

House Study Bill 94

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON SWAIM)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to communications made in professional confidence
2 concerning health care and health care records and providing
3 for fees.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1774HC 82
6 rh/je/5

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1 1 Section 1. Section 622.10, subsection 3, paragraphs a, d,
1 2 and e, Code 2007, are amended to read as follows:
1 3 a. In a civil action in which the condition of the
1 4 plaintiff in whose favor the prohibition is made is an element
1 5 or factor of the claim or defense of the adverse party or of
1 6 any party claiming through or under the adverse party, the
1 7 adverse party shall make a written request for records
1 8 relating to the condition alleged upon the plaintiff's counsel
1 9 for a legally sufficient patient's waiver under federal and
1 10 state law. Upon receipt of a written request, the plaintiff
1 11 shall execute ~~the~~ a legally sufficient patient's waiver and
1 12 release it to the adverse party making the request within
1 13 sixty days of receipt of the written request. The patient's
1 14 waiver may require a physician or surgeon, physician
1 15 assistant, advanced registered nurse practitioner, or mental
1 16 health professional to do all of the following:
1 17 (1) Provide a complete copy of the patient's records
1 18 including, but not limited to, any reports or diagnostic
1 19 imaging relating to the condition alleged.
1 20 (2) Consult with the attorney for the adverse party prior
1 21 to providing testimony regarding the plaintiff's medical
1 22 history and the condition alleged and opinions regarding
1 23 health etiology and prognosis for the condition alleged
1 24 subject to the limitations in ~~paragraph~~ paragraphs "c" and
1 25 "e".
1 26 d. Any physician or surgeon, physician assistant, advanced
1 27 registered nurse practitioner, or mental health professional
1 28 who provides records or consults with the counsel for ~~the~~
1 29 ~~adverse~~ any party shall be entitled to charge a reasonable fee
1 30 for production of the records, diagnostic imaging, and
1 31 consultation. Any party seeking consultation shall be
1 32 responsible for payment of all charges. ~~The fee fees~~ for
1 33 copies of any records shall ~~be based upon actual cost of~~
1 34 ~~production be as specified in subsection 5.~~
1 35 e. Defendant's counsel shall provide a written notice to
2 1 plaintiff's counsel in a manner consistent with the Iowa rules
2 2 of civil procedure providing for notice of deposition at least
2 3 ten days prior to any meeting with plaintiff's physician or
2 4 surgeon, physician assistant, advanced registered nurse
2 5 practitioner, or mental health professional. Plaintiff's
2 6 counsel has the right to be present at all such meetings, or
2 7 participate in telephonic communication with the physician or
2 8 surgeon, physician assistant, advanced registered nurse
2 9 practitioner, or mental health professional and counsel for
2 10 the defendant. Prior to scheduling any meeting or engaging in
2 11 any communication with the physician or surgeon, physician
2 12 assistant, advanced registered nurse practitioner, or mental
2 13 health professional, counsel for the defendant shall confer
2 14 with plaintiff's counsel to determine a mutually convenient
2 15 date and time for such meeting or telephonic communication.
2 16 Plaintiff's counsel may seek a protective order structuring
2 17 all communication by making application to the court at any

2 18 time.

2 19 Sec. 2. Section 622.10, subsection 4, Code 2007, is
2 20 amended to read as follows:

2 21 4. If an adverse party desires the oral deposition, either
2 22 discovery or evidentiary, of a physician or surgeon, physician
2 23 assistant, advanced registered nurse practitioner, or mental
2 24 health professional to which the prohibition would otherwise
2 25 apply or the stenographer or confidential clerk of a physician
2 26 or surgeon, physician assistant, advanced registered nurse
2 27 practitioner, or mental health professional or desires to call
2 28 a physician or surgeon, physician assistant, advanced
2 29 registered nurse practitioner, or mental health professional
2 30 to which the prohibition would otherwise apply or the
2 31 stenographer or confidential clerk of a physician or surgeon,
2 32 physician assistant, advanced registered nurse practitioner,
2 33 or mental health professional as a witness at the trial of the
2 34 action, the adverse party shall file an application with the
2 35 court for permission to do so. The court upon hearing, which
3 1 shall not be ex parte, shall grant permission unless the court
3 2 finds that the evidence sought does not relate to the
3 3 condition alleged ~~and~~. At the request of any party or at the
3 4 request of the deponent, the court shall fix a reasonable fee
3 5 to be paid to the a physician or surgeon, physician assistant,
3 6 advanced registered nurse practitioner, or mental health
3 7 professional by the party taking the deposition or calling the
3 8 witness.

3 9 Sec. 3. Section 622.10, Code 2007, is amended by adding
3 10 the following new subsection:

3 11 NEW SUBSECTION. 4A. At any time, upon a written request
3 12 from a patient, a patient's representative, or an adverse
3 13 party pursuant to subsection 3, accompanied by a legally
3 14 sufficient patient's waiver, any physician or surgeon,
3 15 physician assistant, advanced registered nurse practitioner,
3 16 mental health professional, hospital, nursing home, or other
3 17 person, entity, facility, or organization that furnishes,
3 18 bills, or pays for health care in the normal course of
3 19 business, shall provide copies of the requested records or
3 20 images to the requestor within thirty days of receipt of the
3 21 written request. Except as provided in paragraph "e", a fee
3 22 may be charged for the cost of producing such copies or images
3 23 but the fee shall not exceed the following:

3 24 a. For printed or photocopied records, twelve cents per
3 25 single-sided page or seventeen cents per double-sided page.

3 26 b. For images provided in a nonelectronic format including
3 27 but not limited to X rays, diagnostic images, photographs, or
3 28 other graphic image records, the actual cost of materials and
3 29 supplies used to produce the copies of such images, or ten
3 30 dollars per item, whichever is less.

3 31 c. For electronically scanned or produced records or
3 32 images, the actual cost of the materials and supplies incurred
3 33 in producing the physical media in which the electronic
3 34 records or images are stored, or five dollars per physical
3 35 media necessary to hold the data, whichever is less.

4 1 d. If applicable, the actual cost of postage or delivery
4 2 charges incurred may be added to the amounts charged in
4 3 paragraphs "a" through "c".

4 4 e. A patient or a patient's representative is entitled to
4 5 a copy free of charge of the patient's complete billing or
4 6 accounting statement showing all charges, payments,
4 7 adjustments, and write-offs, including the dates and sources
4 8 thereof, subject only to a charge for the actual costs of
4 9 postage and delivery charges incurred in providing the
4 10 statement.

4 11 Fees charged pursuant to this subsection are not subject to
4 12 a sales or use tax. A physician or surgeon, physician
4 13 assistant, advanced registered nurse practitioner, mental
4 14 health professional, hospital, nursing home, or other person,
4 15 entity, facility, or organization providing the records or
4 16 images may require payment in advance if an itemized statement
4 17 demanding such is provided to the requesting party within
4 18 fifteen days of the request. Upon a timely request for
4 19 payment in advance, the time for providing the records or
4 20 images shall be extended until the greater of thirty days from
4 21 the date of the original request or ten days from the receipt
4 22 of payment.

4 23 EXPLANATION

4 24 This bill relates to communications made in professional
4 25 confidence concerning health care and health care records and
4 26 provides for fees.

4 27 The bill provides that in a civil action in which the
4 28 health condition of a plaintiff is an element or factor of the

4 29 claim or defense, defendant's counsel and plaintiff's counsel
4 30 shall determine a mutually convenient date and time for any
4 31 meeting or telephonic communication with the physician or
4 32 surgeon, physician assistant, advanced registered nurse
4 33 practitioner, or mental health professional. In addition, the
4 34 bill provides that if an adverse party desires the oral
4 35 deposition, either discovery or evidentiary, of a physician or
5 1 surgeon, physician assistant, advanced registered nurse
5 2 practitioner, or mental health professional, or the
5 3 stenographer or confidential clerk of a physician or surgeon,
5 4 physician assistant, advanced registered nurse practitioner,
5 5 or mental health professional or desires to call a physician
5 6 or surgeon, physician assistant, advanced registered nurse
5 7 practitioner, or mental health professional, or the
5 8 stenographer or confidential clerk of a physician or surgeon,
5 9 physician assistant, advanced registered nurse practitioner,
5 10 or mental health professional as a witness at the trial of the
5 11 civil action, upon request of either party or the person being
5 12 deposed, the court shall fix a reasonable fee to be paid to a
5 13 physician or surgeon, physician assistant, advanced registered
5 14 nurse practitioner, or mental health professional by the party
5 15 taking the deposition or calling the witness.

5 16 The bill provides that an adverse party in a civil action
5 17 in which the health condition of a plaintiff is an element or
5 18 factor of the claim or defense, an adverse party who requests
5 19 records relating to the condition of the plaintiff or a
5 20 patient or a patient's representative not involved in a civil
5 21 action but who desires a copy of the patient's health records
5 22 shall be charged a fee for production of the health records,
5 23 which may include diagnostic imaging. The fees for copies of
5 24 any records shall be provided within 30 days of receipt of the
5 25 written request. The bill provides that fees charged for the
5 26 cost of producing such copies or images shall not exceed
5 27 certain specified costs, depending on the nature of the record
5 28 requested. Additional costs may include the actual cost of
5 29 postage or delivery charges. The bill also provides that a
5 30 patient or a patient's representative is entitled to a copy
5 31 free of charge of the patient's complete billing or accounting
5 32 statement, subject only to a charge for the actual costs of
5 33 postage and delivery charges incurred in providing the
5 34 statement. In addition, the person, entity, facility, or
5 35 organization providing the records or images may require
6 1 payment in advance and the time for providing the records or
6 2 images shall be extended until the greater of 30 days from the
6 3 date of the original request or 10 days from the receipt of
6 4 payment.

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