



Connecting lawyers, nonprofits, and communities

June 2011

New York Public Health Law Section 18

The New York Education Law was recently amended to allow educational and nonprofit corporations to employ social workers, mental health professionals, and psychotherapists to practice their profession if they receive a waiver from the New York State Department of Education's Office of the Professions.¹ The waiver application, Form CE, requires the organization to affirm that it will comply with New York Public Health Law § 18 regarding access to patient information.²

Disclosure Requirements

Public Health Law § 18 entitles patients (or their legal guardians, distributees, or attorneys) to access their patient information upon written request.³ Upon receiving such request, the health care provider must provide the patient an opportunity, within 10 days, to inspect the information.⁴ The provider must also furnish, within a reasonable time, a copy of any patient information requested and may charge a reasonable amount for doing so.⁵

Patient information refers to any information relating to an examination or health assessment, including tentative or actual diagnosis. It generally does not include the health care provider's personal notes and observations, information received from another practitioner, or information about the patient from other persons that was provided on the condition that it would not be disclosed.⁶

Denial of Access to Patient Information

The health care provider may deny full or partial access to patient information if the provider determines that access to the information (1) would have a detrimental effect on the provider's professional relationship with the patient, on the treatment or care of the patient, or on the patient's relationship with others; or (2) can reasonably be expected to cause substantial and identifiable harm to the patient or others which would outweigh the patient's

¹ N.Y. EDUC. § 6503-a(1)(a) (2011).

² Note that there are two sections numbered 18.

³ Be careful of confusing this statute with the New York Freedom of Information Law, which separately grants individuals access to information from government agencies in New York.

⁴ N.Y. PUB. HEALTH § 18(2)(a) (2011).

⁵ § 18(2)(d)–(e). The charge must not exceed costs and may not exceed \$0.75 per page for paper copies.

⁶ § 18(1)(e)–(f).

right to access the information.⁷ When making such a determination, the provider must consider all of the facts and circumstances. Factors may include:

- the need for, and the fact of, continuing care and treatment;
- the extent to which the knowledge of the information may be harmful to the health or safety of the patient or others;
- the extent to which the information contains sensitive material disclosed in confidence to the practitioner by family members, friends, and other persons;
- the extent to which the information contains sensitive materials disclosed to the practitioner by the patient which would be injurious to the patient's relationships with other persons, except when the patient is requesting information concerning himself or herself; and
- the age of a minor patient.⁸

The health care provider may also deny access to the provider's personal notes and observations.⁹ The provider must inform the patient of the basis for the denial and the patient's right to appeal the denial to a medical access review committee.¹⁰

This alert is meant to provide general information only, not legal advice. Please contact Linda Manley at Lawyers Alliance for New York at (212) 219-1800 x 239 or visit our website www.lawyersalliance.org for further information.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys work together, delivering expert corporate, tax, real estate, employment and other legal services to community organizations. By connecting lawyers, nonprofits and communities, we help nonprofits to develop affordable housing, stimulate economic development, and operate vital programs for children and young people, the elderly, recent immigrants, and other low-income New Yorkers.

⁷ §§ 18(2)(c), 18(3)(a) & 18(3)(d).

⁸ § 18(3)(d).

⁹ § 18(3)(a).

¹⁰ § 18(3)(e).