

1 **H. B. 3116**

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3 (By Delegates Manchin, Shott, Poore, Ellem, Hunt,
4 Marcum, Skinner, Sponaugle, Fleischauer and Ferro)

5 [Introduced March 25, 2013; referred to the
6 Committee on Health 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, all relating to reimbursement
12 for copies of medical records; copies of medical records in
13 electronic format; and limiting the reimbursement fee for
14 electronic records.

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

16 That §16-29-1 and §16-29-2 of the Code of West Virginia, 1931,
17 as amended, be amended and reenacted, all to read as follows:

18 **ARTICLE 29. HEALTH CARE RECORDS.**

19 **§16-29-1. Copies of health care records to be furnished to**
20 **patients.**

21 Any licensed, certified or registered health care provider so
22 licensed, certified or registered under the laws of this state
23 shall, upon the written request of a patient, his or her authorized
24 agent or authorized representative, within a reasonable time,

1 furnish a copy, ~~as requested~~ in the form of a paper copy or, if
2 requested and if the provider routinely stores records
3 electronically and has the ability to so provide, a copy in an
4 electronic format including, but not limited to, a copy saved upon
5 a computer disc, an electronically mailed copy or a copy saved upon
6 a portable memory device of all or a portion of the patient's
7 record to the patient, his or her authorized agent or authorized
8 representative subject to the following exceptions:

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

14 (b) Nothing in this article shall be construed to require a
15 health care provider responsible for diagnosis, treatment or
16 administering health care services in the case of minors for birth
17 control, prenatal care, drug rehabilitation or related services or
18 venereal disease according to any provision of this code, to
19 release patient records of such diagnosis, treatment or provision
20 of health care as aforesaid to a parent or guardian, without prior
21 written consent therefor from the patient, nor shall anything in
22 this article be construed to apply to persons regulated under the
23 provisions of chapter eighteen of this code or the rules and
24 regulations established thereunder.

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

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

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

19 (f) Nothing in this article shall be construed to apply to
20 health care records maintained by health care providers governed by
21 the AIDS-related Medical Testing and Records Confidentiality Act
22 under the provisions of article three-c of this chapter.

23 **§16-29-2. Reasonable expenses to be reimbursed.**

24 (a) The provider shall be reimbursed by the person requesting

1 in writing a copy of the records at the time of delivery for all
2 reasonable expenses incurred in complying with this article:
3 *Provided*, That the cost may not exceed \$0.75 per page for the
4 copying of any record or records which have already been reduced to
5 written form and a search fee may not exceed \$10: *Provided*,
6 *however*, That if the copy is both routinely stored in electronic
7 format and provided in an electronic format the search fee and per
8 page copy fee may not exceed those set forth above for paper
9 copies, and in no event shall the combined charge for search fee
10 and per page copy fee exceed the sum of \$25, unless the provider
11 certifies in writing that the electronically stored records require
12 conversion by a third party provider in which case the provider may
13 charge additionally for actual charges incurred.

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

19 (c) For purposes of this section, a person is considered
20 indigent if he or she:

21 (1) Is represented by an organization or affiliated pro bono
22 program that provides legal assistance to indigents; or

23 (2) Verifies on a medical records request and release form
24 that the records are requested for purposes of supporting a social

1 security claim or appeal and submits with the release form
2 reasonable proof that the person is financially unable to pay full
3 copying charges by reason of unemployment, disability, income below
4 the federal poverty level, or receipt of state or federal income
5 assistance.

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

NOTE: The purpose of this bill is to provide for copies of
medical records in electronic format and to limit the reimbursement
fee for electronic records.

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