

1 State of Arkansas As Engrossed: S3/13/23 H3/30/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

SENATE BILL 359

4

5 By: Senator G. Stubblefield

6 By: Representative Maddox

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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

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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~~ 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)~~
9 twenty-five dollars (\$25.00) may be ~~added~~ charged for each request for
10 medical records under ~~subdivision~~ subsection (a)~~(1)~~ of this section, and the
11 actual cost of any required 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 subdivision (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) If the patient or person authorized to request the
21 patient's medical records requests that the medical records be notarized or
22 certified, an additional fee of two dollars (\$2.00) may be charged.

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

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

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

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

1 (4)(A) The fee for producing medical records under this
2 subsection is seventy-five dollars (\$75.00), and the actual cost of postage,
3 if any postage is required, may be charged in addition to the fee for
4 producing medical records.

5 (B) The fee and postage charge allowed under subdivision
6 (c)(4)(A) of this section are the only fees and charges allowed for producing
7 medical records under this subsection.

8 ~~(4)~~ (d) ~~Provided, further, this~~ This section does not prohibit
9 reasonable fees for narrative medical reports or medical review when
10 performed by ~~the physician or medical institution~~ a medical provider subject
11 to the request for medical records under this section, but only if a
12 narrative medical report or medical review is requested by the person or
13 entity requesting the records.

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

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

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

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

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

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

36 ~~(2)~~ ~~however if~~ If a patient or the person authorized to request

1 the patient's medical records is compelled to use the subpoena process in
2 order to obtain access to, or copies of, ~~their own~~ the patient's medical
3 records after reasonable requests have been made and a reasonable time has
4 expired, then the court issuing the subpoena and having jurisdiction over the
5 proceedings shall grant the patient or the person authorized to request the
6 patient's medical records a reasonable attorney's fee plus costs of court
7 against the ~~doctor, hospital, or medical institution~~ medical provider.

8 ~~(d)(g)~~ This section does not apply to the ~~Division of Correction~~
9 Department of Corrections.

10 (h)(1) If a request for the patient's own medical records is submitted
11 by the patient or a person authorized to request the patient's medical
12 records under this section, then access shall be provided according to all
13 the requirements of the patient access regulations promulgated under the
14 Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §
15 1320d et seq., and the Health Information Technology for Economic and
16 Clinical Health Act, 42 U.S.C. § 201 et seq., as they existed on January 1,
17 2023.

18 (2) The standards stated in subdivision (h)(1) of this section,
19 with the exception of the fee provisions in the Health Insurance Portability
20 and Accountability Act of 1996, 42 U.S.C. § 1320d et seq., and the Health
21 Information Technology for Economic and Clinical Health Act, 42 U.S.C. § 201
22 et seq., as they existed on January 1, 2023, apply regardless of whether the
23 patient or person authorized to request the patient's medical records
24 requests that the medical records be sent to:

25 (A) The patient;

26 (B) A person authorized to request the patient's medical
27 records;

28 (C) An attorney; or

29 (D) Another third party.

30 (i) As used in this section:

31 (1) "Medical provider" means a doctor, hospital, ambulance
32 provider, medical healthcare provider, or other medical institution that
33 provides medical care;

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

