a patient or other person under this chapter are in addition to
 101 any other rights such patient or person may have relating to access to a patient's records;
 102 however, nothing in this chapter shall be construed as granting to a patient or person any
 103 right of ownership in the records, as such records are owned by and are the property of the
 104 provider.

105 ~~(c)~~(d) This Code section shall apply to psychiatric, psychological, and other mental health
 106 records of a patient."

107 **SECTION 3.**

108 Said chapter is further amended by revising subsections (a) and (f) of Code Section 31-33-8,
 109 relating to electronic health records, as follows:

110 "(a) Notwithstanding any other provision of the law to the contrary, ~~any provider may, in~~
 111 ~~its sole discretion, every provider shall~~ create, maintain, transmit, receive, and store records
 112 in an electronic format within the meaning of Code Section 10-12-2 and may, in its sole
 113 discretion, temporarily or permanently convert records into ~~an electronic paper~~ format."

114 "(f) Except as provided otherwise under federal law, upon receiving a request for a copy
 115 of a record from a patient or an authorized person under Code Section 31-33-3, a provider
 116 shall provide copies of the record in ~~either tangible or electronically stored form~~ unless
 117 specifically requested in paper form."

118 **SECTION 4.**

119 All laws and parts of laws in conflict with this Act are repealed.