WEST VIRGINIA CODE CHAPTER 16 ARTICLE 29

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

(a) 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, 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.

(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) 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.

(c) The provisions of this article may be enforced by a patient, personal representative, authorized agent or authorized representative. 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.

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

(a) A provider may charge a patient or the patient's personal representative no more than a fee consistent with HIPAA, as amended, and any rules promulgated pursuant to HIPAA, plus any applicable taxes.

(b) (1) A person other than a patient or patient's personal representative requesting records from a health care provider shall submit the request and HIPAA compliant authorization in writing and pay a fee at the time of delivery. Notwithstanding any other section of the code or rule, the fees shall not exceed: (A) A search and handling fee of $20; (B) a per page fee of 40 cents for paper copies; and (C) postage, if the person requested that the records be mailed, plus any applicable taxes.

(2) If the requested record is stored by the health care provider in an electronic form, unless the person requesting the record specifically requests a paper copy, the records will be delivered in electronic or digital form and the per page fee for providing an electronic copy shall not exceed 20 cents per page but shall in no event exceed $150 inclusive of all fees, including a search and handling fee, except for applicable taxes.

(c) Any person requesting a record be certified by affidavit pursuant to section four-e, article five, chapter fifty-seven of this code shall pay a fee of $10 for such certification.

(d) If a person requests or agrees to an explanation or summary of the records, the provider may charge a reasonable cost-based fee for the labor cost if preparing the explanation or the summary; for the supplies for creating the explanation or summary; and for the cost of postage, if the person requested that the records be mailed, plus any applicable taxes. If the records are stored with a third party or a third party responds to the request for records in paper or electronic media, the provider may charge additionally for the actual charges incurred from the third party.

(e) The per page fee for copying under subsection (b) shall be adjusted to reflect the consumer price index for medical care services such that the base amount shall be increased or decreased by the proportional consumer price index as published every October 1 starting October 1, 2017.

(f) Notwithstanding the provisions of subsection (a) of this section, a provider shall not impose a charge on an indigent person or his or her authorized representative if the medical records are necessary for the purpose of supporting a claim or appeal under any provisions of the Social Security Act, 42 U. S. C. §301, *et seq*.

For purposes of this section, a person is considered indigent if he or she:

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

(2) Verifies on a medical records request and release form that the records are requested for

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purposes of supporting a Social Security claim or appeal and submits with the release form reasonable proof that the person is financially unable to pay full copying charges by reason of unemployment, disability, income below the federal poverty level or receipt of state or federal income assistance.

(g) Any person requesting free copies of written medical records pursuant to the provisions of subsection (f) of this section is limited to one set of copies per provider. Any additional requests for the same records from the same provider shall be subject to the fee provisions of subsections (a) and (b).

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§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 heath records of that parent's minor child if:

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

(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.

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