

1 **Senate Bill No. 423**

2 (By Senators Wills, Klempa, Browning, Tucker, Miller, Snyder,
3 Yost, Unger, Kessler (Mr. President) and Foster)

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5 [Introduced January 25, 2012; referred to the Committee on Health
6 and Human Resources.]

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10 A BILL to amend and reenact §16-29-1 and §16-29-2 of the Code of
11 West Virginia, 1931, as amended; and to amend said code by
12 adding thereto a new section, designated §16-29-3, all
13 relating to reimbursement for copies of medical records;
14 requiring that one copy of medical records be provided to a
15 patient or representative, upon written request, free of
16 charge; and limiting the fee for subsequent requests to \$10
17 dollars if an electronic format is used.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §16-29-1 and §16-29-2 of the Code of West Virginia, 1931,
20 as amended, be amended and reenacted; and that said code be amended
21 by adding thereto a new section, designated §16-29-3, all to read
22 as follows:

23 **ARTICLE 29. HEALTH CARE RECORDS.**

24 **§16-29-1. Copies of health care records to be furnished to**

1 **patients.**

2 Any licensed, certified or registered health care provider so
3 licensed, certified or registered under the laws of this state
4 shall, upon the written request of a patient, his or her authorized
5 agent or authorized representative, within a reasonable time,
6 furnish a copy ~~as requested~~ in the form of a paper copy or, if
7 requested and if the provider has the ability to so provide, a copy
8 in an electronic format including, but not limited to, a copy saved
9 upon a computer disc, an electronically mailed copy or a copy saved
10 upon a portable memory device of all or a portion of the patient's
11 record to the patient, his or her authorized agent or authorized
12 representative subject to the following exceptions:

13 (a) In the case of a patient receiving treatment for
14 psychiatric or psychological problems, a summary of the record
15 shall be made available to the patient, his or her authorized agent
16 or authorized representative following termination of the treatment
17 program.

18 (b) Nothing in this article shall be construed to require a
19 health care provider responsible for diagnosis, treatment or
20 administering health care services in the case of minors for birth
21 control, prenatal care, drug rehabilitation or related services or
22 venereal disease according to any provision of this code, to
23 release patient records of such diagnosis, treatment or provision
24 of health care as aforesaid to a parent or guardian, without prior

1 written consent therefor from the patient, nor shall anything in
2 this article be construed to apply to persons regulated under the
3 provisions of chapter eighteen of this code or the rules and
4 regulations established thereunder.

5 (c) The furnishing of a copy, as requested, of the reports of
6 X-ray examinations, electrocardiograms and other diagnostic
7 procedures shall be deemed to comply with the provisions of this
8 article: *Provided*, That original radiological study film from a
9 radiological exam conducted pursuant to a request from a patient or
10 patient's representative shall be provided to the patient or
11 patient's representative upon written request and payment for the
12 exam. The health care provider shall not be required to interpret
13 or retain copies of the film and shall be immune from liability
14 resulting from any action relating to the absence of the original
15 radiological film from the patient's record.

16 (d) This article shall not apply to records subpoenaed or
17 otherwise requested through court process.

18 (e) The provisions of this article may be enforced by a
19 patient, authorized agent or authorized representative, and any
20 health care provider found to be in violation of this article shall
21 pay any attorney fees and costs, including court costs incurred in
22 the course of such enforcement.

23 (f) Nothing in this article shall be construed to apply to
24 health care records maintained by health care providers governed by

1 the AIDS-related medical testing and records confidentiality act
2 under the provisions of article three-c of this chapter.

3 **§16-29-2. Reasonable expenses to be reimbursed.**

4 ~~(a) The patient or his or her authorized agent or~~
5 ~~representative shall be provided one copy of all requested records~~
6 ~~at no reimbursement charge. For any additional copies of the~~
7 ~~requested records after the first copy, the provider shall be~~
8 ~~reimbursed by the person requesting in writing a copy of the~~
9 ~~records at the time of delivery for all reasonable expenses~~
10 ~~incurred in complying with this article: *Provided*, That the cost of of~~
11 ~~a paper copy may not exceed seventy-five cents per page for the~~
12 ~~copying of any record or records which have already been reduced to~~
13 ~~written form and a search fee may not exceed ten dollars: *Provided*~~
14 ~~however, That if the copy is provided in an electronic format, a~~
15 ~~search fee not to exceed ten dollars, shall be the only~~
16 ~~reimbursement required.~~

17 ~~(b) Notwithstanding the provisions of subsection (a) of this~~
18 ~~section, a provider shall not impose a charge on an indigent person~~
19 ~~or his or her authorized representative if the medical records are~~
20 ~~necessary for the purpose of supporting a claim or appeal under any~~
21 ~~provisions of the Social Security Act, 42 U.S.C. §301 et seq.~~

22 ~~(c) For purposes of this section, a person is considered~~
23 ~~indigent if he or she:~~

24 ~~(1) Is represented by an organization or affiliated pro bono~~

1 ~~program that provides legal assistance to indigents; or~~

2 ~~(2) Verifies on a medical records request and release form~~
3 ~~that the records are requested for purposes of supporting a social~~
4 ~~security claim or appeal and submits with the release form~~
5 ~~reasonable proof that the person is financially unable to pay full~~
6 ~~copying charges by reason of unemployment, disability, income below~~
7 ~~the federal poverty level, or receipt of state or federal income~~
8 ~~assistance.~~

9 ~~(d) Any person requesting free copies of written medical~~
10 ~~records pursuant to the provisions of subsection (b) of this~~
11 ~~section is limited to one set of copies per provider. Any~~
12 ~~additional requests for the same records from the same provider~~
13 ~~shall be subject to the fee provisions of subsection (a).~~

14 **§16-29-3. Copies provided for indigent persons for claims or**
15 **appeals under provisions of the Federal Social Security Act.**

16 (a) Notwithstanding the provisions of section two of this
17 article, if the medical records are necessary for the purpose of
18 supporting a claim or appeal under any provisions of the Social
19 Security Act, 42 U.S.C. §301 et seq., a provider shall not impose
20 a charge on an indigent person or his or her authorized
21 representative.

22 (b) For purposes of this section, a person is considered
23 indigent if he or she:

24 (1) Is represented by an organization or affiliated pro bono

1 program that provides legal assistance to indigents; or

2 (2) Verifies on a medical records request and release form
3 that the records are requested for purposes of supporting a social
4 security claim or appeal and submits with the release form
5 reasonable proof that the person is financially unable to pay full
6 copying charges by reason of unemployment, disability, income below
7 the federal poverty level, or receipt of state or federal income
8 assistance.

9 (c) Any person requesting free copies of written medical
10 records pursuant to the provisions of section three of this article
11 is limited to one set of copies per provider. Any additional
12 requests for the same records from the same provider is subject to
13 the fee provisions of section two.

NOTE: The purpose of this bill is to require that one copy of medical records be provided to a patient or representative, upon written request, free of charge. The language relating to copies of medical records for certain indigent persons has been moved from §16-29-2 to a new §16-29-3.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§16-29-3 is new; therefore, strike-throughs and underscoring have been omitted.