

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1886

5 By: Representative Gazaway  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING ACCESS TO MEDICAL RECORDS FOR A  
9 LEGAL PROCEEDING; CONCERNING FEES CHARGED FOR  
10 DUPLICATION OF ELECTRONICALLY STORED MEDICAL RECORDS;  
11 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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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code § 16-46-106 is amended to read as follows:

24 16-46-106. Access to medical records for legal proceeding -

### 25 Definitions.

26 (a)~~(1)~~ In contemplation of, preparation for, or use in any legal  
27 proceeding, ~~any a~~ a person who is or has been a patient of a ~~doctor, hospital,~~  
28 ~~ambulance provider, medical healthcare provider, or other medical institution~~  
29 ~~shall be~~ medical provider is entitled to obtain access, personally or by ~~and~~  
30 ~~through his or her attorney~~ another person authorized to request the  
31 patient's medical records, to the ~~information in his or her~~ patient's medical  
32 records, ~~upon request and with written patient authorization through a~~  
33 written request, and shall be furnished copies of all requested medical  
34 records ~~pertaining to his or her case upon the tender of the expense of such~~  
35 ~~copy or copies~~ after paying the relevant expense as described in this  
36 section.



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

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

9       ~~(3)(B)~~ Provided, however ~~However~~, in the alternative to  
 10 the labor charge described in subdivision ~~(a)(2)(b)(2)(A)~~ of this section, a  
 11 reasonable retrieval fee for stored printed or written medical records of a  
 12 ~~hospital, a physician's office, or an ambulance provider~~ medical provider may  
 13 be added to the photocopy charges, ~~only~~ described in subdivision (b)(1) of  
 14 this section if the requested medical records are stored at a location other  
 15 than the location of the ~~hospital, physician's office, or ambulance provider~~  
 16 medical provider.

17       (C) This subsection does not apply to electronically  
 18 stored medical records that have not been printed into a physical form or to  
 19 copies of an X-ray.

20       (c)(1) If medical records are requested under subsection (a) of this  
 21 section in an electronic format, the medical provider shall furnish the  
 22 medical records in an electronic format, including through secure electronic  
 23 transmission to the extent consistent with federal law.

24       (2) A medical provider is not required to produce medical  
 25 records in a specific electronic format under this subsection unless a  
 26 particular electronic format is required by the Arkansas Rules of Civil  
 27 Procedure or the court.

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

32       (4) The fee for producing the medical records under this  
 33 subsection is twenty dollars (\$20.00).

34       ~~(4)~~ Provided, further, this

35       (5) This section shall does not prohibit reasonable fees for  
 36 narrative medical reports or medical review when performed by the physician

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

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

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

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

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

22 ~~(4) The cost of this review of the patient's record will be~~  
 23 ~~borne by the patient or the patient's guardian or attorney.~~

24 ~~(c)(d)(1) Nothing in this section shall~~ This section does not preclude  
 25 the existing subpoena process; ~~however,~~

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

34 ~~(d)(e)~~ This section does not apply to the Division of Correction.

35 (f)(1) If a request for the patient's own medical records is submitted  
 36 by the patient or a person authorized to request the patient's medical

1 records, then access shall be provided according to all requirements of the  
2 patient access regulations promulgated under the Health Insurance Portability  
3 and Accountability Act of 1996 and the Health Information Technology for  
4 Economic and Clinical Health Act, as they existed on January 1, 2021, and the  
5 requirements of 45 C.F.R. § 164.524, as it existed on January 1, 2021.

6 (2) The standards set forth in subdivision (f)(1) of this  
7 section apply regardless of whether the patient or person authorized to  
8 request the patient's medical records requests that the records be sent to:

9 (A) The patient;

10 (B) A person authorized to request the patient's medical  
11 records;

12 (C) An attorney; or

13 (D) Another third party.

14 (3) If the request under subsection (a) of this section is  
15 submitted by a party other than the patient or a person authorized to request  
16 the patient's medical records, the request must be accompanied by a written  
17 authorization, and this section applies to the request.

18 (g) As used in this section:

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

22 (2) "Person authorized to request the patient's medical records"  
23 means a person who has authority under Arkansas law to act on behalf of a  
24 patient in making decisions related to health care; and

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

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

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