

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5120**

By Delegates Summers, Burkhammer, Petitto,

Worrell, Rohrbach, and Griffith

[Introduced January 25, 2024; Referred to the

Committee on Health and Human Resources]

1 A BILL to the amend and reenact §16-29-1 of the Code of West Virginia, 1931, as amended, and  
 2 by adding thereto a new section, designated §16-29-3, relating to medical records;  
 3 providing access to a minor's medical records; and providing exemptions.

*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 of this code;
- 3 (2) "Health care facility" means the same as provided in §55-7B-2 of this code;
- 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 ~~(a) (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 30 days from the receipt of the  
 16 request, furnish a copy, in the form of a paper copy or, if requested and if the provider routinely  
 17 stores records electronically and has the ability to so provide, a copy in an electronic format  
 18 including, but not limited to, a downloadable format through a secure web portal, a copy saved  
 19 upon a computer disc, an electronically mailed copy or a copy saved upon a portable memory

20 device of all or a portion of the patient's record to the patient, his or her personal representative, or  
21 authorized agent or authorized representative subject to the following exceptions:

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

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

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

36 (c) This article does not apply to records subpoenaed or otherwise requested through court  
37 process, except for the fee provisions in §16-29-2 of this code, which do apply to subpoenaed  
38 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 may not be denied access to the health records of that parent's minor child  
2 unless otherwise ordered by the court for good cause or pursuant to subsection (b) of this  
3 section.

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

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

6 (2) The child is emancipated; or

7 (3) The child is married.

NOTE: The purpose of this bill is to update definitions and who has access to medical 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.