

COMMITTEE SUBSTITUTE

for

H. B. 2795

(BY DELEGATE(S) WESTFALL, B. WHITE
AND MCCUSKEY)

(Originating in the Committee on the Judiciary.)
(February 2, 2015)

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §56-4-72, all relating to production of medical records; providing in certain circumstances medical records must be produced without court order; prohibiting unilateral restrictions on the maintenance, use or retention of the medical records; requiring the insurance commissioner to promulgate rules; providing that objection to production of medical records is not limited; providing that court ordered

production of medical records does not affect application of this section; establishing that an order protecting privacy of medical records may be entered; and, establishing that any action related to unauthorized distribution of medical records is unaffected.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §56-4-72, to read as follows:

ARTICLE 4. RULES AND PLEADING.

§56-4-72. Production of medical records.

- 1 (a) In any civil action in which a party's past, present or
2 future health condition is at issue and information regarding the
3 party's health condition constitutes admissible evidence or is
4 reasonably calculated to lead to the discovery of such evidence,
5 upon the receipt of a timely request for that information the party
6 shall produce the medical records and bills for medical services
7 in its possession, custody or control. The duty imposed by this
8 requirement shall be carried out by the parties without need for
9 an order of the court.
- 10 (b) In producing medical records and bills for medical
11 services, no party may unilaterally impose restrictions or

12 conditions on a receiving party's maintenance, use or retention
13 of such documents. When medical records and bills for medical
14 services are provided to an insurance company, no restrictions or
15 conditions may be imposed on the insurance company's
16 handling, use, retention or dissemination of them that would
17 contradict, limit or be inconsistent with the terms of any
18 applicable policy of insurance, or the performance of insurance
19 functions, as permitted or authorized under applicable federal
20 and state laws and regulations. The insurance commissioner shall
21 promulgate rules to protect the privacy of litigants in their
22 personal medical information and the need for an insurance
23 company to use that information appropriately.

24 (c) Nothing in this section is intended to limit a party's right
25 to object to the production of medical records or bills for
26 medical services on the grounds that such information is not
27 discoverable in the circumstances of a particular civil action:
28 *Provided*, That if the court orders the production of the disputed
29 information over a party's objection, the requirements and
30 limitations set forth herein apply.

31 (d) Individuals have a right of privacy concerning their
32 medical records and nothing in this section prevents a judge
33 from issuing an order protecting the privacy of a person's
34 medical records.

35 (e) Nothing in this section is intended to prohibit any
36 common law cause of action relating to the unauthorized
37 distribution of medical records.