

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

House Bill 2402

By Delegates Burkhammer, Mazzocchi, Worrell, Hite,
 miller, Petitto, Horst, and Kimble

[Introduced February 17, 2025; Referred to the
Committee on Health and Human Resources then the
Judiciary]

A BILL to amend and reenact §16-29-1 and §49-5-101 of the code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-29-3, relating to providing access to medical records; providing access to a minor's medical record; and providing access to the medical records of child in the custody of the state.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29. HEALTH CARE RECORDS.

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

(a) ~~Any licensed, certified or registered~~ A health care provider so licensed, certified or registered under the laws of this state shall, upon the written request of a patient, his or her personal representative, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any rules promulgated pursuant to the act, and his or her authorized agent or authorized representative, within no more than thirty days from the receipt of the request, furnish a copy, in the form of a paper copy or, if requested and if the provider routinely stores records electronically and has the ability to so provide, a copy in an electronic format including, but not limited to, a downloadable format through a secure web portal, a copy saved upon a computer disc, an electronically mailed copy or a copy saved upon a portable memory device of all or a portion of the patient's record to the patient, his or her personal representative, or authorized agent or authorized representative subject to the following exceptions:

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

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

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

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

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

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

§16-29-3. Access to minor's records.

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

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

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

(2) The minor child is emancipated; or

(3) The minor child is married.

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; non-release of records; exceptions; penalties.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Corrections and Rehabilitation, the Department of Human Services, a child agency or facility, or court or law-enforcement agency, are confidential and may not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated;

(C) The attorney of the child or parent; and

(D) The Juvenile Justice Commission and its' designees acting in the course of their official duties;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; and

19 (4) Pursuant to an order of a court of record: *Provided*, That the court shall review the
20 record or records for relevancy and materiality to the issues in the proceeding and safety and may
21 issue an order to limit the examination and use of the records or any part thereof.

22 (c) In addition to those persons or entities to whom information may be disclosed under
23 subsection (b) of this section, information related to child abuse or neglect proceedings, except
24 information relating to the identity of the person reporting or making a complaint of child abuse or
25 neglect, shall be made available upon request to:

26 (1) Federal, state, or local government entities, or any agent of those entities, including
27 law-enforcement agencies and prosecuting attorneys, having a need for that information in order
28 to carry out its responsibilities under law to protect children from abuse and neglect;

29 (2) The child fatality review team;

30 (3) Child abuse citizen review panels;

31 (4) Multidisciplinary investigative and treatment teams; or

32 (5) A grand jury, circuit court, or family court, upon a finding that information in the records
33 is necessary for the determination of an issue before the grand jury, circuit court, or family court;
34 and

35 (6) The West Virginia Crime Victims Compensation Fund and its designees acting in the
36 course of their official duties.

37 (d) If there is a child fatality or near fatality due to child abuse and neglect, information
38 relating to a fatality or near fatality shall be made public by the Department of Human Services and
39 provided to the entities described in subsection (c) of this section, all under the circumstances
40 described in that subsection: *Provided*, That information released by the Department of Human
41 Services pursuant to this subsection may not include the identity of a person reporting or making a
42 complaint of child abuse or neglect. For purposes of this subsection, "near fatality" means any
43 medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to §49-5-103 of this code.

(f) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of \$300, or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(h)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Corrections and Rehabilitation may provide access to, and the confidential use of, a treatment plan, court records, or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Corrections and Rehabilitation in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody, and treatment of the juvenile;

(3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this subsection; and

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

(i) The records subject to disclosure pursuant to subsection (b) of this section may not include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of which is exclusively subject to §62-6B-6 of this code.

(j) Notwithstanding the provisions of subsection (a) of this section, records in the possession of the Division of Corrections and Rehabilitation declared to be confidential by the provisions of subsection (a) of this section may be published and disclosed for use in an employee grievance if the disclosure is done in compliance with subsections (k), (l), and (m) of this section.

(k) Records or information declared confidential by the provisions of this section may not be released for use in a grievance proceeding except:

(1) Upon written motion of a party; and

(2) Upon an order of the Public Employee's Grievance Board entered after an in-camera hearing as to the relevance of the record or information.

(l) If production of confidential records or information is disclosed to a grievant, his or her counsel or representative, pursuant to subsection (k) of this section:

(1) The division shall ensure that written records or information is redacted of all identifying information of any juvenile which is not relevant to the resolution of the grievance;

(2) Relevant video and audio records may be disclosed without redaction; and

(3) Records or other information released to a grievant or his or her counsel or representative pursuant to subsection (k) of this section may only be used for purposes of his or her grievance proceeding and may not be disclosed, published, copied, or distributed for any other purpose, and upon the conclusion of the grievance procedure, returned to the Division of Corrections and Rehabilitation.

(m) If a grievant or the Division of Corrections and Rehabilitation seek judicial review of a decision of the Public Employee's Grievance Board, the relevant confidential records disclosed

95 and used in the grievance proceeding may be used in the appeal proceeding upon entry of an
96 order by the circuit court, and the order shall contain a provision limiting disclosure or publication of
97 the records or information to purposes necessary to the proceeding and prohibiting unauthorized
98 use and reproduction.

99 (n) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et seq.*
100 of this code.

101 (o) When requested, a child placing agency or a residential child care and treatment facility
102 may shall disclose otherwise confidential information to other child placing agencies or residential
103 child care and treatment facilities when making referrals or providing services on behalf of the
104 child. This information shall be maintained in the same manner as provided in this code.

105 (p) The department shall provide electronic access to information required to perform an
106 adoption to child placing agencies as necessary to complete the adoption.

107 (q) A child placing agency completing adoption as a contractor on behalf of the department
108 shall have access to secure records from vital statistics and other pertinent record holders.

109 (r) The Bureau of Medical Services and the Bureau for Social Services shall provide
110 electronic access to a child's medical records taken into their custody to the managed care
111 organization, the child placing agency, and the person having temporary custody of the child.