

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: S3/15/11

A Bill

SENATE BILL 861

5 By: Senator S. Harrelson
6

For An Act To Be Entitled

8 AN ACT REGARDING ACCESS TO MEDICAL RECORDS; AND FOR
9 OTHER PURPOSES.

Subtitle

12 REGARDING ACCESS TO MEDICAL RECORDS.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Arkansas Code § 16-46-106 is amended to read as follows:
19 16-46-106. Access to medical records.

20 (a)(1) In contemplation of, preparation for, or use in any legal
21 proceeding, ~~any~~ a person who is or has been a patient of a doctor, hospital,
22 ambulance provider, medical health care provider, or other medical
23 institution shall be entitled to obtain access, personally or by and through
24 his or her attorney, or if the person is deceased by the executor or
25 administrator of the patient's estate or by the patient's surviving spouse,
26 parent, adult child, or adult sibling upon presentation of an affidavit or
27 heirship from that spouse, parent, child, or sibling, to the information in
28 his or her medical records, upon request and with written patient
29 authorization, or if the person is deceased by written authorization of the
30 wrongful-death beneficiary requesting the records, and shall be furnished
31 copies of all medical records pertaining to his or her case upon the tender
32 of the expense of such copy or copies.

33 (2) If a patient is deceased, the records shall be released to
34 the first of the following individuals who exists at the time the records
35 request is made:

36 (A) The executor or administrator of the patient's estate;



- 1 (B) The patient's spouse;
 2 (C) A parent of the patient;
 3 (D) An adult child of the patient; and
 4 (E) An adult sibling of the patient.

5 ~~(2)~~(3) Cost of each photocopy, excluding X rays, shall not
 6 exceed fifty cents (.50¢) per page for the first twenty-five (25) pages and
 7 twenty-five cents (.25¢) for each additional page. A labor charge not
 8 exceeding fifteen dollars (\$15.00) may be added for each request for medical
 9 records under subdivision (a)(1) of this section, and the actual cost of any
 10 required postage may also be charged.

11 ~~(3)~~(4) ~~Provided, however,~~ However, in the alternative to the
 12 labor charge described in subdivision ~~(a)(2)~~ (a)(3) of this section, a
 13 reasonable retrieval fee for stored records of a hospital, a physician's
 14 office, or an ambulance provider may be added to the photocopy charges, only
 15 if the requested records are stored at a location other than the location of
 16 the hospital, physician's office, or ambulance provider.

17 ~~(4)~~(5) ~~Provided, further, this~~ This section ~~shall~~ does not
 18 prohibit reasonable fees for narrative medical reports or medical review when
 19 performed by the physician or medical institution subject to the request, but
 20 only if a narrative medical report or medical review is requested by the
 21 person or entity requesting the records.

22 (b)(1) If a doctor believes a patient should be denied access to his
 23 or her medical records for any reason, the doctor must provide the patient or
 24 the patient's guardian, wrongful-death beneficiary, or attorney a written
 25 determination that disclosure of such information would be detrimental to the
 26 individual's health or well-being.

27 (2)(A) At ~~such~~ that time, the patient or the patient's guardian,
 28 the executor or administrator of the patient's estate, the patient's spouse,
 29 parent, adult child, or adult sibling, or attorney may select another doctor
 30 *in the same* type practice as the doctor subject to the request to review ~~such~~
 31 the information and determine if disclosure of such information would be
 32 detrimental to the patient's health or well-being.

33 (B) If the second doctor determines, based upon
 34 professional judgment, that disclosure of ~~such~~ the information would not be
 35 detrimental to the health or well-being of the individual, the medical
 36 *records shall be released to the patient or the patient's guardian, the*

1 executor or administrator of the patient's estate, the patient's spouse,
2 parent, adult child, or adult sibling, or attorney.

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

6 (4) The cost of this review of the patient's record will be
7 borne by the patient or the patient's guardian, the executor or administrator
8 of the patient's estate, the patient's spouse, parent, adult child, or adult
9 sibling, or attorney.

10 (c) Nothing in this section shall preclude the existing subpoena
11 process; however, if a patient is compelled to use the subpoena process in
12 order to obtain access to, or copies of, their own medical records after
13 reasonable requests have been made and a reasonable time has expired, then
14 the court issuing the subpoena and having jurisdiction over the proceedings
15 shall grant the patient a reasonable attorney's fee plus costs of court
16 against the doctor, hospital, or medical institution.

17 (d) This section does not apply to the Department of Correction or the
18 Department of Community Correction.

19 (e) A doctor, a hospital, an ambulance provider, a medical health
20 provider, or other medical institution providing access to medical records in
21 good-faith reliance that the person given access is so authorized by this
22 section shall be immune from liability for providing access.

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24 /s/S. Harrelson
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