

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2188

By: Schwartz of the House

and

David of the Senate

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8  
9                                   COMMITTEE SUBSTITUTE

10                   An Act relating to torts; amending 76 O.S. 2011,  
11                   Section 19, which relates to access to medical  
12                   records; setting uniform per-page cost of records;  
13                   mandating fee for certain parties requesting records;  
14                   requiring same costs for digital records as paper  
15                   records under certain conditions; prohibiting postage  
16                   charge if records delivered electronically;  
17                   establishing maximum cost for reproducing records;  
18                   proscribing certain fee if person is requesting their  
19                   own records; and providing an effective date.

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

21                   SECTION 1.           AMENDATORY           76 O.S. 2011, Section 19, is  
22 amended to read as follows:

23                   Section 19.   A.   1.   Any person who is or has been a patient of  
24 a doctor, hospital, or other medical institution shall be entitled,  
upon request, to obtain access to the information contained in the

1 patient's medical records, including any x-ray or other photograph  
2 or image or pathology slide. Disclosure regarding a deceased  
3 patient shall require either a court order or a written release of  
4 an executor, administrator or personal representative appointed by  
5 the court, or if there is no such appointment, by the spouse of the  
6 patient or, if none, by any responsible member of the family of the  
7 patient. As used in this paragraph, "responsible family member"  
8 shall mean the parent, adult child, adult sibling or other adult  
9 relative who was actively involved in providing care to or  
10 monitoring the care of the patient as verified by the doctor,  
11 hospital or other medical institution responsible for the care and  
12 treatment of such person.

13 2. Any person who is or has been a patient of a doctor,  
14 hospital, or other medical institution shall be furnished copies of  
15 all records, including any x-ray, other photograph or image or  
16 pathology slide, pertaining to that person's case upon request and  
17 upon the tender of the ~~expense of the copy or copies~~ expenses  
18 enumerated in this paragraph. The cost of each copy to such person  
19 or to the ~~legal~~ personal representative, spouse or responsible  
20 family member of such person, not including any x-ray or other  
21 photograph or image or pathology slide, shall ~~not exceed One Dollar~~  
22 ~~(\$1.00) for the first page and~~ be fifty cents (\$0.50) for each  
23 ~~subsequent~~ page. Requests for medical records from attorneys,  
24

1 insurance companies and by way of subpoena shall be charged a base  
2 fee of Twenty-Five Dollars (\$25.00) in addition to the charge of  
3 fifty cents (\$0.50) per page plus postage or delivery fee. The  
4 physician, hospital or other medical professionals and institutions,  
5 or their business associates as the term is defined in Section  
6 160.103 of Title 45 of the United States Code of Federal Regulations  
7 shall ~~may~~ produce the records in digital form at ~~a cost not to~~  
8 ~~exceed twelve cents (\$0.12) per digital page~~ the same rates as paper  
9 copies if:

- 10       a. the entire request can be reproduced from an  
11           electronic health record system,  
12       b. the medical record is specifically requested to be  
13           delivered in electronic format, and  
14       c. the medical record can be delivered electronically.

15 If a provider or business associate transmits the records  
16 electronically, no postage shall be charged but a delivery charge  
17 shall apply. In no event shall a charge for the reproduction of  
18 medical records pursuant to this paragraph exceed One Hundred  
19 Dollars (\$100.00) plus postage or delivery fee. The cost of each x-  
20 ray, other photograph or image, or pathology slide to such person or  
21 to the legal representative of such person shall ~~not exceed~~ be Five  
22 Dollars (\$5.00) ~~or the actual cost of reproduction, whichever is~~  
23 ~~less.~~ The physician, hospital, or other medical professionals and  
24

1 ~~institutions may charge a patient for the actual cost of mailing the~~  
2 ~~patient's requested medical records, but may, or their business~~  
3 ~~associates as the term is defined in Section 160.103 of Title 45 of~~  
4 ~~the United States Code of Federal Regulations, shall not charge a~~  
5 ~~person who requests their own record a fee for searching,~~  
6 retrieving, reviewing, and preparing medical records of the person.  
7 No mailing fee shall be charged for copies provided by facsimile.

8 3. The provisions of paragraphs 1 and 2 of this subsection  
9 shall not apply to psychological, psychiatric, mental health or  
10 substance abuse treatment records. In the case of psychological,  
11 psychiatric, mental health or substance abuse treatment records,  
12 access to information contained in the records shall be obtained  
13 pursuant to Section 1-109 of Title 43A of the Oklahoma Statutes.

14 B. 1. In cases involving a claim for personal injury or death  
15 against any practitioner of the healing arts or a licensed hospital,  
16 or a nursing facility or nursing home licensed pursuant to Section  
17 1-1903 of Title 63 of the Oklahoma Statutes arising out of patient  
18 care, where any person has placed the physical or mental condition  
19 of that person in issue by the commencement of any action,  
20 proceeding, or suit for damages, or where any person has placed in  
21 issue the physical or mental condition of any other person or  
22 deceased person by or through whom the person rightfully claims,  
23 that person shall be deemed to waive any privilege granted by law

1 concerning any communication made to a physician or health care  
2 provider with reference to any physical or mental condition or any  
3 knowledge obtained by the physician or health care provider by  
4 personal examination of the patient; provided that, before any  
5 communication, medical or hospital record, or testimony is admitted  
6 in evidence in any proceeding, it must be material and relevant to  
7 an issue therein, according to existing rules of evidence.

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

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

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

21 SECTION 2. This act shall become effective November 1, 2013.

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23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/13/2013 - DO  
24 PASS, As Amended and Coauthored.