

§1711-B. Patient access to treatment records; health care practitioners

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Health care practitioner" has the same meaning as in section 1711-C, subsection 1, paragraph F. [PL 1997, c. 793, Pt. A, §3 (AMD); PL 1997, c. 793, Pt. A, §10 (AFF).]

B. "Treatment records" means all records relating to a patient's diagnosis, treatment and care, including x rays, performed by a health care practitioner. [PL 1997, c. 793, Pt. A, §3 (AMD); PL 1997, c. 793, Pt. A, §10 (AFF).]

[PL 1997, c. 793, Pt. A, §3 (AMD); PL 1997, c. 793, Pt. A, §10 (AFF); PL 1999, c. 512, Pt. A, §6 (AFF).]

2. Access. Upon written authorization executed in accordance with section 1711-C, subsection 3, a health care practitioner shall release copies of all treatment records of a patient or a narrative containing all relevant information in the treatment records to the patient. The health care practitioner may exclude from the copies of treatment records released any personal notes that are not directly related to the patient's past or future treatment and any information related to a clinical trial sponsored, authorized or regulated by the federal Food and Drug Administration. The copies or narrative must be released to the designated person in accordance with the requirements of 45 Code of Federal Regulations, Section 164.524 (2019) or for a health care practitioner not subject to the requirements of 45 Code of Federal Regulations, Section 164.524 (2019) within a reasonable time.

If the practitioner believes that release of the records to the patient is detrimental to the health of the patient, the practitioner shall advise the patient that copies of the treatment records or a narrative containing all relevant information in the treatment records will be made available to the patient's authorized representative upon presentation of a written authorization signed by the patient. The copies or narrative must be released to the authorized representative in accordance with the requirements of 45 Code of Federal Regulations, Section 164.524 (2019) or for a health care practitioner not subject to the requirements of 45 Code of Federal Regulations, Section 164.524 (2019) within a reasonable time.

Except as provided in subsection 3, release of a patient's treatment records to a person other than the patient is governed by section 1711-C.

[PL 2019, c. 503, Pt. F, §2 (AMD).]

3. Person receiving the records. Except as otherwise provided in this section, the copies or narrative specified in subsection 2 must be released to:

A. The person who is the subject of the treatment record, if that person is 18 years of age or older and mentally competent; [PL 1991, c. 142, §2 (NEW).]

B. The parent, guardian ad litem or legal guardian of the person who is the subject of the record if the person is a minor, or the legal guardian if the person who is the subject of the record is mentally incompetent; [PL 1997, c. 793, Pt. A, §5 (AMD); PL 1997, c. 793, Pt. A, §10 (AFF).]

C. The designee of a durable health care power of attorney executed by the person who is the subject of the record, at such time as the power of attorney is in effect; [PL 2015, c. 370, §1 (AMD).]

D. The agent, guardian or surrogate pursuant to the Uniform Health Care Decisions Act; or [PL 2017, c. 402, Pt. C, §43 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The lay caregiver designated pursuant to section 1711-G by the person who is the subject of the record. [PL 2015, c. 370, §3 (NEW).]

[PL 2017, c. 402, Pt. C, §43 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3-A. Corrections and clarifications of treatment records. A patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem may submit to a health care practitioner health care information that corrects or clarifies the patient's treatment record, which must be retained with the treatment record by the health care practitioner. If the health care practitioner adds to the treatment record a statement in response to the submitted correction or clarification, the health care practitioner shall provide a copy to the patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem.

[PL 1999, c. 512, Pt. A, §3 (AMD); PL 1999, c. 512, Pt. A, §7 (AFF); PL 1999, c. 790, Pt. A, §§58, 60 (AFF).]

4. Minors. This section does not affect the right of minors to have their treatment records treated confidentially pursuant to the provisions of, chapter 260.

[PL 1995, c. 694, Pt. D, §28 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

5. HIV test. Release of information regarding the HIV infection status of a patient is governed by Title 5, section 19203-D.

[PL 1999, c. 512, Pt. A, §4 (AMD); PL 1999, c. 512, Pt. A, §7 (AFF); PL 1999, c. 790, Pt. A, §§58, 60 (AFF).]

6. Hospital records. Release of treatment records in a hospital is governed by the provisions of section 1711.

[RR 1993, c. 2, §11 (COR).]

7. Retention of records. This section does not alter the existing law or ethical obligations of a health care practitioner with respect to retaining treatment records.

[PL 1991, c. 142, §2 (NEW).]

8. Violation. A person who willfully violates this section commits a civil violation for which a forfeiture of not more than \$25 may be adjudged. Each day that the treatment records or narrative is not released after the reasonable time specified in subsection 2 constitutes a separate violation, up to a maximum forfeiture of \$100.

[PL 1991, c. 142, §2 (NEW).]

SECTION HISTORY

PL 1991, c. 142, §2 (NEW). RR 1993, c. 2, §11 (COR). PL 1995, c. 694, Pt. D, §28 (AMD). PL 1995, c. 694, Pt. E, §2 (AFF). PL 1997, c. 793, Pt. A, §§3-7 (AMD). PL 1997, c. 793, Pt. A, §10 (AFF). PL 1997, c. 793, Pt. B, §5 (AMD). PL 1997, c. 793, Pt. B, §6 (AFF). PL 1999, c. 3, §§3-5 (AFF). PL 1999, c. 512, Pt. A, §§3, 4 (AMD). PL 1999, c. 512, Pt. A, §6 (AFF). PL 1999, c. 512, Pt. B, §5 (AFF). PL 1999, c. 790, Pt. A, §§58, 60 (AFF). PL 2015, c. 370, §§1-3 (AMD). PL 2017, c. 402, Pt. C, §43 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 503, Pt. F, §2 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

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