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4

As Engrossed: S3/13/23

A Bill

SENATE BILL 359

5 By: Senator G. Stubblefield
6 By: Representative Maddox
7

For An Act To Be Entitled

9 AN ACT CONCERNING ACCESS TO MEDICAL RECORDS FOR A
10 LEGAL PROCEEDING; CONCERNING FEES CHARGED FOR
11 DUPLICATION OF ELECTRONICALLY STORED MEDICAL RECORDS;
12 AND FOR OTHER PURPOSES.
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Subtitle

15 CONCERNING ACCESS TO MEDICAL RECORDS FOR
16 A LEGAL PROCEEDING; AND CONCERNING FEES
17 CHARGED FOR DUPLICATION OF ELECTRONICALLY
18 STORED MEDICAL RECORDS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 16-46-106 is amended to read as follows:

25 16-46-106. Access to medical records for legal proceedings, the
26 adjustment of an insurance claim, or the processing and underwriting of a
27 life insurance policy application.

28 (a)~~(1)~~ In contemplation of, preparation for, or use in any legal
29 proceeding, adjustment of an insurance claim, or the processing and
30 underwriting of a life insurance application ~~any~~ a person who is or has been
31 a patient of a ~~doctor, hospital, ambulance provider, medical healthcare~~
32 ~~provider, or other medical institution~~ shall be medical provider is entitled
33 to obtain access, personally or ~~by and~~ through ~~his or her attorney~~ another
34 person authorized to request the patient's medical records, to the
35 ~~information in his or her patient's~~ medical records, ~~upon request and with~~
36 through a written patient authorization request, and shall be furnished



1 copies of all requested medical records ~~pertaining to his or her case upon~~
2 ~~the tender of the expense of such copy or copies after paying the relevant~~
3 expense as provided in this section.

4 ~~(2) Cost of each (b)(1) A photocopy, excluding X-rays, of a medical~~
5 record shall not exceed cost more than fifty cents (50¢) per page for the
6 first twenty-five (25) pages and twenty-five cents (25¢) for each additional
7 page.

8 (2)(A) A labor charge not exceeding fifteen dollars (\$15.00) may
9 be ~~added~~ charged for each request for medical records under ~~subdivision~~
10 subsection (a)(1) of this section, and the actual cost of any required
11 postage may also be charged.

12 ~~(3)(B) Provided, however~~ However, in the alternative to
13 the labor charge described in subdivision ~~(a)(2)~~ (b)(2)(A) of this section, a
14 reasonable retrieval fee for stored, printed, or written medical records ~~of a~~
15 ~~hospital, a physician's office, or an ambulance provider~~ that do not exist in
16 an electronic format may be added to the photocopy charges, ~~only~~ described in
17 subsection (b)(1) of this section if the requested medical records are
18 stored at a location other than the location of the ~~hospital, physician's~~
19 ~~office, or ambulance~~ medical provider.

20 (C) Subsection (b) of this section does not apply to
21 medical records that exist in an electronic format or copies of an X-ray.

22 (c)(1) If the medical records requested under subsection (a) of this
23 section exist in an electronic format, the medical provider shall furnish the
24 medical records in an electronic format, including without limitation through
25 secure electronic transmission to the extent consistent with federal law.

26 (2) A medical provider is not required to produce medical
27 records in a specific electronic format under this subsection unless a
28 specific electronic format is required by the Arkansas Rules of Civil
29 Procedure or the court if the request is for use in a legal proceeding.

30 (3) Medical records requested that exist in electronic format
31 shall be produced within thirty (30) days after receipt of the request unless
32 a different deadline is established under the Arkansas Rules of Civil
33 Procedure or by the court.

34 (4) The fee for producing medical records under this subsection
35 is twenty dollars (\$20.00).

36 ~~(4)~~ (d) ~~Provided, further, this~~ This section does not prohibit

1 reasonable fees for narrative medical reports or medical review when
2 performed by ~~the physician or medical institution~~ a medical provider subject
3 to the request for medical records under this section, but only if a
4 narrative medical report or medical review is requested by the person or
5 entity requesting the records.

6 ~~(b)(1)~~ (e)(1) *If a doctor believes a patient should be denied access to*
7 *his or her medical records for any reason, the doctor must provide the*
8 *patient or the patient's guardian or attorney a written determination that*
9 *disclosure of such information would be detrimental to the individual's*
10 *health or well-being.*

11 *(2)(A) At such time, the patient or the patient's guardian or*
12 *attorney may select another doctor in the same type of practice as the doctor*
13 *subject to the request to review such information and determine if disclosure*
14 *of such information would be detrimental to the patient's health or well-*
15 *being.*

16 *(B) If the second doctor determines, based upon*
17 *professional judgment, that disclosure of such information would not be*
18 *detrimental to the health or well-being of the individual, the medical*
19 *records shall be released to the patient or the patient's guardian or*
20 *attorney.*

21 *(3) If the determination is that disclosure of such information*
22 *would be detrimental, then it either will not be released or the*
23 *objectionable material will be obscured before release.*

24 *(4) The cost of this review of the patient's record will be*
25 *borne by the patient or the patient's guardian or attorney.*

26 ~~(e) Nothing in this (f)(1)~~ This section shall does not preclude the
27 existing subpoena process~~+~~.

28 (2) however if If a patient or the person authorized to request
29 the patient's medical records is compelled to use the subpoena process in
30 order to obtain access to, or copies of, ~~their own~~ the patient's medical
31 records after reasonable requests have been made and a reasonable time has
32 expired, then the court issuing the subpoena and having jurisdiction over the
33 proceedings shall grant the patient or the person authorized to request the
34 patient's medical records a reasonable attorney's fee plus costs of court
35 against the ~~doctor, hospital, or medical institution~~ medical provider.

36 ~~(d)(g)~~ This section does not apply to the ~~Division of Correction~~

1 Department of Corrections.

2 (h)(1) If a request for the patient's own medical records is submitted
3 by the patient or a person authorized to request the patient's medical
4 records under this section, then access shall be provided according to all
5 the requirements of the patient access regulations promulgated under the
6 Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §
7 1320d et seq., and the Health Information Technology for Economic and
8 Clinical Health Act, 42 U.S.C. § 201 et seq., as they existed on January 1,
9 2023, and the requirements of 45 C.F.R. § 164.524, as it existed on January
10 1, 2023.

11 (2) The standards stated in subdivision (h)(1) of this section
12 apply regardless of whether the patient or person authorized to request the
13 patient's medical records requests that the medical records be sent to:

14 (A) The patient;

15 (B) A person authorized to request the patient's medical
16 records;

17 (C) An attorney; or

18 (D) Another third party.

19 (i) As used in this section:

20 (1) "Medical provider" means a doctor, hospital, ambulance
21 provider, medical healthcare provider, or other medical institution that
22 provides medical care;

23 (2) "Person authorized to request the patient's medical records"
24 means a person or entity who presents a properly executed medical records
25 authorization; and

26 (3)(A) "Photocopy" means a photographic copy of printed or
27 written material in a physical form.

28 (B) "Photocopy" does not include an electronically stored
29 record that has not been printed into a physical form.

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31 */s/G. Stubblefield*
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