

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 578

BY SENATORS TRUMP AND BLAIR

[Introduced March 11, 2017; referred
to the Committee on Health and Human Resources]

1 A BILL 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 furnished to patients and
3 the fees charged therein.

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 a reasonable time no more than thirty days
6 from the receipt of the request, furnish a copy, in the form of a paper copy or, if requested and if
7 the provider routinely stores records electronically and has the ability to so provide, a copy in an
8 electronic format including, but not limited to, a downloadable format through a secure web portal,
9 a copy saved upon a computer disc, an electronically mailed copy or a copy saved upon a portable
10 memory device of all or a portion of the patient's record to the patient, his or her personal
11 representative, or authorized agent or authorized representative subject to the following
12 exceptions:

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

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

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

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

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

33 (e) Nothing in this article shall be construed to apply to health care records maintained by
34 health care providers governed by the AIDS-related Medical Testing and Records Confidentiality
35 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 ~~(a)-(b)~~ A person other than a patient or patient's personal representative requesting
5 records from a health care provider shall ~~place~~ submit the request and HIPAA compliant
6 authorization in writing and pay a ~~reasonable, cost-based fee,~~ at the time of delivery.
7 Notwithstanding any other section of the code or rule, the fee shall be: ~~based on the provider's~~
8 ~~cost of:~~ (1) A search and handling fee of \$30 ~~Labor for copying the requested records if in paper,~~

9 ~~or for placing the records in electronic media; (2) a per page fee of 40 cents; supplies for creating~~
10 ~~the paper copy or electronic media and (3) postage, if the person requested that the records be~~
11 ~~mailed, plus any applicable taxes.~~

12 (c) If the requested record is stored by the health care provider in an electronic form,
13 unless the person requesting the record specifically requests a paper copy, the records will be
14 delivered in electronic or digital form and the fee for delivering an electronic copy shall be the
15 same as subsection (b) but shall in no event exceed \$300 inclusive of all fees except for applicable
16 taxes.

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

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

26 ~~(b) (f) The labor for copying under this section shall not exceed twenty-five dollars per hour~~
27 ~~and shall be adjusted to reflect the consumer price index for medical care services such that the~~
28 ~~base amount shall be increased or decreased by the proportional consumer price index in effect~~
29 ~~as published of every October 1 starting October 1, 2017. of the calendar year in which the request~~
30 ~~was made, rounded to the nearest dollar~~

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

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

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

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

43 ~~(d)~~ (h) Any person requesting free copies of written medical records pursuant to the
44 provisions of subsection ~~(e)~~ (g) of this section is limited to one set of copies per provider. Any
45 additional requests for the same records from the same provider shall be subject to the fee
46 provisions of ~~subsection~~ subsections (a), (b) and (c).

NOTE: The purpose of this bill is to establish a new fee structure for the furnishment of health care records, allowing records to be furnished to a patient's personal representative and establishing a limit on the total fee allowable for the furnishment of a patient's health care record.

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