



February 19, 2015

State of Connecticut  
Joint Public Health Committee

**RE: Proposed S.B. 73**

Senator Gerratana, Representative Ritter and Members of the Joint Public Health Committee:

My name is Kyle Probst and I am Counsel and Director of Government Relations for HealthPort Technologies, LLC ("HealthPort") based in Alpharetta, GA. HealthPort is the country's largest contractor performing HIPAA compliance for third party medical record requests. HealthPort operates in all fifty states and strives to relieve medical providers of their medical record production labor and expense so that they can focus on what they do best – provide quality health care. I am here today to speak in favor of Proposed SB73.

**Why is SB 73 necessary?**

Currently Connecticut medical providers are in the difficult situation of trying to implement electronic health record software ("EHR") throughout their health network while meeting federal meaningful use standards and trying to predict future Connecticut health information exchange requirements. At the same time, large hospitals and clinic practices are being acquired at record rates which results in a single medical provider having multiple EHRs. Since the great majority of EHRs are not interoperable, medical providers are faced with two unfavorable options: maintain these "legacy systems" or go through the costly endeavor of converting the acquired facility's records into the acquiring provider's EHR.

Unfortunately, the culmination of events above have made the process of producing an electronic health record to an authorized third party requestor more time consuming and difficult than when the records were on paper in a patient folder. Obtaining a record from an EHR is not as easy as pushing a button, which many people believe. (*The release of information ("ROI") process is elaborated upon in a later section.*) Each EHR has its own password protocol and each is designed differently. Simply locating a proper patient file in an EHR can require searching multiple EHRs. Therefore, individuals who research records must become experts with many different EHRs in order to ensure they are obtaining and reproducing the entire, and proper, records requested.

Therefore, the current fees, which were established in 1993, are outdated and do not compensate the provider for the labor and expense involved in producing a requested medical record. Furthermore, when these rates were established, HIPAA did not exist, electronic health records were merely in their infant stages, and data breaches were not in the news regularly. As further proof of the inadequacy of the statutory rates, in 2014 Connecticut was one of the top five states with the highest cost of living, yet when it comes to fees for the production of medical records Connecticut is below the averages for base fees and per page fees. (*Statistics are provided in a later section to confirm this point.*) Providers simply cannot afford to hire professional employees to perform medical record production at these rates. Therefore, providers may be forced to subsidize their medical record departments from revenues generated from other services.



Alternatively, many providers will turn to contractors, like HealthPort, to perform medical record production. It's no coincidence that HealthPort's presence in Connecticut has grown substantially since the American Recovery and Reinvestment Act of 2009, which required medical providers to implement EHRs and meet meaningful use standards or face Medicare reimbursement reductions.

HealthPort, formerly Smart Document Solutions, has focused its business on medical record production for over forty years. In that time HealthPort has become the model of efficiency in medical record production. HealthPort can operate under statutory fees that medical providers simply cannot. However, Connecticut is a challenge with its current fee structure, even for HealthPort. Adoption of the research and handling fee would relieve some of the financial burden providers, and HealthPort, face when trying to produce medical records to third party requestors. What this would mean to third party requestors is that they would have to pay \$20 more for a medical record regardless of the size of the record. The research and handling fee be charged one time per request and would only be charged to third party requestors who must submit a HIPAA authorization to obtain the records. The fee essentially reimburses providers for the time and labor involved in validating the HIPAA authorization, logging the request and locating the patient file in the HER, as well as any ancillary tasks required by the requestor. Essentially, any third party requesting records would have to pay a flat fee of \$20 more for the file than they would have paid under existing law.

While the main purpose of Proposed SB73 is to establish a research and handling fee of \$20 for those requests that require a HIPAA authorization, the scope is broader than that. These amendments would also establish consistency with HIPAA, since HIPAA was established after the earliest version of the Connecticut law.

#### **Summary of the current law –**

Current law (established in 1991 for hospitals and 2004 for clinics) sets fees for the reproduction of medical records at no more than \$0.65/page. The current law exempts patients and their "representatives" who are requesting records for a social security disability application or appeal.

#### **Summary of the revisions in Proposed SB 73 –**

The Proposed SB 73 would:

- 1) Establish and define the term "personal representative" to be consistent with HIPAA.
- 2) Establish parameters for records requested via subpoena or court order.
- 3) Establish a \$20 research and handling fee to be paid by third party requestors.
- 4) Establish a \$10 certification fee if certification is requested.
- 5) Establish standards for when an electronic copy of a medical record must be produced to a requestor.

#### **Other State Fees -**



As of December 2014, the national average fee for the first page was \$0.79/page (43 states). The national average base fee for “search and retrieval”, “research and handling” etc... is \$18.15 (31 states). Additionally, the following 15 states have adopted language that allows for the periodic increase in the rates based upon CPI: Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Washington, West Virginia, and Wisconsin.

As stated earlier, in a third quarter of 2014 study, Connecticut had the second highest cost of living standard in the country, second only to Hawaii.

These statistics place Connecticut medical providers in the unique and unfortunate situation of having to pay higher than average wages to their employees who produce medical records while collecting less than the average for the work they perform.

### **The ROI Process –**

If a patient requests their medical record they do not need to submit an authorization under HIPAA, however, a third party requesting a patient’s medical record needs to submit an authorization signed by the patient. The Association of Health Information Outsourcing Specialists (AHIOS) created a 32 step flowchart explaining the labor involved in processing a third party authorized request. AHIOS is working on revising this flowchart based upon the ubiquitous nature of electronic records but it is not ready for publication at this time. Verifying the authorization is a specialized task that requires training and HIPAA/HITECH understanding.

A valid HIPAA authorization contains the following:

Required Elements:

- 1) A description of the information requested.
- 2) The identity of the person authorized to request the information.
- 3) The identity of the entity authorized to release the information.
- 4) The purpose of the request.
- 5) Expiration date, or event, of the authorization.
- 6) Signature of the patient authorizing the request.
- 7) Date the authorization was signed and is effective.

Required Statements:

- 1) The patient has the right to revoke the authorization.
- 2) The ability or inability of the provider to condition treatment, payment, enrollment or eligibility for benefits on the authorization.



3) The potential for the disclosed information to be re-disclosed without authorization.

After the authorization has been validated it must be logged so it may later be recalled in the event of an accounting of disclosures pursuant to HIPAA. Once logged, the provider must locate the medical record number of the patient in their EHR to locate the actual records. The provider then searches the EHR using the medical record number.

When navigating the EHR you have to locate the responsive records. A typical EHR is set up with service dates under each patient. The service dates correspond to types of files, ie. face sheet, admission (for outpatient surgery clinics), history and physical, consultation report, possible operation/surgery report (for outpatient surgery clinics), pathology reports, laboratory reports, radiology reports, cardiology reports, special tests, progress notes, physician orders, medications, nurses notes, discharge (for outpatient surgery clinics), genetic testing, patient problem list, billing records, treatment plan, etc...The list is really endless and completely conformable to the medical providers needs. Therefore, the categories and terminology may not be consistent from one vendor to the next. Keep in mind that health system EHRs have the same set-up so the length of time it takes to search a health system EHR (as opposed to an EHR for one location) is even longer than a physician practice.

Despite common perception, electronic health records have not reduced the cost of medical record production. In fact, there is no shortage of articles written regarding the time-consuming labor necessary to search electronic health records when EHR systems are not interoperable, which very few are interoperable.

SB 73 will help bring Connecticut's medical retrieval and production system in line with the federal changes and mandates required of today's healthcare systems and providers.

Respectfully submitted,

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HealthPort Technologies, LLC