

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

State of Arkansas  
94th General Assembly  
Regular Session, 2023

As Engrossed: H3/8/23  
**A Bill**

HOUSE BILL 1275

By: Representative L. Johnson

By: Senator Irvin

### **For An Act To Be Entitled**

AN ACT TO REGULATE ELECTRONIC MEDICAL RECORDS; TO PROHIBIT A HEALTHCARE PAYOR THAT HAS ELECTRONIC ACCESS TO MEDICAL RECORDS FROM REQUESTING MEDICAL RECORDS IN A DIFFERENT FORMAT FROM A HEALTHCARE PROVIDER; AND FOR OTHER PURPOSES.

### **Subtitle**

TO REGULATE ELECTRONIC MEDICAL RECORDS; AND TO PROHIBIT A HEALTHCARE PAYOR THAT HAS ELECTRONIC ACCESS TO MEDICAL RECORDS FROM REQUESTING MEDICAL RECORDS IN A DIFFERENT FORMAT FROM A HEALTHCARE PROVIDER.

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

SECTION 1. Arkansas Code Title 23, Chapter 99, is amended to add an additional subchapter to read as follows:

#### Subchapter 16 – Electronic Access of Medical Records by Healthcare Payor Act

##### 23-99-1601. Title.

This subchapter shall be known and may be cited as the "Electronic Access of Medical Records by Healthcare Payor Act".

##### 23-99-1602. Definitions.



As used in this subchapter:

(1) "Authorized designee" means an entity that is:

(A) Designated by a healthcare payor to operate on its behalf; and

(B) Authorized to access an enrollee's protected health information under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as it existed on January 1, 2023;

(2) "Enrollee" means an individual who is entitled to receive healthcare services under the terms of a health benefit plan;

(3)(A) "Health benefit plan" means an individual, blanket, or group plan, policy, or contract for healthcare services issued, renewed, or extended in this state by a healthcare insurer, health maintenance organization, hospital medical service corporation, or self-insured governmental or church plan in this state.

(B) "Health benefit plan" includes:

(i) Indemnity and managed care plans; and

(ii) Plans providing health benefits to state and public school employees under § 21-5-401 et seq.

(C) "Health benefit plan" does not include:

(i) A plan that provides only dental benefits or eye and vision care benefits;

(ii) A disability income plan;

(iii) A credit insurance plan;

(iv) Insurance coverage issued as a supplement to liability insurance;

(v) Medical payments under an automobile or homeowners insurance plan;

(vi) A health benefit plan provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(vii) A plan that provides only indemnity for hospital confinement;

(viii) An accident-only plan; or

(ix) A specified disease plan;

(4)(A) "Healthcare payor" means:

(i) A health insurance company;

(ii) A health maintenance organization;

(iii) A hospital and medical service corporation; or

(iv) An entity that:

(a) Provides or administers a self-funded health benefit plan, including a governmental plan; or

(b) Performs utilization review for a self-funded health benefit plan, including a governmental plan.

(B) "Healthcare payor" includes any entity that is subject to any of the following laws:

(i) The insurance laws of this state;

(ii) Section 23-75-101 et seq., pertaining to hospital and medical service corporations; or

(iii) Section 23-76-101 et seq., pertaining to health maintenance organizations.

(C) "Healthcare payor" does not include an entity that provides only dental benefits or eye and vision care benefits;

(5)(A) "Healthcare provider" means a person that is licensed, certified, or otherwise authorized by the laws of this state to provide healthcare services.

(B) "Healthcare provider" includes only:

(i) Advanced practice nurses;

(ii) Athletic trainers;

(iii) Audiologists;

(iv) Certified behavioral health providers;

(v) Certified orthotists;

(vi) Chiropractors;

(vii) Community mental health centers or clinics;

(viii) Dentists;

(ix) Home health care;

(x) Hospice care;

(xi) Hospital-based services;

(xii) Hospitals;

(xiii) Licensed ambulatory surgery centers;

(xiv) Licensed certified social workers;

(xv) Licensed dieticians;

(xvi) Licensed intellectual and developmental

disabilities service providers;

- (xvii) Licensed professional counselors;
- (xviii) Licensed psychological examiners;
- (xix) Long-term care facilities;
- (xx) Occupational therapists;
- (xxi) Optometrists;
- (xxii) Pharmacists;
- (xxiii) Physical therapists;
- (xxiv) Physicians and surgeons;
- (xxv) Podiatrists;
- (xxvi) Prosthetists;
- (xxvii) Psychologists;
- (xxviii) Respiratory therapists;
- (xxix) Rural health clinics; and
- (xxx) Speech pathologists;

(6) "Healthcare services" means services and products, including prescription medication, provided by a healthcare provider within the scope of the healthcare provider's license;

(7)(A) "Medical records" means the hospital or clinic records, physicians' records, or other healthcare records that a healthcare provider retains on an enrollee related to the enrollee's medical conditions.

(B) "Medical records" includes other reports, documents, or records that a healthcare provider has concerning:

- (i) The healthcare services provided to the enrollee;
  - (ii) The enrollee's medical history; and
  - (iii) Prescription medications written, procedures ordered, or any other information related to the patient's overall health;
- and

(8) "Prescription medication" means a drug or biologic that is prescribed by a healthcare provider to an enrollee for the purpose of alleviating, curing, preventing, or healing illness, injury, or physical disability.

23-99-1603. Electronic access to medical records sufficient.

(a) A healthcare provider that provides healthcare services to an

enrollee may grant electronic access to the healthcare provider's medical records system to a healthcare payor or the healthcare payor's authorized designee:

(1) To evaluate potential health care to be provided to an enrollee;

(2) To review healthcare services already provided to an enrollee;

(3) To make a determination on an authorization required for the enrollee to receive a medically-necessary healthcare service; or

(4) For any other reason related to healthcare services for an enrollee, including without limitation quality, payment, or other general operations required to provide healthcare services.

(b) A healthcare provider is not required to provide electronic access to medical records to a healthcare payor or the healthcare payor's authorized designee.

(c) For the purposes of subdivision (a)(2) of this section, a healthcare payor shall not require a healthcare provider to submit any paper, facsimile, email, or other type of requested format of medical records if the healthcare payor or the healthcare payor's authorized designee has been granted electronic access to the healthcare provider's medical records unless the medical records sought are not available or accessible electronically.

(d) If there is a dispute over access to medical records between a healthcare payor and a healthcare provider, then the offer of electronic access to medical records by the healthcare provider shall be deemed to satisfy any request made by the healthcare payor.

(e) The initial grant of electronic access to a healthcare provider's medical records system under this subchapter does not initiate any timelines associated with reviewing medical records.

SECTION 2. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on and after January 1, 2024.

/s/L. Johnson