

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1578

By: Monson

AS INTRODUCED

An Act relating to torts; amending 76 O.S. 2001, Section 19, which relates to access to medical records; providing for access to certain information by specified entities; prohibiting the charging of a fee for certain records under specified conditions; allowing a fee for certain requests for records; requiring documentation of certain application or appeal; establishing time limit for responding to request for records; defining term; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 76 O.S. 2001, Section 19, is amended to read as follows:

Section 19. A. 1. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be entitled to obtain access to the information contained in ~~the~~ such patient's medical records, including any x-ray or other photograph or image, upon request.

2. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be furnished copies of all records, including any x-ray or other photograph or image, pertaining to that person's case upon request and, except as otherwise provided by paragraph 3 of this subsection, upon the tender of the expense of the copy or copies. The cost of each copy, not including any x-ray or other photograph or image, shall not exceed twenty-five cents (\$0.25) per page. The cost of each x-ray or other photograph or image shall not exceed Five Dollars (\$5.00) or the actual cost of reproduction, whichever is less. The

physician, hospital, or other medical professionals and institutions may charge a patient for the actual cost of mailing the patient's requested medical records, but may not charge a fee for searching, retrieving, reviewing, and preparing medical records of the person.

3. a. An attorney or other authorized representative of a patient or former patient shall be entitled to obtain access to information contained in such patient's medical records, including any x-ray or other photograph or image on behalf of the patient or former patient, for purposes of and pursuant to the provisions of subparagraph b of this paragraph.

b. A health care provider or health care facility shall not charge a fee for a medical or mental health record requested by a patient or for a patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits or assistance the patient or former patient may be eligible to receive based on such patient's or former patient's disability, or an appeal relating to denial of those benefits or assistance under:

(1) Title 56 of the Oklahoma Statutes, for services offered or provided by the Department of Human Services or Title 74 of the Oklahoma Statutes for services offered or provided by the Oklahoma Health Care Authority or the State Department of Health,

(2) the state Medicaid program,

(3) Title II of the federal Social Security Act, as amended (42 U.S.C., Section 401, et seq.),

(4) Title XVI of the federal Social Security Act, as amended (42 U.S.C., Section 1382, et seq.), or

(5) Title XVIII of the federal Social Security Act, as amended (42 U.S.C., Section 1395, et seq.).

- c. A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient or former patient's application for benefits or assistance pursuant to divisions (1), (2), (3) or (4) of subparagraph b of this paragraph or an appeal relating to denial of those benefits or assistance.
- d. A person, including a state or federal agency, that requests a record pursuant to the provisions of this paragraph shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application or appeal.
- e. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested pursuant to the provisions of this paragraph not later than the thirtieth day after the date on which the provider or facility receives the request.
- f. As used in this subsection, the term "health care provider" means a person who is licensed, certified or otherwise authorized by the laws of this state to provide or render health care in the ordinary course of business or practice of a profession.

4. The provisions of paragraphs 1 and 2 of this subsection shall not apply to psychological or psychiatric records. In the case of psychological or psychiatric records, the patient shall not be entitled to copies unless access to the records is consented to by the treating physician or practitioner or is ordered by a court

of competent jurisdiction upon a finding that it is in the best interests of the patient, ~~but~~; provided, however, the patient may be provided access to information contained in the records, as provided in subsection B of Section 1-109 of Title 43A of the Oklahoma Statutes. The patient or, if the patient is a minor child or a guardian has been appointed for the patient, the guardian of the patient may authorize the release of the psychiatric or psychological records of the patient to the patient's attorney, a third party payor, or a governmental entity. The execution of an authorization shall not be construed to authorize the patient personal access to the records or information.

B. 1. In cases involving a claim for personal injury or death against any practitioner of the healing arts or a licensed hospital, arising out of patient care, where any person has placed the physical or mental condition of that person in issue by the commencement of any action, proceeding, or suit for damages, or where any person has placed in issue the physical or mental condition of any other person or deceased person by or through whom the person rightfully claims, that person shall be deemed to waive any privilege granted by law concerning any communication made to a physician or health care provider with reference to any physical or mental condition or any knowledge obtained by the physician or health care provider by personal examination of the patient; provided that, before any communication, medical or hospital record, or testimony is admitted in evidence in any proceeding, it must be material and relevant to an issue therein, according to existing rules of evidence.

2. Any person who obtains any document pursuant to the provisions of this section shall provide copies of the document to any opposing party in the proceeding upon payment of the expense of copying the document pursuant to the provisions of this section.

SECTION 2. This act shall become effective November 1, 2002.

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CJ

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