

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 286**

By Senators Chapman, Rose, Thorne, and Roberts

[Reported February 19, 2025, from the Committee on  
Health and Human Resources]

1 A BILL to amend and reenact §16-29-1 and §49-5-101 of the Code of West Virginia, 1931, as  
2 amended; and to amend the code by adding a new section, designated §16-29-3, relating  
3 to providing copies of health care records to patients; providing that no release,  
4 authorization, nor any form of permission from or by the minor child shall be required or  
5 requested as a prerequisite for the parent or legal guardian to obtain the medical records;  
6 providing criteria when a parent is not permitted to access the health records of the minor  
7 child; and providing that a managed care organization, child placing agency, and person  
8 with temporary custody of a child will have access to the child's medical records.

*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.**

1 (a) ~~Any licensed, certified, or registered~~A 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 no more than ~~thirty~~30 days from the receipt  
6 of the request, furnish a copy in the form of a paper copy or, if requested and if the provider  
7 routinely stores records electronically and has the ability to so provide, a copy in an electronic  
8 format including, but not limited to, a downloadable format through a secure web portal, a copy  
9 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:

(1) Unless, in the case of a patient receiving mental health 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, 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.**

1        (a) A parent, guardian, foster parent, or kinship placement may not be denied access to the  
2 health records of their minor child unless otherwise ordered by a court or pursuant to §16-29-3(b)  
3 of this code.

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

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

6        (2) The child is emancipated;

7        (3) The child is married; or

8        (4) There is a pending criminal case against the parent or guardian for child abuse and  
9 neglect, or child abuse or neglect as provided in §49-1-201 of this code.

10       (c) Except as provided in §16-29-3(b) of this code, no release, authorization, nor any form  
11 of permission from or by the minor child shall be required or requested as a prerequisite for the  
12 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.**

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

6        (b) Notwithstanding the provisions of ~~subsection (a) of this section~~ §49-5-101(a) of this  
7 code or any other provision of this code to the contrary, records concerning a child or juvenile,  
8 except adoption records and records disclosing the identity of a person making a complaint of child  
9 abuse or neglect, may be made available:

10       (1) Where otherwise authorized by ~~this chapter~~ §49 of this code;

(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

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

(c) In addition to those persons or entities to whom information may be disclosed under ~~subsection (b) of this section~~ §49-5-101(b) of this code, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available upon request to:

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

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

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

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

(d) If there is a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Human Services and provided to the entities described in ~~subsection (c) of this section~~ §49-5-101(c) of this code, all under the circumstances described in that subsection: *Provided*, That information released by the Department of Human Services pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, "near fatality" means any 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 §49-5-101(h) of this code~~, §49-5-101(h) of this code 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 §49-5-101(b) of this code~~ 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 §49-5-101(a) of this code~~, records in the possession of the Division of Corrections and Rehabilitation declared to be confidential by the provisions of ~~subsection (a) of this section §49-5-101(a) of this code~~ 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 §49-5-101(k), §49-5-101(l), and §49-5-101(m) of this code~~.

(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 §49-5-101(k) of this code~~:

(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~~ §49-5-101(k) of this code 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 and used in the grievance proceeding may be used in the appeal proceeding upon entry of an order by the circuit court, and the order shall contain a provision limiting disclosure or publication of the records or information to purposes necessary to the proceeding and prohibiting unauthorized use and reproduction.

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

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

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

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

(r) The Bureau of Medical Services and the Bureau for Social Services shall provide electronic access to a child's medical records taken into their custody to the managed care



115 organization, the child placing agency, and the person having temporary custody of the child.

NOTE: The purpose of this bill is to clarify that neither a parent nor legal guardian of a minor child shall be denied access to the minor child's 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.