

# The Connecticut General Assembly



## Medical Record Requests and Records Fee Working Group Meeting

### MEETING MINUTES

Tuesday, December 12, 2023

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

**ABSENT:** Sen. Anwar, Jennifer Cox, Sen. Somers, Kim Schlottman, Kathleen Nastri, Mike Johnson

### **Convene Meeting**

The meeting was convened at 10:01 AM by Rep. Quinn.

### **Approval of minutes – November 28<sup>th</sup>**

The motion was made by Michael D'Amico, seconded by Rep. Conley. The minutes were approved via voice vote.

### **Discussion on Non-Workers Comp Medical Records Requests**

Rep. Quinn asks Kyle to summarize the proposal submitted to the group.

Kyle states the goal was to not do a complete rewrite and address the issue of turnaround time for medical records requests. They proposed a fee adjustment for the paper records and understands there is a concern that the medical records should be cheaper and easier to transfer. He states the industry wants to address the "runaway" invoices. They request that it increases to 90 cent a page, to reflect the increase in costs of everything over the years. They state they propose no cap on paper records to incentivize people request records electronically. He states it would be 60 cent per page for electronic. They propose a \$300 maximum amount for an electronic copy. They also propose a \$30 flat fee to furnish a copy of a radiology image, if it had to be on printed film, it'd be \$10 per printed film. He also wants the clock to start when the third-party gets the request, but they proposed 3 days after the date the request is post-marked or 2 days after an email or fax is sent. He proposed if the request isn't returned or have no written response in 30 days, the invoice would be reduced by 50%. They also added a CPI adjuster to the proposal as well. He states the proposal covers all medical providers as well (19a-490b and 20-7c).

Rep. Quinn asks Kyle about the \$25 search fee. Kyle states the basis for that is the initial validation work and search and retrieval process (patient signoffs, statements, power of attorney documentations, etc.).

Rep. Quinn asks if a patient needs updated records every six weeks if the client would get hit with a \$25 search fee every time. Kyle confirms that would be the case.

Rep. Quinn discusses the medical records request which is HIPAA compliant for workers compensation, and questions whether the state developed a form that covers all situations, and all companies agree of the form if the third-party would still need to look at the form and validate it every time. Kyle states within the form document there are certain terms that have variables in them, so the third-party would still need to verify. Kyle agrees if everyone has the same form it would speed up the process, but you can't assume everything will be correct.

Rep. Quinn asks how contracts are structured between medical providers and the third-party. Kyle states they aren't paid by the provider, and they are worded in a way that the third-party is paid by the fees collected by statute for providers.

Rep. Conley states she has serious concerns with the proposal. She believes the \$25 fee doesn't take into account the practicalities of getting medical records and there is an assumption that each request is complex and that isn't the reality. Related to the CPI adjuster, she doesn't believe this should be added to the statute. She states that she opposes the notion that all providers use third-party providers, and to have rate increases on people who don't use third parties is inappropriate. She also opposes expanding the response time to 30 days.

Michael states he submitted a revised proposal and hopes to comment on it. He believes the proposal submitted by Kyle ignores patient requests and lawyer requests are treated differently under federal law which is part of the problem the group is trying to solve. Michael believes much of this would violate federal law. He states when he revised his own proposal, he took into consideration federal law and making sure it wouldn't violate it. He states the amount suggested for the cap on electronic records (\$300) is way far above the cap in any other state. He also was surprised by the proposed increase in the per page fee, and states when looking at other states the average per page fee for hard copy are below the current amount in CT statute. Michael appreciates the attempt to deal with timing of requests but shares similar concerns that Rep. Conley has. He states his concern that the healthcare providers and business associates don't do anything to track how long it takes for a request to get from healthcare providers to third parties. He agrees both statutes need to be addressed.

Rick asks Kyle if he charges Yale-New Haven based on the anticipated volume of service. Kyle states he doesn't have the contract in front of him.

Rick believes the industry charges hospitals based on the anticipated volume of service needed based on the size of the hospitals. Kyle states they don't charge the hospitals, their contracts are structured that third parties are given the ability to collect the fees.

Rick states he is trying to determine what their other income is from providing services directly to hospitals. Liz McElhiney confirms what Kyle said, and that they don't charge a fee to the hospitals but that they collect fees permitted. Kyle states they do offer additional services for a fee to hospitals for other services, but not for medical records services.

Rick states he has requests that have taken three months and asks if Kyle has any records of requests that take long. Kyle states they do have a request log.

Rep. Quinn asks if each company tracks how long it takes to get records completed. Kyle says that they don't process records on a linear path, and that there are nuances in getting records based on importance.

Rep. Quinn imagines if the 50% reduction fee proposal would prompt the industry to track employee's performance. Kyle says it would be less about individual employees and more about the company.

Carl Schiessl believes CT law should support patient rights as the north star, and that providers are gatekeepers of privacy rights. He states providers must validate that all necessary forms and paperwork are documented and that if there are authorizations needed that they are adequately completed. The provider doesn't have the luxury of assuming that requestors are legitimate or completed all the steps. He also states that CT law should be consistent with HIPAA and promote patient privacy. He states HIPAA separates the right of the patient to access their own records from the ability for a third party to access records with an authorization. He states if you expedite all records, then no records are expedited. He also believes any expedited records should be for medical reasons not for legal use. He talks about SB 9 (PA 23-97) and doesn't know what the impact will be. He believes providers shouldn't be held responsible for inaccuracies if the avenue is to rush to generate records.

Kyle states they put patients' privacy first. He states he appreciates the language submitted by Michael and states he didn't change the language for efficiency in drafting. He states HIPAA preempts state law.

Rep. Conley states attorneys are regularly requesting records for the authorization of treatment, and that there will be a need to figure out prioritizations.

Michael states it doesn't make any sense to create something that clearly conflicts with HIPAA/federal law.

Kyle states Michael's proposal is the reiteration of last years proposal, and Kyle appreciates a per page fee for electronic records. He has concerns with the search fee of \$25 because of the limitations on it as well as the records caps because of the cost of labor and goods in Connecticut.

Rep. O'Dea asks if there is a state that Connecticut should mirror. He states we've been adding CPIs to a number of bills in the past, and that he is amendable to that proposal. He states he's less concerned about the smaller fees than he is about the \$10,000 bills. Michael isn't sure which state has it best, and believed looking at the existing statute and modifying it made the most sense.

Rick Silver states 14 states have no fees and other states have very minimal fees. He states there shouldn't be an issue with a proposal between how records are handled for patients versus attorneys.

Kyle believes what's best for everyone should be somewhere in the middle and that the group should take a reasonable approach to it.

Michael goes through his revised proposal to 20-7c. He states he separated the fees to be compliant with federal law and with the concerns from Kyle. He goes over the rationality for the per page rate that he has proposed, by looking at various factors (printers, other states, etc.). He states the rationality behind the 35-cent provision and the electronic cap was so that there could be a cap and implies when a search fee would be appropriate. He states he added a provision that if someone requests in color and it can be provided in color, then it should be. He states he didn't cap hard copy fees in the spirit of compromise. He states he added a phrase to address that there are other reasons for an expedited copy, not just statute of limitations. He states he added a provision that if a record isn't provided in 30 days the cost is 50% and if it's more than 45 days it is free of charge.

Rick Silver asks the Chair to be able to send to the working group delays from Ciox and what other states do related to records. The Chair grants it.

Kyle asks if the working group will vote on the final proposal, or what the end result and recommendation looks like. Rep. Quinn states they would eventually vote on something, which would be created by the Chairs and that would be what is submitted to the legislature.

### **Announcement of Time and Date of Next Meeting**

Tuesday, January 2<sup>nd</sup>, 2024 at 10:00am

### **Adjournment**

The motion to adjourn was made by Michael D'Amico and seconded by Rep. Conley. The meeting was adjourned at 11:34AM.