

Roberts, Sullivan (RIDOH)

From: Roberts, Sullivan (RIDOH)
Sent: Tuesday, July 31, 2018 9:22 AM
To: Roberts, Sullivan (RIDOH)
Subject: Notice of Proposed Rulemaking

From: Robert Crausman [<mailto:rob@osuc.net>]
Sent: Wednesday, July 25, 2018 5:13 PM
To: McDonald, James (RIDOH) <James.McDonald@health.ri.gov>
Subject: Re: [EXTERNAL] : Fwd: Notice of Proposed Rulemaking

Supreme court justice Potter Stewart's threshold for obscenity "I know it when I see it" hits the mark but doesn't translate well into the language of a regulator.

That said, you may want to tackle the issue in regs by defining at a minimum what must be done and how much time must pass before a romantic relationship is initiated

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Clinical Professor, Alpert School of Medicine/Brown University

From: Robert Crausman [<mailto:rob@osuc.net>]
Sent: Wednesday, July 25, 2018 3:59 PM
To: McDonald, James (RIDOH) <James.McDonald@health.ri.gov>
Subject: [EXTERNAL] : Fwd: Notice of Proposed Rulemaking

Hi Jim,

It should go without saying, but...

I suggest that you define "current patient"

RSC

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August 6, 2018



VIA EMAIL AND HAND DELIVERY

Ms. Paula Pullano
RI Department of Health
3 Capitol Hill
Providence RI 02908
Paula.pullano@health.ri.gov

Dear Paula:

Pursuant to R.I. Gen. Laws § 42-35-2.8 and the State of Rhode Island Department of Health (“RIDOH”) Public Notice of Proposed Rule Making dated July 25, 2018, I am writing on behalf of Sharecare, Inc. (“Sharecare”) and Ciox Health (“Ciox”) to provide written comment on the Proposed Amendment to the Licensure and Discipline of Physicians Regulation (216-RICR-40-05-1) (the “Proposed Regulation”) and to request a public hearing on the Proposed Regulation.

In particular, Sharecare and Ciox suggest the following revisions to Sections 1.5.12(B)(1) and (2) of the Proposed Regulation:¹

1. Reimbursement to the physician for responding to ~~providing~~ a patient ~~request for~~ a copy of their medical record, regardless of format, shall be consistent with federal law specifically 45 C.F.R. § 164.524. ~~not exceed seventy five cents (\$0.75) per page for the first fifty (50) pages. After fifty (50) pages, the fee shall not exceed fifty cents (\$0.50) per page. If a medical record is greater than two hundred and twenty five (225) pages, the total charge will not exceed one hundred and twenty dollars (\$125). If a health record is transferred electronically (e.g., USB, CD or other electronic means), the fee shall be consistent with the number of pages transferred and, if there are greater than two hundred and twenty five (225) pages, shall not exceed one hundred twenty five dollars (\$125.00). An additional charge to reflect actual cost of postage or electronic transfer is permissible.~~
2. Physicians are prohibited from charging a patient who requests their own record ~~a~~ retrieval or certifying fees for duplicating medical records.

¹ Sharecare and Ciox’s revisions are indicated in red font. The RIDOH proposed revisions are indicated in black font.



Ms. Paula Pullano
August 6, 2018
Page 2

In subsection one, Sharecare and Ciox have deleted the word “providing” and added the phrase “request for” to clarify that the identity of the requestor determines whether the relevant Health Insurance Portability and Accountability Act (“HIPAA”) regulation, 45 C.F.R. § 164.524, applies. Specifically, when a third party is initiating a request for personal health information (“PHI”) on its own behalf, with the individual’s HIPAA authorization, the access fee limitations do not apply. *See* Individuals’ Rights under HIPAA to Access Their Health Information 45 CFR § 164.524, U.S. Dep’t of Health & Human Services (Feb. 25, 2016). As a result, RIDOH should revise subsection one to clarify that the patient must request the record in order to qualify for the HIPAA access fee limitations.

Furthermore, RIDOH should remove subsection two in its entirety. Should RIDOH not remove subsection two, it should revise its language as set forth above. Subsection two is unnecessary because the HIPAA regulation referenced in subsection one already prohibits a retrieval or certifying fee when a patient requests his or her record. Thus, subsection two is duplicative of subsection one. Nonetheless, if subsection two remains in the Proposed Regulation, RIDOH should revise its language to clarify that, consistent with HIPAA, the prohibition against retrieval or certifying fees for duplicating medical records applies only to circumstances in which the patient requests his or her own record and not those circumstances when a third-party, including a patient’s attorney, requests those records. The revised provision would also be consistent with R.I. Gen. Laws § 23-1-48, which sets forth the amounts that health care providers may charge third party requestors for duplication of medical records.

Sharecare and Ciox respectfully request a public hearing on the Proposed Regulation.

Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "R. Beretta, Jr.", written over a horizontal line.

RICHARD R. BERETTA, JR.
rberetta@apslaw.com

RRB:af

cc: Leslie D. Parker, Esq.

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
R.I. DEPARTMENT OF HEALTH

* * * * *

PUBLIC HEARING IN RE:
RULES AND REGULATIONS FOR
LICENSURE OF PHYSICIANS

original

* * * * *

R.I. DEPARTMENT OF HEALTH
3 CAPITOL HILL
PROVIDENCE, RI 02908
AUGUST 22, 2018
10:00 A.M.

M.E. HALL COURT REPORTING
108 WALNUT STREET
WARWICK, RI 02888
(401) 461-3331

E X H I B I T S

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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2	EXISTING RULES AND REGULATIONS	7
3	RIGL 5-37-1.4, SUBSECTION 5 AND	
	5-19.2-3	7
4	OFFICE OF REGULATORY REFORM E-MAIL	7

1 (COMMENCED AT 10:05 A.M.)

2 HEARING OFFICER ROBERTS:

3 Welcome. We are here today regarding to public
4 hearing concerning the Rules and Regulations
5 for Licensure and Discipline of Physicians.
6 This hearing is being conducted under the
7 provisions of Rhode Island General Laws 23-17
8 and 42-35. Today is Wednesday; August 22,
9 2018. My name is Sullivan Roberts, Rules
10 Coordinator for the Rhode Island Department of
11 Health, also known as RIDOH, and I will be the
12 Hearing Officer for today's proceeding.

13 Before we start, and to prevent
14 any interruption of the process, at this time,
15 I would like to ask those of you with cell
16 phones, pagers and watch alarms to turn them
17 off or set them to silent or vibrate.

18 The purpose of the hearing today
19 is to afford interested parties an opportunity
20 to comment on the proposed Regulations, allow
21 as many people as possible to be heard, and to
22 ensure that an accurate record of all comments
23 is obtained. This hearing is intended for your
24 participation only and is not intended to

1 provide a forum for discussing, debating,
2 arguing or otherwise having dialogue on the
3 Regulations before us with RIDOH personnel as
4 part of this public hearing.

5 If you would like to speak, the
6 procedure we will use is as follows.

7 Please register to speak at the
8 rear of the room. Speakers will be taken in
9 order of registration. Up to five minutes will
10 be allowed for your presentation, unless the
11 lack of speakers allows for additional time.
12 Any interruption due to the Stenographer's need
13 to clarify your testimony will not count
14 against your allotted time. I will indicate
15 when you have one minute of time remaining. If
16 you are unable to complete your testimony in
17 the time allotted, you may have an opportunity
18 to speak if any time is remaining after the
19 other speakers who have signed up complete
20 their testimony.

21 When you are called, come to the
22 podium. Identify yourself by name and
23 affiliation, if any. Please spell your name
24 and give the full name of your organization, if

1 you used an acronym, such as NASA. Make your
2 presentation and make sure to conclude within
3 the allotted time of five minutes. If you have
4 a written copy of your statement, we would
5 appreciate if you could provide it for the
6 record.

7 In accordance with the
8 requirements of the Administrative Procedures
9 Act, additional written comments on these
10 proposed amendments will be accepted by Monday,
11 August 27, 2018. After the conclusion of the
12 public comment period, RIDOH has four options
13 under State law.

14 The first option is to file the
15 Regulations as posted with the Secretary of
16 State.

17 The second option is to file
18 with minor technical changes, such as
19 correcting spelling, punctuation, et cetera.

20 The third option is to make
21 non-technical changes in what you see before
22 you today, which would be addressed in RIDOH'S
23 concise explanatory statement filed with the
24 final regulations and could also necessitate a

1 new public hearing and associated public notice
2 posting.

3 And the fourth option is not
4 file the proposed Regulations, in which case
5 the current Regulations would remain in effect.
6 Unless specified by law, regulation or at the
7 discretion of RIDOH, once filed, the
8 Regulations become effective 20 days after
9 filing and have the force of law upon that
10 date.

11 Are there any questions on how
12 the public hearing will be conducted today?

13 (PAUSE)

14 HEARING OFFICER ROBERTS: At
15 this time, for the record, we will have a
16 presentation of exhibits. The first exhibit is
17 the Notice of proposed rule making posted on
18 the Rhode Island Secretary of State's web site
19 on August 7, 2018, which includes a copy of the
20 proposed Regulations with revisions indicated.

21 (EXHIBIT 1, NOTICE OF PUBLIC
22 HEARING, MARKED)

23 HEARING OFFICER ROBERTS: The
24 second exhibit is a copy of the existing Rules

1 and Regulations for Licensure and Discipline of
2 Physicians last filed with the Rhode Island
3 Secretary of State in September, 2017.

4 (EXHIBIT 2, EXISTING RULES AND
5 REGULATIONS, MARKED)

6 HEARING OFFICER ROBERTS: The
7 third exhibit is a copy of Rhode Island General
8 Laws 5-37-1.4 Subsection 5, and 5-19.2-3, the
9 enabling statutes for these Regulations.

10 (EXHIBIT 3, RIGL 5-37-1.4,
11 SUBSECTION 5 AND 5-19.2-3, MARKED)

12 HEARING OFFICER ROBERTS: The
13 fourth and final exhibit is a copy of the
14 e-mail dated July 24, 2018, from the Office of
15 Regulatory Reform to Sullivan Roberts
16 confirming that RIDOH was authorized to move
17 forward with promulgation of these amendments.

18 (EXHIBIT 4, OFFICE OF REGULATORY
19 REFORM E-MAIL, MARKED)

20 HEARING OFFICER ROBERTS: At
21 this time, I would like to call the first
22 speaker, Kyle Probst.

23 MR. PROBST: Thank you. My name
24 is Kyle Probst, K-Y-L-E, P-R-O-B-S-T. I'm the

1 director of Government Relations for Ciox,
2 that's C-I-O-X, Health out of Alpharetta,
3 Georgia. We are a national medical records
4 disclosure company working on behalf of covered
5 institutes throughout the country to produce
6 medical records to third-party requesters and
7 other medical providers when they are properly
8 requested under federal and state law.

9 We pride ourself with complying
10 with federal and state privacy laws and
11 insuring patient privacy. I'm here to comment
12 today on Sections 1.5.12, parenthetical B,
13 parenthetical one and parenthetical two. These
14 deal with the fees that can be charged for a
15 copy of a patient's medical record.

16 It is my understanding and the
17 understanding of Ciox is that part of the
18 Department's intent was to be consistent with
19 HIPAA, as there's a reference to the 45 CFR
20 164.524, which is the fee provisions for a
21 patient requesting their own records.

22 We previously submitted a letter
23 from Adler, Pollock & Sheehan, who's our
24 representation in this matter; and stated that

1 if we are going to be can consistent with
2 HIPAA, we believe the focus should be on a
3 patient requesting their own record. HIPAA
4 only regulates the fees that a covered entity
5 or business associate may charge to a patient
6 or their personal representative, and there's
7 case law that clearly defines who that personal
8 representative is, and it is limited to someone
9 who generally can make health care decisions
10 for the patient or represents the estate.

11 So, in that respect, we believe
12 Paragraph 1 may go a little bit further and be
13 a little bit confusing with its choice of
14 language. We would like to have the language
15 focus on who is actually requesting the record,
16 so that the fee provisions under HIPAA would
17 only apply if a patient or their personal
18 representative request the record. Again, we
19 want to focus on the request not on actually
20 providing the record.

21 Because in HIPAA and in the
22 February 25, 2016 OCR Guidance, the focus is on
23 who's requesting the record. HIPAA, again,
24 does not regulate the fees that can be charged

1 for a third party such as an auditor, an
2 insurance company or an attorney.

3 Second, in Subparagraph 2, there
4 is a reiteration that retrieval and
5 certification fees for duplicating records
6 cannot be charged to the patient; and in our
7 written statement, we acknowledge that if
8 you're going to say HIPAA applies, then
9 reiterating part of what is already in HIPAA is
10 not necessary. So, we believe Paragraph 2
11 could actually be struck in its entirety; but if
12 you're going to include that language, we would
13 like it to be clearer that you can only
14 limit -- I'm sorry, that you shouldn't be able
15 to charge a patient only a retrieval or
16 certification fee. That a third-party should
17 be able to be charged those fees and that would
18 be consistent with the HIPAA language.

19 Once again, our intent is really
20 to make sure that we are aren't doing anything
21 in Rhode Island that is contrary to the
22 language in HIPAA with respect to the fees that
23 can be charged to the patient or a personal
24 representative, and we are not broadening the

1 scope in giving other third parties the benefit
2 of the fees established in HIPAA, which is
3 actually a restriction to the reasonable
4 cost-based fee charged to a patient or personal
5 representative. Thank you.

6 HEARING OFFICER ROBERTS: Thank
7 you. The next speaker is Leslie Parker.

8 MS. PARKER: Good morning.
9 Leslie Parker, L-E-S-L-I-E, P-A-R-K-E-R, from
10 Adler, Pollock & Sheehan. My office represents
11 Share Care, Inc. and Ciox Health. On August 6,
12 2018, Richard Berretta, from my office,
13 submitted written comments on behalf of Ciox
14 and Share Care, and those comments,
15 specifically the comment related to Sections
16 1.5.12(B)(1) are consistent with the Department
17 of Health practice and other regulations,
18 specifically Department of Health regulations
19 often reference and/or incorporate federal
20 CFRs. By way of example, the following
21 regulations include and incorporate federal
22 CRFs by citation into the regulation. The
23 state laboratory regulations, the licensing
24 home nursing care providers and home care

1 providers regulations, the licensing of nursing
2 facility regulations, the licensing of
3 optometrists regulations, and the licensing of
4 patient safety organizations regulations.

5 Thank you.

6 HEARING OFFICER ROBERTS: Thank
7 you. Are there any other personal present who
8 would like to make a statement concerning the
9 proposed Regulations?

10 (PAUSE)

11 HEARING OFFICER ROBERTS: Seeing
12 no additional speakers present, this hearing is
13 now closed.

14 (HEARING CLOSED AT 10:16 A.M.)

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C E R T I F I C A T E

I, Mary Ellen Hall, hereby certify that the foregoing is a true, accurate and complete transcript's of my notes taken at the above-entitled hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of August, 2018.

Mary Ellen Hall/Notary Public

MARY ELLEN HALL, NOTARY PUBLIC/
CERTIFIED COURT REPORTER

DATE: AUGUST 22, 2018

IN RE: LICENSURE AND DISCIPLINE OF PHYSICIANS

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**RHODE ISLAND
MEDICAL SOCIETY**

23 August 2018

Paula Pullano
RI Department of Health
3 Capitol Hill
Providence, RI 02908-5097

Dear Paula:

Re: Board of Medical Licensure and Discipline Regulations: 216-RICR-40-05-1

The Rhode Island Medical Society would like to be on the official record of public comments on these proposed changes to the current regulations.

Specifically, we write to endorse the comments and suggestions made by the representative of Adler, Pollock & Sheehan, PC, on behalf of their clients pertaining to *Section 1-5-12 (B) Reimbursement*. These comments and suggestions were made during the public hearing held on August 22, 2018.

We trust the Department will give close attention to these very constructive and worthy suggestions and incorporate them into the proposed regulations before they are filed.

If you have any questions, please contact Steve DeToy, Director of Government and Public Affairs at sdetoy@rimed.org or 401.331.1401.

Sincerely,

Bradley J. Collins, MD, FACP, FHM
President

August 23, 2018

Ms. Paula Pullano
Rhode Island Department of Health
3 Capitol Hill
Providence, RI 02908-5097

Re: Chapter 40 – Professional Licensing and Facility Regulation
Subchapter 05 – Professional Licensing
Part 1 – Licensure and Discipline of Physicians

Dear Ms. Pullano:

On behalf of the over 575 Rhode Island PAs the Rhode Island Academy of Physician Assistants (RIAPA) thanks you for the opportunity to comment on the proposed amendments to *Chapter 40 – Professional Licensing and Facility Regulation Subchapter 05 – Professional Licensing Part 1 – Licensure and Discipline of Physicians*

In reviewing the regulation we identified an inadvertent restriction of physician assistant (PA) scope of practice created by the definitions of “Practice of medicine” (1.2-A(20)) and “Surgery” (1.2-A(21)).

In defining “Practice of medicine” (1.2-A(20))¹ the regulations state that any person holding themselves out as being able to to perform surgery is considered to be practicing medicine which is limited to allopathic or osteopathic physicians. This is sound public health policy that the RIAPA fully supports.

The definition of “Surgery” (1.2-A(22))² then provides a menu of procedures (e.g. burning, freezing, vapping, suturing; use of scalpels, needles, probes; reduction of fractures and major dislocations) considered to be surgery which, by definition, is considered the practice of medicine. It follows then that as PAs are not physicians they are prohibited from performing any of the procedures constituting surgery which restricts the services they may provide.

Being trained in the same medical model as physicians PAs are capable of providing a wide variety of medical services in collaboration with physicians and are certainly qualified to, and have on a daily basis since the inception of the profession, provided the services described in the definition of surgery.

In order to remedy the restriction we suggest exempting PAs from the provisions of the regulations by adding the following:

1.3.1 Generally

A. No person, unless licensed to practice medicine in Rhode Island, shall practice allopathic or osteopathic medicine or surgery or attempt to practice allopathic or osteopathic medicine or surgery, or any of the branches of allopathic or osteopathic medicine or surgery after having received therefore or with the intent of receiving therefore, either directly or indirectly, any bonus, gift or compensation or who shall open an office with intent to practice allopathic or osteopathic medicine or shall hold himself or herself out to the public as a practitioner of allopathic or osteopathic medicine, whether by appending to his or her name the title of doctor or any abbreviation thereof, or M.D., or D.O. or any other title or designation implying a practitioner of allopathic or osteopathic medicine.

B. These regulations shall not apply to physician assistants licensed under RIGL 5-54

Thank you for your consideration

Sincerely



Janes Carney, PA, DFAAPA
Director of Advocacy and Government Relations

¹ Licensure and Discipline of Physicians (216-RICR-40-05-1)

1.2.19 "Practice of Medicine", pursuant to R.I. Gen. Laws § 5-37-1(15), shall include the practice of allopathic and osteopathic medicine. Any person shall be regarded as practicing medicine within the meaning of the Act who holds himself or herself out as being able to diagnose, treat, perform surgery, use a laser/intense pulsed light, or prescribe for any person for disease, pain, injury, deformity or physical or mental condition or prescribe for any person ill or alleged to be ill with disease, pain, injury, deformity or abnormal physical or mental condition, or who shall either profess to heal, offer or undertake, by any means or method, to diagnose, treat, perform surgery, or prescribe for any person for disease, pain, injury, deformity or physical or mental condition. In addition, one who attaches the title M.D., physician, surgeon, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to his or her name indicating that he or she is engaged in the treatment or diagnosis of the diseases, injuries or conditions of persons shall be held to be engaged in the practice of medicine. Non-ablative treatment is part of the practice of medicine.

² Supra

1.2.22. "Surgery" is performed for the purpose of structurally altering the human body by the incision or destruction of tissues and is part of the practice of medicine. Surgery also is the diagnostic or therapeutic treatment of conditions or disease processes by any instruments causing localized alteration or transposition of human tissue which include lasers, ultra- sound, ionizing radiation, scalpels, probes, and needles. The tissue can be cut, burned, vaporized, frozen, sutured, probed, or manipulated by closed reductions for major dislocations or fractures, or otherwise altered by mechanical, thermal, light-based, electromagnetic, or chemical means. All of these surgical procedures are invasive, including those that are performed with lasers, and the risks of any surgical procedure are not eliminated by using a light knife or laser in place of a metal knife, or scalpel.