

1 **SENATE FLOOR VERSION**

2 April 2, 2013

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2188

By: Schwartz of the House

and

David of the Senate

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

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

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

20 Section 19. A. 1. Any person who is or has been a patient of
21 a doctor, hospital, or other medical institution shall be entitled,
22 upon request, to obtain access to the information contained in the
23 patient's medical records, including any x-ray or other photograph
24 or image or pathology slide. Disclosure regarding a deceased

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

11 2. Any person who is or has been a patient of a doctor,
12 hospital, or other medical institution shall be furnished copies of
13 all records, including any x-ray, other photograph or image or
14 pathology slide, pertaining to that person's case upon request and
15 upon the tender of the ~~expense of the copy or copies~~ expenses
16 enumerated in this paragraph. The cost of each copy to such person
17 or to the ~~legal~~ personal representative, spouse or responsible
18 family member of such person, not including any x-ray or other
19 photograph or image or pathology slide, shall ~~not exceed One Dollar~~
20 ~~(\$1.00) for the first page and~~ be fifty cents (\$0.50) for each
21 ~~subsequent~~ page. Requests for medical records from attorneys,
22 insurance companies and by way of subpoena shall be charged a base
23 fee of Ten Dollars (\$10.00) in addition to the per page charges
24 required pursuant to this section, plus postage or delivery fee.

1 The physician, hospital or other medical professionals and
2 institutions ~~may, or their business associates as the term is~~
3 defined in Section 160.103 of Title 45 of the United States Code of
4 Federal Regulations shall produce the records in digital form at a
5 ~~cost not to exceed twelve cents (\$0.12) per digital page~~ the rate of
6 thirty cents (\$0.30) per page if:

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

12 If a provider or business associate transmits the records
13 electronically, no postage shall be charged but a delivery charge
14 shall apply. In no event shall a charge for the reproduction of
15 electronically stored and delivered medical records pursuant to this
16 paragraph exceed Two Hundred Dollars (\$200.00) plus postage or
17 delivery fee. The cost of each x-ray, other photograph or image, or
18 pathology slide to such person or to the legal representative of
19 such person shall ~~not exceed~~ be Five Dollars (\$5.00) ~~or the actual~~
20 cost of reproduction, whichever is less. The physician, hospital,
21 or other medical professionals and institutions ~~may charge a patient~~
22 for the actual cost of mailing the patient's requested medical
23 records, but ~~may, or their business associates as the term is~~
24 defined in Section 160.103 of Title 45 of the United States Code of

1 Federal Regulations, shall not charge a person who requests their
2 own record a fee for searching, retrieving, reviewing, and preparing
3 medical records of the person. No mailing fee shall be charged for
4 copies provided by facsimile.

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

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

1 communication, medical or hospital record, or testimony is admitted
2 in evidence in any proceeding, it must be material and relevant to
3 an issue therein, according to existing rules of evidence.
4 Psychological, psychiatric, mental health and substance abuse
5 treatment records and information from psychological, psychiatric,
6 mental health and substance abuse treatment practitioners may only
7 be obtained provided the requirements of Section 1-109 of Title 43A
8 of the Oklahoma Statutes are met.

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
19 April 2, 2013 - DO PASS AS AMENDED
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