

Stricken language would be deleted from and underlined language would be added to present law.
Act 765 of the Regular Session

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: S3/13/23 H3/30/23
A Bill

SENATE BILL 359

By: Senator G. Stubblefield
By: Representative Maddox

For An Act To Be Entitled

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

Subtitle

CONCERNING ACCESS TO MEDICAL RECORDS FOR
A LEGAL PROCEEDING; AND CONCERNING FEES
CHARGED FOR DUPLICATION OF ELECTRONICALLY
STORED MEDICAL RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 16-46-106 is amended to read as follows:

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

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



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

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

~~(2)(A) A labor charge not exceeding fifteen dollars (\$15.00) twenty-five dollars (\$25.00) may be added charged~~ for each request for medical records under ~~subdivision~~ subsection (a)~~(1)~~ of this section, and the actual cost of any required postage may also be charged.

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

(C) If the patient or person authorized to request the patient's medical records requests that the medical records be notarized or certified, an additional fee of two dollars (\$2.00) may be charged.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The patient;

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

(C) An attorney; or

(D) Another third party.

(i) As used in this section:

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

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

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

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

/s/G. Stubblefield

APPROVED: 4/12/23