

**STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY FOR**

Rules Pertaining to the Standards for Hospitals and Health Facilities  
6 CCR 1011-1  
Chapter II, General Licensure Standards

August 28, 2013

**Basis and Purpose:**

The proposed amendment to the above referenced rule is necessary to comply with the January 30, 2013 Amended Order of Denver District Court Judge Herbert L. Stern, III, in the case of Colorado Consumer Health Initiative v. Colorado Board of Health. In addition, the Division reviewed the entire section pursuant to Governor Hickenlooper's Executive Order D2012-002 regarding regulatory efficiency reviews.

**These rules are promulgated pursuant to the following statutes:**

Section 25-1.5-103, C.R.S. (2013).

Section 25-1-802(1)(b)(I), C.R.S. (2013).

**Major Factual and Policy Issues Encountered:**

The Denver District Court issued an order stating that "the Board of Health can amend or strike the language in 6 CCR 1011-1, Chapter II, 5.2.3.4 so long as the amended language, or lack thereof, requires Colorado healthcare facilities to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements on copy fees at 45 C.F.R. §164.524(c)(4)(i)-(iii)."

The federal HIPAA requirements supersede Colorado law and allow a health care entity to charge a cost-based fee for providing copies of patient health records to a patient or a patient's "personal representative" as defined at 45 CFR §164.502(g), but specifies that the fee charged must be reasonable and not include any costs other than the cost of copying, costs of supplies for and labor of copying, postage and cost of preparing a summary explanation of the covered health information. HIPAA, however, does not apply to a patient's "designated representative." A patient's designated representative is someone authorized in writing or by court order to act on behalf of a patient.

With regard to patient record copy costs for "designated representatives," §25-1-801(1)(a) and (b), C.R.S. applies and states that copies of patient records shall be furnished "upon the payment of reasonable costs." Section 25-1-801(1)(c) also requires that "the hospital or related facility or institution shall post in conspicuous public places on the premises a statement of the requirements set forth in paragraphs (a) and (b) of this subsection (1) and shall make available a copy of said statement to each patient upon admission."

The Division has reviewed the section in question and determined that, based upon the court order and the Governor's Executive Order D2012-002, the majority of the existing rule language on patient record copy costs can be stricken since the issue is already addressed in state and federal statute and

our Chapter II regulations already require licensed health care facilities to comply with applicable state and federal law. Therefore, no additional language regarding patient record copy costs is necessary other than to clarify that copies of patient records which are requested for the sole purpose of continuing medical care must be provided at no cost.

**Alternative rules considered:**

The Department carefully reviewed both state and federal law in this area, along with the laws in other states and determined that the proposed amendment was the best course of action given the Court order. No other alternatives are deemed appropriate at this time.

# DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

## Health Facilities Regulation Division

### STANDARDS FOR HOSPITALS AND HEALTH FACILITIES

#### CHAPTER II – GENERAL LICENSURE STANDARDS

##### 6 CCR 1011-1 Chap 02

\* \* \* \* \*

#### Part 2 Licensure Process

##### 2.1 Statutory Authority and Applicability

2.1.1 The statutory authority for the promulgation of these rules is set forth in sections 25-1.5-103 and 25-3-101, *et seq.*, C.R.S.

2.1.2 A health care entity licensed by the Department shall comply with all applicable federal and state statutes and regulations including this Chapter II. In the event of a discrepancy between the Department's regulations, the more specific standards shall apply.

\* \* \* \* \*

#### Part 5. ACCESS TO PATIENT MEDICAL RECORDS

5.0 It is the intent of the legislature and these regulations that persons who have been treated by health care facilities or individual providers have access to their medical records in order to take more complete responsibility for their own health and to improve their communication with health care providers.

##### 5.1 DEFINITIONS

5.1.1 PATIENT - A patient is any individual admitted to or treated in a health facility defined in 5.2 or treated by any of the providers defined in 5.3.

5.1.2 PATIENT RECORD - A patient record is a documentation of services pertaining to medical and health care that are performed at the direction of a physician or other licensed health care provider on behalf of the patient by physicians/dentists, nurses, technicians and other health care personnel. Patient records include such diagnostic documentation as X-rays and EKG's. Patient records do not include doctors' office notes, which are the notes by-a physician of observations about the patient made while the patient is in a non-hospital setting and maintained in the physician's office

5.1.3 ATTENDING HEALTH CARE PROVIDER - An attending health care provider is the physician currently or most recently responsible for coordinating the patient's care in a facility, or in the case of outpatient services, is the custodian of the record of the outpatient service. If the attending health care provider is deceased or unavailable, the current custodian of the record shall designate a substitute attending health care provider for purposes of compliance with these regulations.

5.1.4 DESIGNATED REPRESENTATIVE - A designated representative of a patient or attending health care provider is a person so authorized in writing or by court order to act

on behalf of the patient or attending health care provider. In the case of a deceased patient, the personal representative or, if none has been appointed, heirs shall be deemed to be designated representatives of the patient.

## 5.2 HEALTH CARE ENTITY RECORDS

5.2.1 Except as hereinafter provided, patient records in the custody of health care entities required to be certified under Section 25-1.5-103(1)(II) or licensed under Part 1 of Article 3 of Title 25 of the C.R.S. shall be available to a patient or his/her designated representative through the attending health care provider or his/her designated representative at reasonable times and upon reasonable notice.

### 5.2.2 Inpatient Records

5.2.2.1 While an inpatient in a facility described in 5.2.1, a person may inspect his/her patient record within a reasonable time, which should normally not exceed 24 hours of request (excluding weekends and holidays). The patient or designated representative shall sign and date the request. The attending health care provider or his/her designated representative shall acknowledge in writing the patient's or representative's request. After inspection, the patient or designated representative shall sign and date the patient record to acknowledge inspection.

5.2.2.2 The patient or designated representative shall not be charged for inspection.

5.2.2.3 If the attending health care provider feels that any portion of the patient record pertaining to psychiatric or psychological problems or any doctor's notes would have a significant negative psychological impact upon the patient, the attending health care provider shall so indicate on his/her acknowledgment of the patient's or representative's request to inspect the patient record. The attending health care provider or his/her designated representative shall so inform the patient or representative within a reasonable time, normally not to exceed 24 hours, excluding holidays and weekends. The facility shall permit inspection of the remaining portions of the patient record. The portion of the patient record pertaining to psychiatric or psychological problems or doctor's notes may then be withheld from the patient or representative until completion of the treatment program, if in the opinion of an independent third party who is a licensed physician practicing psychiatry, the portion of the record would have a significant negative psychological impact upon the patient. The Department of Public Health and Environment, upon request of either the patient or the attending health care provider, shall identify an independent third party psychiatrist to review the record and render a final decision.

If the record or a portion thereof pertaining to psychiatric or psychological problems or doctor's note having a significant negative psychological impact is withheld from the patient, a summary thereof prepared by the attending health care provider may be available following termination of the treatment program, upon written, signed and dated request by the patient or his/her designated representative, without the necessity of further consultation with an independent third party.

5.2.2.4 A statement setting forth the requirements of 5.2 of these regulations, the facility's procedures for obtaining records, and the right to appeal grievances regarding access to records to the Department of Public Health and Environment shall be posted in conspicuous public places on the premises and made available to each patient upon admission to the facility.

5.2.3 Discharged Inpatient Record

5.2.3.1 A discharged inpatient or his/her designated representative may inspect or obtain a copy of his/her record after submitting a signed and dated request to the facility. The attending health care provider or his/her designated representative shall acknowledge in writing the patient's or representative's request. After inspection, the patient or designated representative shall sign and date the record to acknowledge inspection.

5.2.3.2 The facility shall make a copy of the record available or make the record available for inspection within a reasonable time, from the date of the signed request, normally not to exceed ten days, excluding weekends and holidays, unless the attending health care provider or designated representative is unavailable to acknowledge the request, in which case the facility shall so inform the patient and provide the patient record as soon as possible.

5.2.3.3 Discharged patients or their representatives shall not be charged for inspection of patient records.

~~5.2.3.4 Unless otherwise prohibited by law, a representative of the patient, other than a "personal representative" as defined in the Federal Health Insurance Portability and Accountability Act (HIPAA) § 164.502(g), with the patient's written authorization, shall pay for the reasonable cost of obtaining a copy of the patient's record, which shall be \$16.50 for the first ten or fewer pages, \$.75 per page for pages 11-40, and \$.50 per page for every additional page.~~

~~The discharged patient or personal representative (as defined under HIPAA § 164.502(g)) shall pay for the reasonable cost of obtaining a copy of his/her patient record, not to exceed \$14.00 for the first ten or fewer pages, \$.50 per page for pages 11-40, and \$.33 per page for every additional page. Actual postage or shipping costs and applicable sales tax, if any, also may be charged. The per-page fee for records copied from microfilm shall be \$1.50 per page. No fees shall be charged by a health care provider of patient records for requests for medical records received from another health care provider or to an individual regulated pursuant to Section 25-1-802(1) solely for the purpose of providing continuing medical care to a patient. A LICENSED HEALTH CARE ENTITY SHALL CHARGE NO FEES FOR A MEDICAL RECORDS REQUEST RECEIVED FROM ANOTHER LICENSED HEALTH CARE PROVIDER OR INDIVIDUAL REGULATED PURSUANT TO 25-1-802(1), C.R.S., WHEN THE REQUEST IS SOLELY FOR THE PURPOSE OF PROVIDING CONTINUING MEDICAL CARE TO A PATIENT.~~

~~For one or more specific classes of records or services, institutions may charge additional sums upon presenting a justification therefor acceptable to the Department.~~

5.2.3.5 If the patient or the patient's designated representative so approves, the facility may supply a written interpretation by the attending health care provider or his/her designated representative of records, such as X-rays, which cannot be reproduced without special equipment. If the requestor prefers to obtain a copy of such records, he/she must pay the actual cost of such reproduction.

5.2.3.6 If the attending health care provider feels that any portion of the patient record pertaining to psychiatric or psychological problems or any doctor's notes would have a significant negative psychological impact upon the patient, the attending health care provider shall so indicate on his/her acknowledgment of the patient's or representative's request to inspect or obtain a copy of the patient's record. The

1 attending health care provider or his/her designated representative shall so  
2 inform the patient or representative within a reasonable time of the date of the  
3 request, normally not to exceed five days, excluding weekends and holidays. The  
4 facility shall permit inspection or provide a copy of the remaining portion of the  
5 record within that time. The portion of the patient record pertaining to psychiatric  
6 or psychological problems may then be withheld from the patient or  
7 representative until completion of the treatment program if, in the opinion of an  
8 independent third party who is a licensed physician practicing psychiatry, the  
9 portion of the patient record would have a significant negative psychological  
10 impact upon the patient. The Department of Public Health and Environment,  
11 upon request of either the patient or the attending health care provider, shall  
12 identify an independent third party psychiatrist to review the record and render a  
13 final decision.

14 If the patient record or a portion thereof pertaining to psychiatric or psychological  
15 problems or doctor's note having a significant negative psychological impact is  
16 withheld from the patient, a summary thereof prepared by the attending health  
17 care provider may be available following termination of the treatment program,  
18 upon written, signed and dated request by the patient or his/her designated  
19 representative, without the necessity of further consultation with an independent  
20 third party.

21 5.2.4 Nothing in this section shall apply to any nursing facility conducted by or for the  
22 adherents of any well-recognized church or religious denomination for the purpose of  
23 providing facilities for the care and treatment of the sick who depend exclusively upon  
24 spiritual means through prayer for healing and the practice of the religion of such church  
25 or denomination.

26 ~~5.2.5 Facilities licensed by the Department of Public Health and Environment shall submit to~~  
27 ~~the Department a copy of their policy and procedure to comply with this regulation and all~~  
28 ~~forms used to implement it, and shall promptly submit to the Department any future~~  
29 ~~amendments to such policies and procedures.~~

30 5.2.- EMERGENCY ROOM RECORDS. Patient records in the custody of emergency rooms of  
31 facilities described in 5.2.1 shall be available to patients or their designated  
32 representatives IN THE SAME MANNER AS INPATIENT OR DISCHARGED INPATIENT RECORDS. ~~as~~  
33 ~~provided in 5.2.~~

34 5.2. If any changes/corrections, deletions, or other modifications are made to any portion of a  
35 patient record, the person must note in the record the date, time, nature, reason,  
36 correction, deletion, or other modification, his/her name and the name of a witness, to the  
37 change, correction, deletion or other modification.

#### 38 5.4 EFFECT OF THIS PART 5 ON SIMILAR RIGHTS OF A PATIENT

39 5.4.1 Nothing in this Part 5 shall be construed so as to limit the right of a patient or the patient's  
40 designated representative to inspect patient records, including the patient's medical or  
41 psychological data pursuant to section 24-72-204(3)(a)(I),C.R.S.

42 5.4.2 Nothing in this Part 5 shall be construed to require a person responsible for the diagnosis  
43 or treatment of venereal diseases or addiction to or use of drugs in the case of minors,  
44 pursuant to sections 25-4-402(4) and 13-22-102,C.R.S.,~~1973~~ to release patient records  
45 of such diagnosis or treatment to a parent, guardian, or person other than the minor of his  
46 designated representative.

1  
2

5.4.3 Nothing in this Part 5 shall be construed to waive the responsibility of a custodian of medical records in facilities to maintain confidentiality of those records in its possession.