

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

House Bill 3311

BY DELEGATES ROHRBACH, FORSHT, MALLOW,

LONGANACRE AND BATES

[Originating in the Committee on Health and Human

Resources; reported on March 26, 2021]

1 A BILL to amend and reenact §16-29-2 of the Code of West Virginia, 1931, as amended, relating
2 to the cost of medical records; requiring that the cost of obtaining a medical record may
3 not exceed a fee consistent with HIPAA; and providing clarifying technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. HEALTH CARE RECORDS.

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

1 (a) A provider may charge a patient or the patient's personal representative no more than
2 a fee consistent with HIPAA, as amended, and any rules promulgated pursuant to HIPAA, plus
3 any applicable taxes.

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

10 ~~(e)~~ (2) 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)~~ (c) 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)~~ (d) 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)~~ (e) The per page fee for copying under ~~this section~~ subsection (b) shall be adjusted to
25 reflect the consumer price index for medical care services such that the base amount shall be
26 increased or decreased by the proportional consumer price index as published every October 1
27 starting October 1, 2017.

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

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

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

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

40 ~~(h)~~ (g) Any person requesting free copies of written medical records pursuant to the
41 provisions of subsection ~~(g)~~ (f) of this section is limited to one set of copies per provider. Any

- 42 additional requests for the same records from the same provider shall be subject to the fee
- 43 provisions of subsections (a) and (b). ~~and (c).~~

NOTE: The purpose of this bill is to limit the cost of obtaining medical records to a fee consistent with HIPAA.

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