

PUBLIC NOTICE

HEALTH

THE COMMISSIONER

HOSPITAL LICENSING STANDARDS

Notice of Receipt of Petition for Rulemaking

Medical Records Patient Services

N.J.A.C. 8:43G-15.3

Petitioner: Stacy Noonan, Esq, Managing Attorney, Community Health Law Project,
Hamilton, NJ.

Take notice that on October 8, 2024, the Department of Health (Department) received a petition for rulemaking from Stacy Noonan, Esq., Managing Attorney, Community Health Law Project (petitioner).

Substance or nature of the requested rulemaking action:

The petitioner requests that the Department amend N.J.A.C. 8:43G, Hospital Licensing Standards, at Subchapter 15, Medical Records, Section 15.3, Medical records patient services.

Problem of purpose of the request:

N.J.A.C. 8:43G-15.3 establishes standards by which a hospital is to provide medical records to its patients. The rule authorizes hospitals to charge a patient, or the patient's legally authorized representative, fees for copies of the patient's medical records.

The petitioner states that N.J.A.C. 8:43G-15.3, which the Department last amended in 2011, conflicts with more recently enacted amendments to statutes

addressing the fees that hospitals and health care professionals can charge for copies of patient records.

Specifically, the petitioner notes that N.J.S.A. 26:2H-5n, Hospital to provide medical, billing records; fees, at paragraph (d)5, prohibits the imposition of otherwise authorized fees for patient records upon a “patient or an attorney representing a patient who has a pending application for, or is currently receiving, [F]ederal Social Security disability benefits provided under Title II or Title XVI of the [F]ederal Social Security Act,” and that N.J.S.A. 45:9-22.27, Health care professional to provide copies of treatment, billing records; fees, at paragraph (j)4, likewise prohibits a health care professional from imposing otherwise authorized patient records fees upon a patient, or the attorney for a patient, who is applying for, or receiving, Social Security disability benefits. P.L. 2021, c. 359 (approved and effective January 10, 2022) established these prohibitions against the imposition of fees for access to patient records.

The agency, on behalf of which the petitioner submits the petition, represents patients who have pending applications for, or are currently receiving, Social Security disability benefits. The petitioner states that, while most “treating sources provide [the agency’s clients’] medical records ... without issue ..., one large treating source in Trenton refuses to provide records unless [the agency pays] copying charges, citing to N.J.A.C. 8:43G-15.3.” The petitioner requests that the Department amend N.J.A.C. 8:43G-15.3 to reconcile the rule to the statutes described above; that is, to prohibit the imposition of fees for copies of medical records being requested by a person, or the attorney for a person, who is applying for, or receiving, Social Security disability benefits.

The petitioner does not identify the Department's rulemaking authority to implement the proposed revision. The Department notes that P.L. 2019, c. 217 (which established N.J.S.A. 26:2H-5n), at sections 3 and 4, directs the Commissioner of the Department (Commissioner) to promulgate implementing rules and take anticipatory administrative action necessary to implement N.J.S.A. 26:2H-5n; see N.J.S.A. 26:2H-5, Commissioner's powers, at subsection (b) (establishing the Commissioner's rulemaking authority to implement the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., which includes N.J.S.A. 26:2H-5n).

In accordance with the provisions at N.J.A.C. 1:30-4.2, the Chief Administrator will subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.