PLUNKETT COONEY

Medical Records Access Act of 2004

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What is it and how does it impact the medical and legal professions?

A new Michigan statute became law, effective April 1, 2004, which has significantly impacted both medical and legal professionals. It is titled the Medical Records Access Act.

In essence, it is designed to regulate access to and disclosure of medical records, and to prescribe powers and duties of certain state agencies and departments. In particular, it defines "medical records" and "healthcare provider," explains who can obtain medical records and how, establishes set fees that may be charged for providing medical records appropriately sought, and prescribes administrative sanctions and remedies to ensure compliance.

The definition portion of the statute is of particular importance. For example, the act specifically defines "healthcare providers" to include many that one would normally consider, such as certain licensed and registered individuals or entities under the Public Health Code.

However, the statute specifically *excludes* from this definition psychiatrists, psychologists, social workers and professional counselors who provide only mental health services. It also excludes healthcare providers who only sell/dispense drugs and/or medical devices. The act also does not apply to third party payers and certain insurers or self-funded plans. It is unclear why these entities have been excluded.

This statute, however, does not preclude obtaining medical records from these excluded entities. And, while one could argue the fees also do not apply, an equally viable position can be taken that the fees are fair and reasonable and what a court might impose if forced to do so.

Another portion of the definitions section that merits attention is the one defining "medical record." It is broadly defined as follows:

"...information oral or recorded in any form or medium that pertains to a patient's healthcare, medical history, diagnosis, prognosis, or medical condition *and* that is maintained by a healthcare provider or health facility in the process of the patient's health."

This definition seems to be broad enough to cover medical records a care provider receives from other medical care professionals. Thus, a general practitioner who refers a patient to a cardiologist and receives a cardiologist's report or other medical documentation regarding the patient now has as part of his/her medical records not only those generated by the general practitioner but also those generated by and received from the specialist.

A request for “any and all medical records” should, by this statute’s definition, include the general practitioner’s records as well as those received from the cardiologist. Many care providers routinely do not include records supplied by other medical care professionals when a request is made for “any and all” medical records. However, if they receive an appropriate Health Information Portability and Accountability Act (HIPAA) compliant authorization seeking “any and all medical records,” they should take comfort that neither this statute nor the federal regulations under HIPAA preclude such a release.

Perhaps one of the reasons this Act was passed is because there has been so much confusion in the past regarding what is a fair price to pay for medical records that are sought for legal reasons. Before this Act, many practitioners would provide patients copies of their medical records for personal reasons or for another practitioner for continuity of care at little or no charge. However, there was no uniformity when it came to providing records at the request of attorneys for legal matters.

Under this statute, there is a detailed fee schedule set forth for producing medical records pursuant to the Act. A healthcare provider is not mandated to charge these fees, but the statute mandates the fees cannot be exceeded. In essence, the fees include a charge for the request of $20.00 (depending on whether the request is by the patient or someone else) and a charge per page, depending upon the number of pages. Postage costs are allowed. Additionally, pre-payment may be a prerequisite to actually sending the records. Indigent persons are treated separately.

The time frame for responding to requests is also set forth. Generally, healthcare providers have 30 days to respond with an extension to 60 days being available for off-site record retrieval. There are also provisions to follow for advising the requester that records do not exist or that they are in the possession of another healthcare professional.

Generally speaking, this statute - as related to Michigan law and the requirements under HIPAA - provides a detailed and consistent basis upon which to request and provide medical records. A person requesting the medical records will know exactly what to ask for pursuant to applicable authorizations established by federal and state law. Furthermore, there will be a standard and uniform price for producing all medical records.

Finally, there will be a basis with this statute, together with other statutes that already exist, to encourage reluctant medical care providers and health facilities to comply promptly, fully, and reasonably with legitimate requests for medical information.