

COMMITTEE SUBSTITUTE

FOR

**H. B. 4301**

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(BY DELEGATES MOYE, HATFIELD, BROWN, POORE,  
REYNOLDS, HUNT, MILEY, MANCHIN AND FLEISCHAUER)

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(Originating in the Committee on the Judiciary)  
[February 24, 2012]

A BILL to amend and reenact §16-29-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-29-2 of said code, all relating to reimbursement for copies of medical records; copies of medical records in electronic format; and limiting the reimbursement fee for electronic records.

*Be it enacted by the Legislature of West Virginia:*

That §16-29-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §16-29-2 of said code be amended and reenacted, all to read as follows:

**ARTICLE 29. HEALTH CARE RECORDS.**

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

1 Any licensed, certified or registered health care provider  
2 so licensed, certified or registered under the laws of this state  
3 shall, upon the written request of a patient, his or her  
4 authorized agent or authorized representative, within a  
5 reasonable time, furnish a copy ~~as requested~~ in the form of a  
6 paper copy or, if requested and if the provider routinely  
7 stores records electronically and has the ability to so provide,  
8 a copy in an electronic format including, but not limited to,  
9 a copy saved upon a computer disc, an electronically mailed  
10 copy or a copy saved upon a portable memory device of all  
11 or a portion of the patient's record to the patient, his or her  
12 authorized agent or authorized representative subject to the  
13 following exceptions:

14 (a) In the case of a patient receiving treatment for  
15 psychiatric or psychological problems, a summary of the  
16 record shall be made available to the patient, his or her

17 authorized agent or authorized representative following  
18 termination of the treatment program.

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

31 (c) The furnishing of a copy, as requested, of the reports  
32 of X-ray examinations, electrocardiograms and other  
33 diagnostic procedures shall be deemed to comply with the  
34 provisions of this article: *Provided*, That original radiological  
35 study film from a radiological exam conducted pursuant to a

36 request from a patient or patient's representative shall be  
37 provided to the patient or patient's representative upon  
38 written request and payment for the exam. The health care  
39 provider shall not be required to interpret or retain copies of  
40 the film and shall be immune from liability resulting from any  
41 action relating to the absence of the original radiological film  
42 from the patient's record.

43 (d) This article shall not apply to records subpoenaed or  
44 otherwise requested through court process.

45 (e) The provisions of this article may be enforced by a  
46 patient, authorized agent or authorized representative, and  
47 any health care provider found to be in violation of this  
48 article shall pay any attorney fees and costs, including court  
49 costs incurred in the course of such enforcement.

50 (f) Nothing in this article shall be construed to apply to  
51 health care records maintained by health care providers  
52 governed by the AIDS-related medical testing and records  
53 confidentiality act under the provisions of article three-c of  
54 this chapter.

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

1 (a) The provider shall be reimbursed by the person  
2 requesting in writing a copy of the records at the time of  
3 delivery for all reasonable expenses incurred in complying  
4 with this article: *Provided*, That the cost of a paper copy may  
5 not exceed 75¢ per page for the copying of any record or  
6 records which have already been reduced to written form and  
7 a search fee may not exceed \$10: *Provided however*, That if  
8 the copy is both routinely stored in electronic format and  
9 provided in an electronic format the search fee and per page  
10 copy fee may not exceed those set forth above for paper  
11 copies, and in no event shall the combined charge for search  
12 fee and per page copy fees exceed the sum of \$75, unless the  
13 provider certifies in writing that the electronically stored  
14 records require conversion by a third party provider in which  
15 case the provider may charge additionally for actual charges  
16 incurred.

17 (b) Notwithstanding the provisions of subsection (a) of  
18 this section, a provider shall not impose a charge on an

19 indigent person or his or her authorized representative if the  
20 medical records are necessary for the purpose of supporting  
21 a claim or appeal under any provisions of the Social Security  
22 Act, 42 U.S.C. §301 et seq.

23 (c) For purposes of this section, a person is considered  
24 indigent if he or she:

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

27 (2) Verifies on a medical records request and release form  
28 that the records are requested for purposes of supporting a social  
29 security claim or appeal and submits with the release form  
30 reasonable proof that the person is financially unable to pay full  
31 copying charges by reason of unemployment, disability, income  
32 below the federal poverty level, or receipt of state or federal  
33 income assistance.

34 (d) Any person requesting free copies of written medical  
35 records pursuant to the provisions of subsection (b) of this  
36 section is limited to one set of copies per provider. Any  
37 additional requests for the same records from the same provider  
38 shall be subject to the fee provisions of subsection (a).