

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4560**

4 (By Delegates Manchin, Caputo, Longstreth,
5 Skinner, Moore, Wells, M. Poling and Sponaugle)
6

7 (Originating in the Committee on the Judiciary)

8 [February 19, 2014]
9

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 (a) Any licensed, certified or registered health care provider
22 so 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,
25 furnish a copy, ~~as requested~~ in the form of a paper copy or, if

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

8 ~~(a)~~ (1) In the case of a patient receiving treatment for
9 psychiatric or psychological problems, a summary of the record
10 shall be made available to the patient, his or her authorized agent
11 or authorized representative following termination of the treatment
12 program.

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

24 (b) Nothing in this article shall be construed to require a
25 health care provider responsible for diagnosis, treatment or

1 administering health care services in the case of minors for birth
2 control, prenatal care, drug rehabilitation or related services or
3 venereal disease according to any provision of this code, to
4 release patient records of such diagnosis, treatment or provision
5 of health care as aforesaid to a parent or guardian, without prior
6 written consent therefor from the patient, nor shall anything in
7 this article be construed to apply to persons regulated under the
8 provisions of chapter eighteen of this code or the rules and
9 regulations established thereunder.

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

21 ~~(d)~~ (c) This article ~~shall~~ does not apply to records
22 subpoenaed or otherwise requested through court process.

23 ~~(e)~~ (d) The provisions of this article may be enforced by a
24 patient, authorized agent or authorized representative, and any
25 health care provider found to be in violation of this article shall

1 pay any attorney fees and costs, including court costs incurred in
2 the course of such enforcement.

3 ~~(f)~~ (e) Nothing in this article shall be construed to apply to
4 health care records maintained by health care providers governed by
5 the AIDS-related Medical Testing and Records Confidentiality Act
6 under the provisions of article three-c of this chapter.

7 **§16-29-2. Reasonable expenses to be reimbursed.**

8 (a) The provider shall be reimbursed by the person requesting
9 in writing a copy of the records at the time of delivery for all
10 reasonable expenses incurred in complying with this article:
11 *Provided*, That the cost may not exceed \$0.75 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 \$10: *Provided*,
14 *however*, That if the copy is both routinely stored in electronic
15 format and provided in an electronic format the search fee and per
16 page copy fee may not exceed those set forth above for paper
17 copies, and in no event shall the combined charge for search fee
18 and per page copy fee for providing the records in electronic
19 format exceed the sum of \$50, unless the provider certifies in
20 writing that the electronically stored records require conversion
21 by a third party provider in which case the provider may charge
22 additionally for actual charges incurred. The limitations on
23 reimbursement contained in the immediately preceding sentence do
24 not apply to private office practices of one or more health care
25 professionals licensed to practice in this state pursuant to the

1 provisions of chapter thirty of this code.

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

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

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

11 (2) Verifies on a medical records request and release form
12 that the records are requested for purposes of supporting a Social
13 Security claim or appeal and submits with the release form
14 reasonable proof that the person is financially unable to pay full
15 copying charges by reason of unemployment, disability, income below
16 the federal poverty level, or receipt of state or federal income
17 assistance.

18 (d) Any person requesting free copies of written medical
19 records pursuant to the provisions of subsection (b) of this
20 section is limited to one set of copies per provider. Any
21 additional requests for the same records from the same provider
22 shall be subject to the fee provisions of subsection (a).