

SENATE BILL No. 88

By Committee on Judiciary

1-22

AN ACT concerning access to health care records and health care billing records by patients and others.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a podiatrist, an optometrist, a pharmacist, a dentist, a physical therapist, a psychiatrist, a psychologist, a licensed professional counselor, a licensed clinical professional counselor, a licensed master level psychologist, a licensed clinical psychotherapist, a licensed specialist clinical social worker, a baccalaureate social worker, a master social worker, a specialist social worker, a licensed marriage and family therapist, a nurse practitioner, a nurse anesthetist, a physician's assistant, a hospital, a medical center or clinic, a medical care facility, an ambulatory surgical center, a health maintenance organization, a psychiatric hospital, a mental health center or mental health clinic or other person or entity providing medical or health care within the State of Kansas;

(b) "patient" means a person who receives medical or health care from a health care provider, including but not limited to, any examination, testing, evaluation, diagnosis or treatment of any physical or psychological injury, illness or disorder or any claimed physical or psychological injury, illness or disorder;

(c) "representative of a patient" means: (1) A parent of a minor child patient; (2) a spouse, child or parent of a patient who is not competent; (3) the guardian or conservator of a patient; (4) an heir of a deceased patient or an executor, administrator or other representative of a deceased patient's estate; or (5) an attorney or other person designated in writing by a patient or by a representative of a patient;

(d) "authorized party" means a person or entity who has been authorized by the patient or the patient's representative, or by court order or operation of law, to have access to health care records or health care

1 billing records of the patient for a limited purpose;

2 (e) "health care" means the provision of care, services or supplies to
3 a patient and includes any: (1) Preventive, diagnostic, therapeutic, reha-
4 bilitative, maintenance or palliative care, counseling, service or procedure
5 with respect to the physical or mental condition, or functional status, of
6 a patient or affecting the structure or function of the body; (2) sale or
7 dispensing of a drug, device, equipment or other item pursuant to a pre-
8 scription; or (3) procurement or banking of blood, sperm, organs or any
9 other tissue for a administration to patients;

10 (f) "health care records" means any information, recording, data, pa-
11 pers, records or documents generated or maintained by a health care
12 provider whether in written, photographic, ultrasonographic, fluoro-
13 scopic, microfilm, audiotape, videotape or electronic form concerning
14 medical or health care, treatment or evaluation of the patient, including
15 but not limited to, notes, summaries, reports, forms, films, images, tele-
16 phone orders or messages, x-rays, monitor strips, slides, electronically or
17 computer stored data, printouts and correspondence; and

18 (g) "health care billing records" means any records or information
19 concerning the charges or fees for medical or health care, treatment or
20 evaluation of the patient, or any payments or adjustments thereto, in-
21 cluding but not limited to, billings, ledgers, electronically or computer
22 stored data, printouts and correspondence.

23 Sec. 2. (a) Except as provided in section 5, and amendments thereto,
24 a patient or representative of a patient, upon reasonable notice or request,
25 shall be entitled to inspect and copy any health care records or health
26 care billing records in the possession of a health care provider concerning
27 medical or health care of the patient.

28 (b) Any health care provider who receives a request from a patient
29 or representative of a patient for access to or copies of any health care
30 records or health care billing records, shall provide access to or copies of
31 such records within 10 days after the receipt of such notice or request,
32 or shall notify the patient or representative of the patient making the
33 request within 10 days after the receipt of such notice or request, of the
34 reason why access to or copies of such records is being withheld or de-
35 layed, indicating the date when access to or copies of such records will
36 be provided.

37 Sec. 3. (a) Except as provided in section 5, and amendments thereto,
38 an authorized party, upon reasonable notice or request, shall be entitled
39 to inspect and copy any health care records or health care billing records
40 in the possession of a health care provider concerning medical or health
41 care of the patient, subject to any limitations upon the authorization.

42 (b) Any health care provider who receives a notice or request from
43 an authorized party for access to or copies of any health care records or

1 health care billing records, shall provide access to or copies of such re-
2 cords within 10 days after the receipt of such notice or request, or shall
3 notify the authorized party making the request within 10 days after the
4 receipt of such notice or request of any reason why access to or copies of
5 such records is being withheld or delayed, indicating the date when access
6 to or copies of such records will be provided.

7 (c) An authorized party who has obtained health care records or
8 health care billing records concerning a patient shall, upon notice or re-
9 quest, supply a copy of such records to the patient or representative of
10 the patient.

11 (d) An authorized party who has obtained health care records or
12 health care billing records concerning a patient shall maintain the confi-
13 dentiality of such records and shall not use or release such records except
14 for the purpose for which authorization was given by the patient or rep-
15 resentative of the patient, or in connection with the proceedings for which
16 authorization was given by court order or operation of law.

17 Sec. 4. (a) No charge for retrieving or copying health care records
18 shall exceed the maximum fees allowed under the workers compensation
19 schedule of medical fees issued by the Kansas department of human
20 resources unless the health care provider establishes the reason the re-
21 quested records cannot reasonably be retrieved or copied without addi-
22 tional expense.

23 (b) A health care provider shall be entitled to reimbursement for the
24 reasonable expenses incurred in retrieving and copying health care re-
25 cords, and may demand that such reimbursement be provided in advance
26 of providing access to or copies of such records.

27 (c) A health care provider shall not be entitled to reimbursement of
28 any expenses incurred in retrieving or copying health care billing records
29 unless the health care provider establishes the reason the requested re-
30 cords cannot reasonably be retrieved or copied in the ordinary course of
31 business.

32 (d) A health care provider shall not make any alterations, additions
33 or deletions of information recorded in the health care records of a patient
34 except that a health care provider may make additional contemporaneous
35 entries in the health care records, and may make corrections or additions
36 to the health care records which are clearly designated as late entries with
37 the date of entry shown.

38 Sec. 5. (a) A health care provider may withhold or limit access to or
39 copies of health care records or health care billing records, or a portion
40 thereof, if the health care provider certifies that providing access to or
41 copies of the requested records, or a portion thereof, will create a signif-
42 icant risk of harm to the patient.

43 (b) If a health care provider withholds or limits access to or copies of

1 health care records or health care billing records under subsection (a)
2 because releasing such records to the patient or to a specific represen-
3 tative of the patient or authorized party would create a significant risk of
4 harm to the patient, the health care provider shall arrange to provide
5 access to or copies of the requested records to another representative of
6 the patient or authorized party, or to the patient, under conditions suf-
7 ficient to protect the patient from the risk of such harm, if it is reasonably
8 possible to do so.

9 Sec. 6. (a) Any health care provider, patient, representative of a pa-
10 tient or authorized party may bring a claim or action to enforce the pro-
11 visions of this act, and any court having jurisdiction of such claim or action
12 may, in its discretion, award attorney fees for failure to comply with this
13 act without just cause or excuse.

14 (b) The patient, or a representative of a minor, incompetent or de-
15 ceased patient, shall be given reasonable notice of any action concerning
16 access to or copying of health care records or health care billing records,
17 and may intervene as a party in any such action.

18 Sec. 7. This act shall not be construed or interpreted to limit or im-
19 pair access to health care records or health care billing records under any
20 federal or state statute, law, regulation, rule or order.

21 Sec. 8. This act shall take effect and be in force from and after its
22 publication in the statute book.

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