STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 2188 By: Schwartz

AS INTRODUCED

An Act relating to torts; amending 76 O.s. 2011, Section 19, which relates to access to medical records; setting uniform per-page cost of records; mandating fee for certain parties requesting records; requiring same costs for digital records as paper records under certain conditions; prohibiting postage charge if records delivered electronically; establishing maximum cost for reproducing records; proscribing certain fee if person is requesting their own records; providing for increase or decrease of fee based on certain pricing index; directing State Department of Health to calculate fee; requiring Department to post fee schedule on its website; and providing an effective date.

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

SECTION 1. AMENDATORY 76 O.S. 2011, 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 or pathology slide. Disclosure regarding a deceased

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

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, other photograph or image or pathology slide, pertaining to that person's case upon request and upon the tender of the ~~expense of the copy or copies~~ expenses numerated in this paragraph. The cost of each copy to such person or to the ~~legal~~ personal representative, spouse or responsible family member of such person, not including any x-ray or other photograph or image or pathology slide, shall ~~not exceed One Dollar ($1.00) for the first page and~~ be fifty cents ($0.50) for each ~~subsequent~~ page. Requests for medical records from attorneys, insurance companies and by way of subpoena shall be charged a base fee of Twenty-Five Dollars ($25.00) in addition to the charge of fifty cents ($0.50) per page plus postage or delivery fee. The

physician, hospital or other medical professionals and institutions, or their business associates as the term is defined in Section 160.103 of Title 45 of the United States Code of Federal Regulations shall ~~may~~ produce the records in digital form at ~~a cost not to exceed twelve cents ($0.12) per digital page~~ the same rates as paper copies if:

a. the entire request can be reproduced from an electronic health record system,

b. the medical record is specifically requested to be delivered in electronic format, and

c. the medical record can be delivered electronically.

If a provider or business associate transmits the records electronically, no postage shall be charged but a delivery charge shall apply. In no event shall a charge for the reproduction of medical records pursuant to this paragraph exceed One Hundred Dollars ($100.00) plus postage or delivery fee. The cost of each x-ray, other photograph or image, or pathology slide to such person or to the legal representative of such person shall ~~not exceed~~ be 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~~, or their business associates as the term is defined in Section 160.103 of Title 45 of the United States Code of Federal Regulations, shall not charge a

person who requests their own record a fee for searching, retrieving, reviewing, and preparing medical records of the person. No mailing fee shall be charged for copies provided by facsimile. On January 1 of each year beginning January 1, 2014, all amounts in this paragraph shall be increased or decreased by the average percentage of increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average, all items), prepared by the United States Department of Labor, Bureau of Labor Statistics, for the twelve-calendar-month period prior to the immediately preceding first day of January over the immediately preceding twelve-calendar-month period, as reported by the Bureau of Labor. The State Department of Health shall make this determination and adjust the amounts accordingly. The State Department of Health shall provide a list of the adjusted amounts accordingly on its website no later than December 31 of each year.

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

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. This act shall become effective November 1, 2013.

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