

1 COMMITTEE SUBSTITUTE

2 FOR

3 H. B. 2795

4
5 (By Delegates Westfall, B. White and McCuskey)

6 (Originating in the Committee on the Judiciary.)

7 (February 2, 2015)

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
11 designated §56-4-72, all relating to production of medical records; providing in certain
12 circumstances medical records must be produced without court order; prohibiting unilateral
13 restrictions on the maintenance, use or retention of the medical records; requiring the
14 insurance commissioner to promulgate rules; providing that objection to production of
15 medical records is not limited; providing that court ordered production of medical records
16 does not affect application of this section; establishing that an order protecting privacy of
17 medical records may be entered; and, establishing that any action related to unauthorized
18 distribution of medical records is unaffected.

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

20 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
21 section, designated §56-4-72, to read as follows:

22 **ARTICLE 4. RULES AND PLEADING.**

1 **§56-4-72. Production of medical records.**

2 (a) In any civil action in which a party's past, present or future health condition is at issue and
3 information regarding the party's health condition constitutes admissible evidence or is reasonably
4 calculated to lead to the discovery of such evidence, upon the receipt of a timely request for that
5 information the party shall produce the medical records and bills for medical services in its
6 possession, custody or control. The duty imposed by this requirement shall be carried out by the
7 parties without need for an order of the court.

8 (b) In producing medical records and bills for medical services, no party may unilaterally
9 impose restrictions or conditions on a receiving party's maintenance, use or retention of such
10 documents. When medical records and bills for medical services are provided to an insurance
11 company, no restrictions or conditions may be imposed on the insurance company's handling, use,
12 retention or dissemination of them that would contradict, limit or be inconsistent with the terms of
13 any applicable policy of insurance, or the performance of insurance functions, as permitted or
14 authorized under applicable federal and state laws and regulations. The insurance commissioner
15 shall promulgate rules to protect the privacy of litigants in their personal medical information and
16 the need for an insurance company to use that information appropriately.

17 (c) Nothing in this section is intended to limit a party's right to object to the production of
18 medical records or bills for medical services on the grounds that such information is not discoverable
19 in the circumstances of a particular civil action: *Provided*, That if the court orders the production
20 of the disputed information over a party's objection, the requirements and limitations set forth herein
21 apply.

22 (d) Individuals have a right of privacy concerning their medical records and nothing in this

1 section prevents a judge from issuing an order protecting the privacy of a person's medical records.

2 (e) Nothing in this section is intended to prohibit any common law cause of action relating

3 to the unauthorized distribution of medical records.