

No. 1998-26

## AN ACT

HB 1048

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for subpoena of medical records; providing for a limit on charges for reproducing medical charts or records; and further providing for rights of patients, for obtaining personal appearance of custodian of original charts, for obtaining production of original medical records and for exemption from attachment of retirement funds and accounts.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 6152(a) and (c) of Title 42 of the Pennsylvania Consolidated Statutes are amended to read:

§ 6152. Subpoena of records.

(a) Election.—

(1) When a subpoena duces tecum is served upon *any health care provider or* an employee of any health care facility licensed under the laws of this Commonwealth, requiring the production of any medical charts or records at any action or proceeding, it shall be deemed a sufficient response to the subpoena if the *health care provider or* health care facility notifies the attorney for the party causing service of the subpoena, within three days of receipt of the subpoena, of the health care *provider's or* facility's election to proceed under this subchapter and of the estimated actual and reasonable expenses of reproducing the charts or records. *However, when medical charts or records are requested by a district attorney or by an independent or executive agency of the Commonwealth, notice pursuant to this section shall not be deemed a sufficient response to the subpoena duces tecum.*

(2) (i) *Except as provided in subparagraph (ii), the health care provider or facility or a designated agent shall be entitled to receive payment of such expenses before producing the charts or records. The payment shall not exceed \$15 for searching for and retrieving the records, \$1 per page for paper copies for the first 20 pages, 75¢ per page for pages 21 through 60 and 25¢ per page for pages 61 and thereafter; \$1.50 per page for copies from microfilm; plus the actual cost of postage, shipping or delivery. No other charges for the retrieval, copying and shipping or delivery of medical records other than those set forth in this paragraph shall be permitted without prior approval of the party requesting the copying of the medical records. The amounts which may be charged shall be adjusted annually beginning on January 1, 2000, by the Secretary of Health of the*

*Commonwealth based on the most recent changes in the consumer price index reported annually by the Bureau of Labor Statistics of the United States Department of Labor.*

*(ii) Payment to a health care provider or facility for searching for, retrieving and reproducing medical charts or records requested by a district attorney shall not exceed \$15, search and retrieval fee, plus the actual cost of postage, shipping or delivery as described in subparagraph (i), as adjusted by the Secretary of Health of the Commonwealth, unless otherwise agreed to by the district attorney.*

*(3) No independent or executive agency of the Commonwealth shall be required to pay any search or retrieval fee, copying cost or other cost related to medical charts or records under this section unless otherwise required by law, regulation or agreed to by the agency in guidelines, statements of policy or by publication of notice in the Pennsylvania Bulletin.*

\* \* \*

(c) Delivery of records.—Following this election, the health care *provider* or facility shall hold the originals available, and, upon payment of its [estimated reproduction] expenses by the party causing service of the subpoena, or by any other party, shall within [ten] 30 days deliver, by *first class mail*, certified mail, return receipt requested, or by personal delivery, legible and durable copies, certified by the health care *provider* or facility of all medical charts or records specified in the subpoena. *However, a district attorney shall not be required to pay for copies of medical charts or records before receipt, and the charts or records shall be delivered on or before the date specified on the subpoena duces tecum.*

\* \* \*

Section 2. Title 42 is amended by adding a section to read:

§ 6152.1. *Limit on charges.*

(a) *Charges.*—

*(1) Notwithstanding the provisions of section 6152(c) (relating to subpoena of records), a health care provider or facility shall not charge more than a flat fee of \$19 for the expense of reproducing medical charts or records, plus the actual cost of postage, shipping or delivery, if the charts or records are requested for the purpose of supporting a claim or appeal under any provision of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) or any Federal or State financial needs-based benefit program. The fee provided for in this subsection shall be adjusted annually by the Secretary of Health of the Commonwealth, as provided for in section 6152(a)(2)(i).*

*(2) No independent or executive agency of the Commonwealth shall be required to pay any search or retrieval fee, copying cost or other cost related to medical charts or records under this section unless otherwise required by law, regulation or agreed to by the agency in guidelines,*

*statements of policy or by publication of notice in the Pennsylvania Bulletin.*

*(b) Documentation.—The person making the request shall provide the health care provider or facility with clear and convincing documentation that the purpose of the request is to obtain medical charts or records necessary to support a claim or appeal under any provision of the Social Security Act or any Federal or State financial needs-based benefit program.*

*(c) Request.—For purposes of this section, a request for medical charts or records shall include, but not be limited to, a subpoena for medical charts or records under section 6152 or a letter from a person's attorney of record for whom an Appointment of Representative form (SSA-1696-U4) has been executed, indicating the need for such charts or records.*

Section 3. Sections 6155(b), 6158 and 6159 of Title 42 are amended to read:

§ 6155. Rights of patients.

\* \* \*

(b) Rights to records generally.—

*(1) A patient or his designee, including his attorney, shall have the right of access to [all of] his medical charts and records and to [photocopy] obtain photocopies of the same, without the use of a subpoena duces tecum, for his own use. A health care provider or facility shall not charge a patient or his designee, including his attorney, a fee in excess of the amounts set forth in section 6152(a)(2)(i) (relating to subpoena of records).*

*(2) Nothing in this subsection shall be construed as requiring an insurer to pay for medical records required to validate medical services for which reimbursement is sought under an insurance contract, except as provided in:*

*(i) the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, and the regulations promulgated thereunder;*

*(ii) 75 Pa.C.S. Ch. 17 (relating to financial responsibility) and the regulations promulgated thereunder; or*

*(iii) a contract between an insurer and any other party.*

§ 6158. Obtaining personal attendance of custodian.

The personal attendance of the custodian of the original charts or records specified in the subpoena shall *only* be required if the subpoena duces tecum so specifies[.] *for the purpose of obtaining the custodian's testimony on an issue in dispute and upon payment of the actual and reasonable expenses of the custodian's personal attendance. When the personal attendance of the custodian is requested by a district attorney or an independent or executive agency of the Commonwealth, the fee paid to the custodian shall not exceed the ordinary fee paid to witnesses in criminal cases as specified in section 5903 (relating to compensation and expenses of witnesses) and shall be paid after the custodian's appearance.*

§ 6159. Obtaining production of original record.

The production of the original record shall *only* be required if the subpoena duces tecum so specifies[.] *for the purpose of comparing the reproduced record to the original or for the purpose of resolving an issue in dispute and shall be delivered within 30 days of receipt of the request. Except when the original record is requested by a district attorney or an independent or executive agency of the Commonwealth, the records shall be delivered on the date set forth in the subpoena duces tecum.*

Section 4. Title 42 is amended by adding a section to read:

§ 6160. *Definitions.*

*The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:*

*“Insurer.” A foreign or domestic insurance company, association or exchange holding a certificate of authority under the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921; a health maintenance organization holding a certificate of authority under the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act; a hospital plan organization holding a certificate of authority under 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations); a professional health services plan corporation holding a certificate of authority under 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations); a fraternal benefit society holding a certificate of authority under the act of December 14, 1992 (P.L.835, No.134), known as the Fraternal Benefit Societies Code; or a risk-assuming preferred provider organization operating pursuant to section 630 of The Insurance Company Law of 1921.*

Section 5. Section 8124(b)(1)(ix) of Title 42 is amended to read:

§ 8124. Exemption of particular property.

\* \* \*

(b) Retirement funds and accounts.—

(1) Except as provided in paragraph (2), the following money or other property of the judgment debtor shall be exempt from attachment or execution on a judgment:

\* \* \*

(ix) Any retirement or annuity fund provided for under section 401(a), 403(a) and (b), 408 or 409 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(a), 403(a) and (b), 408 or 409), the appreciation thereon, the income therefrom [and], the benefits or annuity payable thereunder *and transfers and rollovers between such funds*. This subparagraph shall not apply to:

(A) Amounts contributed by the debtor to the retirement or annuity fund within one year before the debtor filed for bankruptcy. *This shall not include amounts directly rolled over from other funds which are exempt from attachment under this subparagraph.*

(B) Amounts contributed by the debtor to the retirement or annuity fund in excess of \$15,000 within a one-year period. *This shall not include amounts directly rolled over from other funds which are exempt from attachment under this subparagraph.*

(C) Amounts deemed to be fraudulent conveyances.

\* \* \*

Section 6. This act shall take effect as follows:

- (1) The amendment or addition of 42 Pa.C.S. §§ 6152(a) and (c), 6152.1, 6155(b), 6158 and 6159 shall take effect in 60 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 18th day of February, A.D. 1998.

THOMAS J. RIDGE