

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2486

BY DELEGATE WESTFALL

[Introduced February 15, 2017; 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, all relating to production of medical records; providing in certain
 3 circumstances medical records must be produced without court order; prohibiting
 4 unilateral restrictions on the maintenance, use or retention of the medical records;
 5 requiring the State Insurance Commissioner to propose rules to protect the privacy of
 6 litigants; providing that objection to production of medical records is not limited; providing
 7 that court ordered production of medical records does not affect application of this section;
 8 establishing that an order protecting privacy of medical records may be entered; and,
 9 establishing that any action related to unauthorized distribution of medical records is
 10 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 that 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 those
 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 State
14 Insurance Commissioner shall propose rules for legislative approval in accordance with article
15 three, chapter twenty-nine-a of this code to protect the privacy of litigants in their personal medical
16 information and the need for an insurance company to use that information appropriately.

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

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

25 (e) Nothing in this section is intended to prohibit any common law cause of action relating
26 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. The bill prohibits unilateral restrictions on the receipt or use of the medical records. And, the bill provides the right to object to request for records and effect of court order relating to the use of such records.

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