

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4301**

4
5 (By Delegates Moye, Hatfield, Brown, Poore,
6 Reynolds, Hunt, Miley, Manchin and Fleischauer)

7 (Originating in the Committee on the Judiciary)

8 [February 24, 2012]

9
10 A BILL to amend and reenact §16-29-1 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §16-29-2 of said
12 code, all relating to reimbursement for copies of medical
13 records; copies of medical records in electronic format; and
14 limiting the reimbursement fee for electronic records.

15 *Be it enacted by the Legislature of West Virginia:*

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

19 **ARTICLE 29. HEALTH CARE RECORDS.**

20 **§16-29-1. Copies of health care records to be furnished to**
21 **patients.**

22 Any licensed, certified or registered health care provider so
23 licensed, certified or registered under the laws of this state
24 shall, upon the written request of a patient, his or her authorized

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

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

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

1 regulations established thereunder.

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

13 (d) This article shall not apply to records subpoenaed or
14 otherwise requested through court process.

15 (e) The provisions of this article may be enforced by a
16 patient, authorized agent or authorized representative, and any
17 health care provider found to be in violation of this article shall
18 pay any attorney fees and costs, including court costs incurred in
19 the course of such enforcement.

20 (f) Nothing in this article shall be construed to apply to
21 health care records maintained by health care providers governed by
22 the AIDS-related medical testing and records confidentiality act
23 under the provisions of article three-c of this chapter.

24 **§16-29-2. Reasonable expenses to be reimbursed.**

1 (a) The provider shall be reimbursed by the person requesting
2 in writing a copy of the records at the time of delivery for all
3 reasonable expenses incurred in complying with this article:
4 *Provided, That the cost of a paper copy may not exceed 75¢ per page*
5 *for the copying of any record or records which have already been*
6 *reduced to written form and a search fee may not exceed \$10:*
7 *Provided however, That if the copy is both routinely stored in*
8 *electronic format and provided in an electronic format the search*
9 *fee and per page copy fee may not exceed those set forth above for*
10 *paper copies, and in no event shall the combined charge for search*
11 *fee and per page copy fees exceed the sum of \$75, unless the*
12 *provider certifies in writing that the electronically stored*
13 *records require conversion by a third party provider in which case*
14 *the provider may charge additionally for actual charges incurred.*

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

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

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

24 (2) Verifies on a medical records request and release form

1 that the records are requested for purposes of supporting a social
2 security claim or appeal and submits with the release form
3 reasonable proof that the person is financially unable to pay full
4 copying charges by reason of unemployment, disability, income below
5 the federal poverty level, or receipt of state or federal income
6 assistance.

7 (d) Any person requesting free copies of written medical
8 records pursuant to the provisions of subsection (b) of this
9 section is limited to one set of copies per provider. Any
10 additional requests for the same records from the same provider
11 shall be subject to the fee provisions of subsection (a).