

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 466

BY SENATORS HALL, ASHLEY, CARMICHAEL AND GAUNCH

[Introduced February 2, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §56-4-72, relating to production of medical records; providing in certain
3 circumstances that medical records must be produced without court order; prohibiting
4 unilateral restrictions on maintenance, use or retention of medical records; requiring
5 Insurance Commissioner to promulgate rules; providing that objection to production of
6 medical records is not limited; providing that court ordered production of medical records
7 does not affect application of this section; establishing that an order protecting privacy of
8 medical records may be entered; and establishing that any action related to unauthorized
9 distribution of medical records is unaffected.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 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 future health condition is at issue
2 and information regarding the party's health condition constitutes admissible evidence or is
3 reasonably calculated to lead to the discovery of such evidence, upon the receipt of a timely
4 request for that information the party shall produce the medical records and bills for medical
5 services in its possession, custody or control. The duty imposed by this requirement shall be
6 carried out by the parties without need for an order of the court.

7 (b) In producing medical records and bills for medical services, no party may unilaterally
8 impose restrictions or conditions on a receiving party's maintenance, use or retention of such
9 documents. When medical records and bills for medical services are provided to an insurance
10 company, no restrictions or conditions may be imposed on the insurance company's handling,
11 use, retention or dissemination of them that would contradict, limit or be inconsistent with the
12 terms of any applicable policy of insurance, or the performance of insurance functions, as

13 permitted or authorized under applicable federal and state laws and regulations. The Insurance
14 Commissioner shall promulgate rules to protect the privacy of litigants in their personal medical
15 information and the need for an insurance company to use that information appropriately.

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

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

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

NOTE: The purpose of this bill is to provide that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order; to prohibit unilateral restrictions on the maintenance, use or retention of the medical records; to require the Insurance Commissioner to promulgate rules; to provide that objection to production of medical records is not limited; to provide that court ordered production of medical records does not affect application of this section; to establish that an order protecting privacy of medical records may be entered; and to establish that any action related to unauthorized distribution of medical records is unaffected.

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