

1 **H. B. 4560**

2
3 (By Delegates Manchin, Caputo, Longstreth,
4 Skinner, Moore, Wells, M. Poling and Sponaugle)
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6 [Introduced February 17, 2014; referred to the
7 Committee on the Judiciary.]
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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 (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,

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)~~ (1) 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 (2) The furnishing of a copy, as requested, of the reports of
15 X-ray examinations, electrocardiograms and other diagnostic
16 procedures shall be deemed to comply with the provisions of this
17 article: Provided, That original radiological study film from a
18 radiological exam conducted pursuant to a request from a patient or
19 patient's representative shall be provided to the patient or
20 patient's representative upon written request and payment for the
21 exam. The health care provider shall not be required to interpret
22 or retain copies of the film and shall be immune from liability
23 resulting from any action relating to the absence of the original
24 radiological film from the patient's record.

1 (b) Nothing in this article shall be construed to require a
2 health care provider responsible for diagnosis, treatment or
3 administering health care services in the case of minors for birth
4 control, prenatal care, drug rehabilitation or related services or
5 venereal disease according to any provision of this code, to
6 release patient records of such diagnosis, treatment or provision
7 of health care as aforesaid to a parent or guardian, without prior
8 written consent therefor from the patient, nor shall anything in
9 this article be construed to apply to persons regulated under the
10 provisions of chapter eighteen of this code or the rules and
11 regulations established thereunder.

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

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

1 ~~(e)~~ (d) The provisions of this article may be enforced by a
2 patient, authorized agent or authorized representative, and any
3 health care provider found to be in violation of this article shall
4 pay any attorney fees and costs, including court costs incurred in
5 the course of such enforcement.

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

10 **§16-29-2. Reasonable expenses to be reimbursed.**

11 (a) The provider shall be reimbursed by the person requesting
12 in writing a copy of the records at the time of delivery for all
13 reasonable expenses incurred in complying with this article:
14 *Provided*, That the cost may not exceed \$0.75 per page for the
15 copying of any record or records which have already been reduced to
16 written form and a search fee may not exceed \$10: *Provided*,
17 *however*, That if the copy is both routinely stored in electronic
18 format and provided in an electronic format the search fee and per
19 page copy fee may not exceed those set forth above for paper
20 copies, and in no event shall the combined charge for search fee
21 and per page copy fee exceed the sum of \$50, unless the provider
22 certifies in writing that the electronically stored records require
23 conversion by a third party provider in which case the provider may
24 charge additionally for actual charges incurred. The limitations

1 on reimbursement contained within this subsection do not apply to
2 private office practices of one or more health care professionals
3 licensed to practice in this state pursuant to the provisions of
4 chapter thirty of this code.

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

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

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

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

21 (d) Any person requesting free copies of written medical
22 records pursuant to the provisions of subsection (b) of this
23 section is limited to one set of copies per provider. Any
24 additional requests for the same records from the same provider

1 shall be subject to the fee provisions of subsection (a).

NOTE: The purpose of this bill is to provide that copies of health care records may be furnished to patients in a paper copy or electronic version. The bill also provides for reasonable expenses to be charged for providing paper and/or electronic versions of a patient's records.

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