

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1735

By: Gilbert

AS INTRODUCED

An Act relating to torts; amending 76 O.S. 2001, Section 19, as last amended by Section 17, Chapter 168, O.S.L. 2004 (76 O.S. Supp. 2004, Section 19), which relates to access to medical records; modifying conditions governing access to certain mental health and substance abuse treatment records; and declaring an emergency.

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

SECTION 1. AMENDATORY 76 O.S. 2001, Section 19, as last amended by Section 17, Chapter 168, O.S.L. 2004 (76 O.S. Supp. 2004, 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, upon request, to obtain access to the information contained in the patient's medical records, including any x-ray or other photograph or image.

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 upon the tender of the expense of the copy or copies. The cost of each copy to such person or to the legal representative of such person, not including any x-ray or other photograph or image, shall not exceed One Dollar (\$1.00) for the first page and fifty cents (\$0.50) for each subsequent page. The cost of each x-ray or other photograph or image to such person or to the legal representative of such person 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. The provisions of paragraphs 1 and 2 of this subsection shall not apply to psychological ~~or~~, psychiatric, mental health or substance abuse treatment records. In the case of psychological ~~or~~, psychiatric, mental health or substance abuse treatment 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 the patient may be provided access to information contained in the records, as provided in subsection B of~~ shall be obtained pursuant to 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, or a nursing facility or nursing home licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma Statutes 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.

Psychological, psychiatric, mental health and substance abuse treatment records and information from psychological, psychiatric, mental health and substance abuse treatment practitioners may only be obtained provided the requirements of Section 1-109 of Title 43A of the Oklahoma Statutes are met.

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.

C. This section shall not apply to the records of an inmate in a correctional institution when the correctional institution believes the release of such information to be a threat to the safety or security of the inmate or the institution.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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