

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Senate Bill 578

BY SENATORS TRUMP AND BLAIR

[Passed April 7, 2017; in effect 90 days from passage]

1 AN ACT to amend and reenact §16-29-1 and §16-29-2 of the Code of West Virginia, 1931, as
2 amended, all relating generally to copies of health care records; providing that health care
3 records must be furnished no more than thirty days from the receipt of the request from a
4 patient, his or her representative, authorized agent or authorized representative; stating
5 that electronic copies of health records may be provided in a downloadable format through
6 a secure web portal; permitting a personal representative to act in lieu of a patient in
7 certain circumstances; clarifying that fees shall apply to subpoenaed records; establishing
8 fees for providing copies of health care records; and providing that the per page fee shall
9 be adjusted annually according to the consumer price index.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. HEALTH CARE RECORDS.

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

1 (a) Any licensed, certified or registered health care provider so licensed, certified or
2 registered under the laws of this state shall, upon the written request of a patient, his or her
3 personal representative, as defined by the Health Insurance Portability and Accountability Act of
4 1996 (HIPAA), as amended, and any rules promulgated pursuant to the act, and his or her
5 authorized agent or authorized representative, within no more than thirty days from the receipt of
6 the request, furnish a copy, in the form of a paper copy or, if requested and if the provider routinely
7 stores records electronically and has the ability to so provide, a copy in an electronic format
8 including, but not limited to, a downloadable format through a secure web portal, a copy saved
9 upon a computer disc, an electronically mailed copy or a copy saved upon a portable memory
10 device of all or a portion of the patient's record to the patient, his or her personal representative,
11 or authorized agent or authorized representative subject to the following exceptions:

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

15 (2) The furnishing of a copy, as requested, of the reports of x-ray examinations,
16 electrocardiograms and other diagnostic procedures shall be deemed to comply with the
17 provisions of this article.

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

25 (c) This article does not apply to records subpoenaed or otherwise requested through
26 court process, except for the fee provisions in section two of this article, which do apply to
27 subpoenaed records.

28 (d) The provisions of this article may be enforced by a patient, personal representative,
29 authorized agent or authorized representative and any health care provider found to be in violation
30 of this article shall pay any attorney fees and costs, including court costs incurred in the course
31 of such enforcement.

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

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

1 (a) A provider may charge a patient or the patient's personal representative a fee
2 consistent with HIPAA, as amended, and any rules promulgated pursuant to HIPAA, plus any
3 applicable taxes.

4 (b) A person other than a patient or patient's personal representative requesting records
5 from a health care provider shall submit the request and HIPAA compliant authorization in writing
6 and pay a fee at the time of delivery. Notwithstanding any other section of the code or rule, the
7 fees shall not exceed: (1) A search and handling fee of \$20; (2) a per page fee of 40 cents for
8 paper copies; and (3) postage, if the person requested that the records be mailed, plus any
9 applicable taxes.

10 (c) If the requested record is stored by the health care provider in an electronic form,
11 unless the person requesting the record specifically requests a paper copy, the records will be
12 delivered in electronic or digital form and the per page fee for providing an electronic copy shall
13 not exceed 20 cents per page but shall in no event exceed \$150 inclusive of all fees, including a
14 search and handling fee, except for applicable taxes.

15 (d) Any person requesting a record be certified by affidavit pursuant to section four-e,
16 article five, chapter fifty-seven of this code shall pay a fee of \$10 for such certification.

17 (e) If a person requests or agrees to an explanation or summary of the records, the
18 provider may charge a reasonable cost-based fee for the labor cost if preparing the explanation
19 or the summary; for the supplies for creating the explanation or summary; and for the cost of
20 postage, if the person requested that the records be mailed, plus any applicable taxes. If the
21 records are stored with a third party or a third party responds to the request for records in paper
22 or electronic media, the provider may charge additionally for the actual charges incurred from the
23 third party.

24 (f) The per page fee for copying under this section shall be adjusted to reflect the consumer
25 price index for medical care services such that the base amount shall be increased or decreased
26 by the proportional consumer price index as published every October 1 starting October 1, 2017.

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

31 For purposes of this section, a person is considered indigent if he or she:

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

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

39 (h) Any person requesting free copies of written medical records pursuant to the provisions
40 of subsection (g) of this section is limited to one set of copies per provider. Any additional requests
41 for the same records from the same provider shall be subject to the fee provisions of subsections
42 (a), (b) and (c).

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the.....
Day of, 2017.

.....
Governor