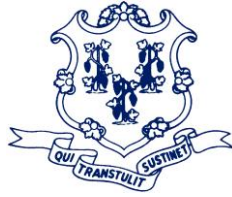


The Connecticut General Assembly



Medical Record Requests and Records Fee Working Group Meeting

MEETING MINUTES

Tuesday, November 28, 2023

ATTENDANCE: Representative Mike Quinn, Representative Christine Conley, Michael D'Amico, Jennifer Cox, Marie Gallo-Hall, Kyle Probst, Liz McElhiney, Rick Silver, Rachel Pattison, Kathleen Nastri, Carl Schiessl, Mike Johnson, Sue Schaffman, Rep. O'Dea

I. CONVENE MEETING

Representative Quinn called the meeting to order at 10:02AM.

II. REMARKS BY THE CHAIRS

Representative Quinn offered welcoming remarks and asked his co-chair if she had anything additional. Representative Conley also offered welcoming remarks.

III. APPROVAL OF MINUTES – November 14th

Representative Quinn asks for a motion to approve the minutes. Michael D'Amico makes the motion; Rep. Conley seconds the motion. The motion passes and the minutes are approved.

IV. DISCUSSION ON LEGISLATIVE PROPOSALS

Representative Quinn asks for Michael D'Amico to explain his proposal.

Michael D'Amico states he looked at the version that Public Health passed and then incorporated most of that language to his proposal. He then goes over line by line the language from Public Health and states that he added other records from any other healthcare provider. He also states that they addressed that not every record provider has electronic formats, so that those providers don't get penalized for not providing electronic records. He states that language was added so that a patient's attorney can request the records not just the patient because that was an issue raised. He states they added a reasonable cost-based fee determined by federal law, regulation or administrative guidance; whichever is less. The final change they propose relates to expedited copies and makes it mandatory for the copy to be provided within 10 days. He states they added it because sometimes there is a dire need for the records because of statute of limitations.

Representative Quinn thanks Rick and Kathleen for also working with Michael on this, and asks them both if they have anything to add. Kathleen is juggling two meetings at once, and Rick states he has no further comments.

Representative Quinn then opens it to questions.

Jennifer Cox asks related to statute of limitations and counting to 120 days, do they count from the natural statute of limitations or the 90-day extension. Michael states on the natural expiration not the tolling period.

Jennifer asks how often it happens that they can't bring a case because they couldn't get the records, and how frequent would this language actually be used. Rick states it happens pretty frequently because to bring an action in Connecticut you must have a position that there is a good faith declaration of negligence, and in order to do that a physician won't give that position without the full medical records (hospital and PCP records).

Jennifer Cox states there isn't that much confusion on the federal level and the language related to fees and who can ask for the records. She states this change would make the patient and the lawyer the same, and that isn't the federal law. She states this language needs to be more fleshed out and be HIPAA compliant. She also expresses concerns with the vendor language, she states the vendor can't do anything without the covered entities instruction and she doesn't think this language is the way to deal with the issue and that HIPAA would likely block the language. She states all of the language needs work.

Michael D'Amico rebuts and states that the delay in getting the records can sometimes thwart lawsuits and that it is a real issue. He states it happens frequently enough that it is important to address it. He asks Jennifer where a HIPAA compliant authorization clause should be put into the language. She states the concept under CT law that a patient signing the release is the same as asking. Michael states he wants to get the verbiage right for the language so that people can be supportive and so that it covers vendors and providers. Jennifer says she will look at it and get back to the group, but that it could be in conflict with HIPAA.

Rep. Conley asks if people can send their proposals in PDF's and also Word in order to see the changes to statutes. She states some people need color copies but not all do. She asks if there is a way to write language to get just a part of a record, because some people don't need the whole record (just the ER record, or MRI for example).

Kyle Probst gives the distinction between a third-party request and a patient request, and that HIPAA only gives fees on the patients request. He also states that there are significant labor costs for a third-party request (life insurance agencies, attorneys, etc.) because they must sift for sensitive information which takes much longer. He states 508 requests (third-party) always require the HIPAA verification which have various elements. He states a 524 request (patient request) is much different under HIPAA. He states the federal government set fees for the third-party and leaves the fees for patients up to the states. He states many states have different fees for electronic or paper, and some have reasonable fee models. He states we shouldn't treat everything like a patient request because that doesn't align with HIPAA. He states his attorney turnaround-time for records is five days from when it is entered into their system, which he assumes people are going to dispute.

Rep. Quinn states that within five days from when you enter it into the system but asks if he has a stat for how long it's been before entered into the system. Kyle states there is a disconnect from when a provider gets a request, and when it gets to the third-party. Kyle hopes to work with Jennifer to when requests can be sent directly to the third-party vendor instead of the provider.

Rachel Pattison states there needs to be more review under the HIPAA authorization, because her understanding is that HIPAA doesn't apply to workers compensation. She states she has heard some providers don't accept the form, and that having providers accept the form it could expedite requests.

Rep. O'Dea asks Kyle for copies on what the 21 states do for fees on digital and paper, and Kyle will provide those. Rep. O'Dea states that Yale's third-party takes weeks to get records. He states it is a good point the third-party costs versus the patient costs. He believes it is outrage to charge a patient thousands of dollars for a digital version and asks if it has been addressed yet. Kyle states that the 21 states take various approaches, those that have different fees for digital versus paper. Kyle states that there should be a hard cap on fees for records, and to figure out what it is. He states that you shouldn't cap a paper record because of the costs of paper but it also incentivizes people to switch to electronic because it gets records faster and is more secure. He states Arkansas enacted a flat \$75 fee for electronic medical record requests. He also states the original fee was created in 1993 and that the 65 cent per page fee would be \$1.40 today.

Rep. O'Dea states that they don't want the hospitals to lose money but that the ten-thousand-dollar charge is outrageous. He states that the Arkansas model sounds good but wants to make sure hospitals aren't losing money on that subsidizing the costs. He states he looks forward to seeing the data from Kyle.

Rick Silver states that if they apply for the record under the federal system, it's roughly six dollars. He states California charges a search fee and it's only \$4. Rick thinks the claim that the attorney shouldn't be able to get the record makes no sense, and that he is most concerned about the fee situation than the statute of limitation issue.

Elizabeth McElhiney states that a personal representative is different than a patient's attorney and that they must be handled differently by the third-party. She states the third-party always wants to provide the records as quickly and cheaply as possible.

Rep. Conley states that an issue that still hasn't been addressed is getting the requests to the third-party vendors from the providers, and if we are only looking at the last leg of the request, we aren't fully addressing the issue.

Jennifer Cox states the entire system is built like Frankenstein. She states from the hospital's point of view, they would rather get the record to the attorney late to ensure that privacy wasn't violated. She states that workers comp insurers don't have to do HIPAA forms, but that they aren't completely out from under HIPAA.

Kyle states he welcomes the comparison of states to come up with a fee schedule but doesn't support California. He states they haven't been changed since 1986 and that there are two different fee schedules.

Michael D'Amico believes there should be a time limit for a provider to get the record request to the third-party, and then a time limit for a third-party to get the

record to the requestor. He believes there should be a fee to incentivize the timeliness of that process.

Marie Gallo-Hall asks where the proposed legislation will be going in regard to the Workers Compensation forum. She states last years proposal was more workers comp directed, than this proposal. She states they are revising the workers compensation authorization. Rep. Quinn states that section b of 31-294f is sparse and they would have to come up with a fee for the workers compensation road related to medical record fees.

Rep. O'Dea states that there is nothing related to digital versus papers for caps in the proposal and asks if Michael D'Amico is open to that discussion. He says yes.

Rep. O'Dea asks if any states stagger fees based on timeline. He also asks why Jennifer thinks it'd be extraordinary if CT adopted Utah's standards for medical records. She states because Utah isn't supportive of various medical ideologies that Connecticut is, and that in Utah it is easier to get a record because they care about much less. Kyle adds that Utah has a \$33 handling fee and adds a CPI adjustment often.

Rick states there are 14 states that have no fees at all. He lists various states that have very low caps on digital record requests. He states it's very rare he receives records in 30 days, and that his firm has someone dedicated to calling third-parties and providers to get the records because of how bad the delay is.

Rachel asks why the changes to 20-7c were proposed. Mike says he isn't sure what she means. Mike says that these changes weren't proposed with workers compensation in mind. Rep. Quinn states that the bill Rep. Blumenthal put forward didn't have workers compensation in mind either, but that he thought it would make sense to do something workers compensation related, mainly on the timeliness.

Kyle rebuts Rick's statements on the various states with low fees.

Rep. Quinn states that the current proposal isn't the final product and isn't purpose but it's a starting point. He states he and Rep. Conley will have a proposal ready for discussion at the next meeting.

V. ANNOUNCEMENT OF TIME AND DATE OF NEXT MEETING

- Tuesday, December 12th @ 10:00am

VI. ADJOURNMENT

- Representative Quinn asked for a motion to adjourn the meeting. Kyle Probst makes the motion, Michael D'Amico seconds the motion. The meeting adjourned at 11:46AM.