

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4320

By Delegates Burkhammer, Kimble, Horst and Thorne

[Originating in the Committee on the Judiciary;

Reported on February 2, 2024]

1 A BILL to amend and reenact §16-9A-2 of the Code of West Virginia, 1931, as amended, relating
2 to providing copies of health care records to patients, and to amend the Code of West
3 Virginia, 1931, as amended, by adding thereto a new section, designated §16-29-3 relating
4 to a parent or guardian's access to the health care records of their minor child; and relating
5 to a requirement that no release, authorization, nor any form of permission from or by the
6 minor child shall be required or requested as a prerequisite for the parent or legal guardian
7 to obtain the medical records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. HEALTH CARE RECORDS.

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

1 (a) These following terms are defined for this article:

2 (1) "Health care provider" means the same as provided in §55-7B-2;

3 (2) "Health care facility" means the same as provided in §55-7B-2;

4 (3) "Health Care Record" means any oral, written, or other transmission in any form or
5 medium of information that:

6 (A) Is entered in the record of a patient;

7 (B) Identifies or can readily be associated with the identity of a patient; and

8 (C) Relates to the health care of the patient.

9 (4) "Patient" means a person who receives health care and on whom a health care record
10 is maintained.

11 (b) ~~Any licensed, certified or registered A health care provider so licensed, certified or~~
12 ~~registered under the laws of this state shall, upon the written request of a patient, his or her~~
13 ~~personal representative, as defined by the Health Insurance Portability and Accountability Act of~~
14 ~~1996 (HIPAA), as amended, and any rules promulgated pursuant to the act, and his or her~~
15 ~~authorized agent or authorized representative, within no more than thirty days from the receipt of~~
16 ~~the request, furnish a copy of the health care record in the form of a paper copy or, if requested~~

17 ~~and if the provider routinely stores records electronically and has the ability to so provide, a copy in~~
18 ~~an electronic format including, but not limited to, a downloadable format through a secure web~~
19 ~~portal, a copy saved upon a computer disc, an electronically mailed copy or a copy saved upon a~~
20 ~~portable memory device of all or a portion of the patient's record to the patient, his or her personal~~
21 ~~representative, or authorized agent or authorized representative subject to the following~~
22 ~~exceptions:~~

23 ~~(1) unless, in the case of a patient receiving mental health treatment, for psychiatric or~~
24 ~~psychological problems, a summary of the record shall be made available to the patient, personal~~
25 ~~representative, or his or her authorized agent or authorized representative following termination of~~
26 ~~the treatment. program.~~

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

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

37 ~~(c) This article does not apply to records subpoenaed or otherwise requested through court~~
38 ~~process, except for the fee provisions in §16-29-2, which do apply to subpoenaed records.~~

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

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

§16-29-3. Access to minor's records.

1 (a) A parent or guardian may not be denied access to the health records of their minor child
2 unless otherwise ordered by a court or pursuant to subsection (b) of this section.

3 (b) A parent is not permitted to access the health records of that parent's minor child if:

4 (1) The child has graduated high school or equivalent;

5 (2) The child is emancipated; or

6 (3) The child is married.

7 (c) Except as provided in subsection (b) of this section, no release, authorization, nor any
8 form of permission from or by the minor child shall be required or requested as a prerequisite for
9 the parent or legal guardian to obtain the medical records.

NOTE: The purpose of this bill is to provide a parent or legal guardian access to their child's health 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.