

Date of Hearing: May 18, 2020

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 2520 (Chiu) – As Amended May 4, 2020

SUBJECT: Access to medical records.

SUMMARY: Entitles an employee, of a nonprofit legal services entity representing a patient, to provide a copy, at no charge, of the relevant portion of the patient's records that are needed to support a claim regarding eligibility for specified public benefit programs. Expands the definition of a public benefit program to include the discharge of a federal student loan based on total and permanent disability, Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), and a government-funded housing subsidy or tenant-based housing assistance program. Requires a health care provider to provide the records at no charge upon proof that the records are needed for a petition for nonimmigrant status under the Victims of Trafficking and Violence Protection Act (visa status for victims of certain crimes), or a self-petition for lawful permanent residency under the Violence Against Women Act. Specifically, **this bill:**

- 1) Entitles an employee of a nonprofit legal services entity representing a patient, or representative of a patient to provide a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider proof that the records are needed to support an appeal regarding eligibility for specified public benefit programs.
- 2) Requires a health care provider to provide medical records at no charge upon proof that the records are needed for a petition for U nonimmigrant status under the Violence Against Women Act and to an expanded list of public benefit programs, that includes the discharge of a federal student loan based on total and permanent disability, CAPI, and a government-funded housing subsidy or tenant-based housing assistance program.
- 3) Prohibits a health care provider from charging a fee to a patient for filling out forms or providing information responsive to forms that support a claim or appeal regarding eligibility for a public benefit program.
- 4) Requires the health care provider to provide information responsive to those portions of the form for which the health care provider has the information necessary to provide a medical opinion, as specified.
- 5) Authorizes a health care provider to substitute a similar form or record that contains the information responsive to the form if the public benefit program allows for other methods of providing the requested information.
- 6) Deletes a provision that allows a hospital or other health care provider to bill a patient specified rates for the copies of the medical records previously provided free of charge, if the patient's appeal regarding eligibility for a benefit program as described in 2) above is successful.

- 7) Allows a health care provider to honor a request to disclose a patient record or complete a public benefit form that contains the written or electronic signature of the patient or personal representative of the patient.
- 8) Includes speech-language pathologists, audiologists, and physician assistants within the definition of a health care provider.
- 9) Makes technical and conforming changes.

EXISTING LAW:

- 1) Establishes under federal law Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards for privacy of individually identifiable health information and security standards for the protection of electronic protected health information, including, through regulations, that a HIPAA covered entity may not condition the provision to an individual of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except under specified circumstances.
- 2) Entitles any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative, to inspect patient records upon presenting a health care provider with a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available.
- 3) Requires any patient or patient's representative to be entitled to copies of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request to the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that does not exceed \$0.25 per page or \$0.50 per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available.
- 4) Entitles a patient or the representative of a patient to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider proof that the records are needed to support an appeal regarding eligibility for the Medi-Cal program, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits.
- 5) Entitles a patient to a copy, at no charge, of the relevant portion of the patient's records that are needed to support an appeal regarding eligibility for certain public benefit programs, by including initial applications in addition to appeals, and by expanding the list of public benefit programs to include In-Home Supportive Services, the California Work Opportunity and Responsibility to Kids program, CalFresh, and certain veterans related benefits.
- 6) Defines relevant portion as those records regarding services rendered to the patient from the date of the patient's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the patient's application is pending.
- 7) Limits the patient or patient's representative to no more than one copy of any relevant portion of his or her record free of charge. Excludes from this provision any patient who is

represented by a private attorney, who is not employed by a nonprofit legal services entity, who is paying for the costs related to the patient's appeal, pending the outcome of that appeal.

- 8) Permits a health care provider to bill the patient for the copies of the medical records previously provided free of charge if the patient's appeal regarding eligibility for a public benefit program is successful.
- 9) Defines patient records as records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient.
- 10) Defines a health care provider as a licensed health facility, clinic, or home health agency, or a licensed health care professional, as specified.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, applying for a public benefit program is often a complicated process that requires the submission of medical records to prove a disability or medical condition. Applicants turn to legal aid advocates for help when their applications are denied or need additional assistance. In assisting low-income clients, legal aid advocates have reported difficulty obtaining medical records without cost and are denied access because they do not have formal authority to receive the records. For example, some health facilities require a "power of attorney" to receive records on behalf of a client. "Power of attorney," however, allows an individual to make legal, financial, and health decisions on behalf of another person, so it is not an appropriate designation for legal aid advocates who are only representing clients on a public benefits issue. The author states that when applying for public benefit program, low-income people also face barriers in completing forms to certify their disability or medical condition. Some healthcare providers refuse to complete these forms or charge a minimum of \$40 to complete them. Without medical records and completed forms from their healthcare providers, applicants may not receive public benefits.

According to the author, this bill is an essential bill that will help low-income Californians access public benefit programs by making easier access to medical records needed to qualify for such programs. This includes clarifying that legal aid advocates can access medical records without cost for patients regarding eligibility for public benefits programs, including the Cash Assistance Program for Immigrants, victims of domestic violence, immigrant victims of crime, and beneficiaries of government-funded housing subsidies or tenant-based housing assistance programs. The author states that by streamlining access to medical records, this bill increases access to public benefit programs and helps build a California for all.

In light of the pandemic severely exacerbating income inequality, it is more important than ever that we protect our most vulnerable communities by simplifying and expanding access to public benefits for those who desperately need them. This bill would improve access to California's social safety net at a time when millions of Californians must rely on it.

2) BACKGROUND.

- a) **Eligible Public Benefits Program.** Existing law entitles a patient or the representative of a patient to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider proof that the records are needed to support an appeal regarding eligibility for the Medi-Cal program, social security disability insurance benefits, and SSI/SSP IHSS, CalFresh, CalWORKs, veteran benefits. This bill expands the provision of free medical records to applicants of the following benefit programs:
- i) The discharge of a federal student loan based on total and permanent disability. Total and Permanent Disability discharge is a program created by the U.S. Department of Education. It relieves the disabled borrower from having to repay federal student loans or TEACH Grant service obligations. Nelnet, a student loan servicer, assists the Department of Education with this process.
 - ii) CAPI. CAPI is a 100% state-funded program designed to provide monthly cash benefits to aged, blind, and disabled non-citizens who are ineligible for SSI/SSP solely due to their immigrant status. The Welfare Reform Act of 1996 eliminated SSI/SSP eligibility for most non-citizens. As a result, most immigrants who were not receiving SSI/SSP in August 1996 are no longer eligible for SSI/SSP.
 - iii) Government-funded housing subsidy or tenant-based housing assistance program. According to the US Department of Housing and Development (HUD), HUD can assist with privately owned subsidized housing and help. Apartment owners offer reduced rents to low-income tenants. The housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects. Housing choice vouchers are administered locally by public housing agencies (PHAs). The PHAs receive federal funds from HUD to administer the voucher program.
- b) **U nonimmigrant status and Violence Against Women Act.** In addition to public benefits program, this bill expands the provision of free medical records to a petition for U nonimmigrant status under the Victims of Trafficking and Violence Protection Act or a self-petition for lawful permanent residency under the Violence Against Women Act. The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The

legislation also helps law enforcement agencies to better serve victims of crimes. Additionally, under the federal Violence Against Women Act, individuals may be eligible to become a lawful permanent resident if you are the victim of battery or extreme cruelty committed by:

- i) A U.S. citizen spouse or former spouse;
 - ii) A U.S. citizen parent;
 - iii) A U.S. citizen son or daughter;
 - iv) A lawful permanent resident (LPR) spouse or former spouse; or
 - v) An LPR parent.
- c) **Federal guidance.** The U.S. Department of Health and Human Services issued guidance which state in part, while the Privacy Rule permits a limited fee as described; covered entities should provide individuals who request access to their information with copies of their personal health information free of charge. While covered entities should forgo fees for all individuals, not charging fees for access is particularly vital in cases where the financial situation of an individual requesting access would make it difficult or impossible for the individual to afford the fee. Providing individuals with access to their health information is a necessary component of delivering and paying for health care.
- 3) **SUPPORT.** Western Center on Law and Poverty, sponsor of this bill, writes that this bill clarifies that legal aid advocates can access medical records without cost on behalf of patients who need these records to maintain their benefits. To further ensure individuals can maintain their benefits, this bill would require providers to complete these forms where medical input is needed. Applying and maintaining eligibility for a public benefit program can be a complicated process that requires submission of medical records to prove a disability or medical condition. Applicants turn to legal aid advocates for help when their applications are denied or need additional assistance. When applying for public benefit programs, low-income people face barriers in completing forms to certify their disability or medical condition. Some health care providers refuse to complete these forms or charge a minimum of \$40 to complete them. This bill would expand access to free medical records to include programs serving immigrants with disabilities, petitions to obtain lawful status for immigrants who are survivors of crime or domestic violence, and individuals applying for government-funded housing assistance programs.
- 4) **PREVIOUS LEGISLATION.**
- a) SB 575 (Leyva), Chapter 626, Statutes of 2017, requires health care providers to provide patients with a copy of those health records at no charge to support a claim for eligibility for a public benefit program. Specifies additional public benefit programs to which these requirements would apply.
 - b) SB 241 (Monning), Chapter 513, Statutes of 2017, changes the basis of the fee that a health care provider is authorized to charge from clerical costs to specified costs for labor, supplies, postage, and preparing an explanation or summary of the patient record. The bill would require the health care provider to provide the patient or patient's personal representative with a copy of the records in a paper or electronic copy, in the form or format requested if the records are readily producible in that form or format.

- c) AB 1337 (Linder), Chapter 528, Statutes of 2015, creates an authorization form for disclosure of health information by medical providers, and requires electronic medical records requested prior to the filing of any action or appearance of a defendant in an action to be provided electronically if requested in an electronic format, and if it is readily producible in that format.
- d) SB 588 (Emmerson) of 2013 would have provided that, where the records are delivered to the attorney or the attorney's representative for inspection or copying at the record custodian's place of business and if any portion of the patient's medical records is stored on paper, the fee for complying with the authorization would be \$15 dollars, plus actual costs, as specified. If any portion of the records is stored electronically and is inaccessible for inspection or copying, the health care provider, in its sole discretion, would have been authorized to produce a paper copy of the electronic records for the attorney to inspect and copy, and to charge specified fees. SB 588 was held in the Senate Judiciary Committee.
- e) SB 1543 (Emmerson) of 2012 would have prescribed the fees for a health care provider or medical records management company to charge when providing copies of medical records to an attorney. SB 1543 was held in the Senate Judiciary Committee.
- f) AB 1311 (Goldberg), Chapter 325, Statutes of 2001, requires a health care provider, within 30 days of a written request from a patient, former patient, or patient's representative, to provide a free copy of that portion of the patient's medical records relevant to the patient's appeal from the denial of eligibility for a public benefit program, as specified.

5) **AUTHOR'S AMENDMENTS.** The author wishes to amend this bill to include nurse practitioners to the list of medical providers required to provide medical records as specified in this bill.

REGISTERED SUPPORT / OPPOSITION:

Support

Western Center on Law and Poverty (sponsor)
 Bet Tzedek
 California Advocates for Nursing Home Reform
 California Association for Nurse Practitioners
 California Food Policy Advocates
 California Immigrant Policy Center
 California Low-income Consumer Coalition
 Children Now
 Disability Rights California
 Justice in Aging
 Legal Aid Foundation of Los Angeles
 Legal Aid Society of San Mateo County
 National Association of Social Workers, California Chapter
 National Health Law Program

Opposition

None on file.

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