

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2795**

(BY DELEGATES WESTFALL, B. WHITE AND MCCUSKEY)

[Originating in the Committee on the Judiciary;

February 18, 2016.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §56-4-72, relating to production of medical records and medical billing records  
3 in civil actions; defining medical records and medical billing records; establishing  
4 procedures for requesting releases for medical records and medical billing records to  
5 specified health care providers; providing that all releases comply with applicable state  
6 and federal law and prohibit contact between a requester and health care provider beyond  
7 written request; providing opportunity and procedure for objections to the release of  
8 medical records and medical billing records; directing copy of requests to health care  
9 providers any records received to be provided to the party who is the subject of the  
10 requests; providing that other lawful discovery methods not foreclosed; providing for  
11 confidential use and maintenance of medical records and medical billing records by  
12 receiving party, its attorneys, experts, consultants, agents and insurance carriers; allowing  
13 parties to agree on whether to provide copies of medical records or medical billing records  
14 to individual parties; requiring that medical records and medical billing records not be  
15 shared, provided or disseminated to other third parties not enumerated without consent;  
16 providing for confidential maintenance and use of medical records and medical billing  
17 records by insurance carriers; providing for limits on restrictions or conditions that may be  
18 imposed on insurance carriers with respect to maintenance of medical records and  
19 medical billing records; specifying that nothing in this section restricts, supersedes or  
20 enlarges rights or obligations under rule twenty-six of the West Virginia Rules of Civil  
21 Procedure; and preserving rights of a party to object to production of medical records or  
22 medical billing records.

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

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

**ARTICLE 4. RULES AND PLEADING.****§56-4-72. Production of medical records in civil actions.**

1           (a) For purposes of this section, “medical records” and “medical billing records” mean  
2 documents created, derived or maintained by a health care provider that relate to a patient’s past,  
3 present or future physical, mental or behavioral health condition; the provision of health care to a  
4 patient; or payment for the provision of health care to a patient.

5           (b) In civil actions, a party may serve upon any other party whose medical records or  
6 medical billing records are relevant to an issue in the case, or may lead to the discovery of  
7 admissible evidence, a request that the party or other authorized person sign a medical records  
8 release or releases authorizing specified health care providers to release medical records and  
9 medical billing records to the requesting party. All releases shall comply with any applicable state  
10 or federal law and shall contain language that prohibits contact between a health care provider  
11 and the requester other than a written request for existing records, unless by order of the court.

12           (c) The party upon whom the request is served, within thirty days after service of the  
13 request or as otherwise agreed to by the requesting party and party to whom the requests are  
14 made, shall provide to the requesting party releases signed by the party or other authorized  
15 person unless the request is objected to, in which event the reasons for the objection shall be  
16 stated. The party requesting the release of medical records or medical billing records may move  
17 for an order with respect to any objection or other failure to respond to the request.

18           (d) The party requesting the medical records or medical billing records shall provide to  
19 the party whose medical records or medical billing records are sought, or the party’s attorney if  
20 he or she is represented by an attorney, a copy of any request directed to a health care provider,  
21 which copy shall be provided contemporaneously with the request directed to the health care  
22 provider.

23           (e) The party requesting the medical records or medical billing records shall provide to  
24 the party whose medical records or medical billing records are being sought, or to the party’s

25 attorney, a copy of all documents obtained by the requesting party pursuant to the release within  
26 seven days of receipt.

27 (f) Nothing in this section is intended to foreclose any other lawful methods of discovery  
28 or to alter or affect the provisions of section six-a, article seven-b, chapter fifty-five of this code.

29 (g) All medical records or medical billing records obtained pursuant to this section or by  
30 any other lawful methods of discovery shall be treated as confidential by the opposing party, its  
31 attorneys, experts, consultants, agents and any insurance carrier who may be obligated to pay all  
32 or some of any judgment obtained in the litigation: *Provided*, That the parties may agree as to  
33 whether copies of medical records or medical billing records may be provided to individual parties  
34 in the litigation. Except as otherwise required or allowed by applicable state or federal law,  
35 regulation or court order, medical records and medical billing records shall not be shared,  
36 provided or disseminated to any other third party other than those provided herein without  
37 consent.

38 (h) Medical records and medical billing records obtained in connection with insurance  
39 claims or civil litigation shall be confidentially maintained by insurance carriers in accordance with  
40 state and federal law, including the provisions of Title 114, Series 57 of the Code of State Rules,  
41 and no additional restrictions or conditions may be imposed that contradict or are inconsistent  
42 with any applicable policy of insurance or the performance of insurance functions permitted or  
43 authorized by state and federal law.

44 (i) Nothing in this section is intended to restrict, supersede or enlarge any party's rights  
45 or obligations under rule twenty-six of the West Virginia Rules of Civil Procedure, nor limit a party's  
46 right to object to the production of medical records or medical billing records on the grounds that  
47 such records are not discoverable in the circumstances of a particular civil action: *Provided*, That  
48 if the court orders the production of disputed records over a party's objection, the requirements  
49 and limitations set forth herein apply.