

HOUSE BILL No. 2683

By Committee on Health and Human Services

Requested by Dodie Wellshear on behalf of the Kansas Trial Lawyers Association

2-4

1 AN ACT concerning health and healthcare; relating to healthcare records;
2 allowing fees to be charged by healthcare providers to furnish
3 healthcare records; providing for the disclosure of a decedent's
4 healthcare records to certain individuals; amending K.S.A. 65-6836 and
5 repealing the existing section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*
8 Section 1. K.S.A. 65-6836 is hereby amended to read as follows: 65-
9 6836. (a) As used in this section:

10 (1) "~~Health-care~~Healthcare provider" means any person licensed by
11 the state board of healing arts.

12 (2) "Authorized representative" means the person designated in
13 writing by the patient to obtain the ~~health-care~~ healthcare records of the
14 patient or the person otherwise authorized by law to obtain the ~~health-care~~
15 healthcare records of the patient.

16 (3) "Authorization" means a written or printed document signed by a
17 patient or a patient's authorized representative containing:

18 (A) A description of the ~~health-care~~ healthcare records that a ~~health~~
19 ~~care~~ healthcare provider is authorized to produce;

20 (B) the patient's name, address and date of birth;

21 (C) a designation of the person or entity authorized to obtain copies
22 of the ~~health-care~~ healthcare records;

23 (D) a date or event upon which the force of the authorization shall
24 expire, which shall not exceed one year;

25 (E) if signed by a patient's authorized representative, the authorized
26 representative's name, address, telephone number and relationship or
27 capacity to the patient; and

28 (F) a statement setting forth the right of the person signing the
29 authorization to revoke it in writing.

30 (b) Subject to K.S.A. 65-6824, and amendments thereto, except as
31 otherwise provided ~~herein~~ in this section, copies of ~~health-care~~ records
32 ~~protected health information regarding an individual in a designated~~
33 ~~record set pursuant to 45 C.F.R. § 164.524~~, shall be furnished to a patient,
34 a patient's authorized representative or any other person or entity
35 authorized by law to obtain or reproduce such records, *in the form and*

1 *format requested*, within 30 days of the receipt of the authorization, or the
2 ~~health care healthcare~~ provider shall notify the patient or the patient's
3 authorized representative of the reasons why copies are not available.

4 (c) A ~~health care healthcare~~ provider may ~~withhold~~ copies of ~~health~~
5 ~~care records if the health care provider reasonably believes that providing~~
6 ~~copies of the requested records will cause substantial harm to the patient or~~
7 ~~another person. Health care providers may condition the furnishing of the~~
8 ~~patient's health care records to the patient, the patient's authorized~~
9 ~~representative or any other person or entity authorized by law to obtain or~~
10 ~~reproduce such records, upon the payment of charges not to exceed those~~
11 ~~established and updated not less than every two years by rules and~~
12 ~~regulations adopted by the state board of healing arts. In establishing such~~
13 ~~charges, the board shall consider changes in the all-items consumer price~~
14 ~~index published by the United States department of labor. Providers may~~
15 ~~charge for the reasonable cost of all duplications of health care record~~
16 ~~information which cannot be routinely duplicated on a standard photocopy~~
17 ~~machine charge the following fees to furnish a patient's healthcare records~~
18 ~~to the patient, the patient's authorized representative or another person or~~
19 ~~entity authorized by law to obtain or reproduce such records.~~

20 (1) *The records shall be furnished electronically upon payment of the*
21 *search, retrieval and copying fees set under this section at the time of*
22 *request or \$188.88, whichever is less, if:*

23 (A) *Such person requests healthcare records to be delivered*
24 *electronically;*

25 (B) *the healthcare provider stores such records in an electronic*
26 *health record; and*

27 (C) *the healthcare provider is capable of providing the requested*
28 *records and affidavit, if requested, in an electronic format.*

29 (d) *Healthcare providers may charge a reasonable, cost-based fee for*
30 *duplications of healthcare records that cannot be furnished electronically*
31 *or routinely duplicated on a standard photocopy machine. The following*
32 *fees shall be in effect on July 1, 2026, and shall thereafter be increased or*
33 *decreased annually pursuant to subsection (g):*

34 (1) *Copying in the amount of \$.60 per page for the cost of supplies*
35 *and labor, plus, if the healthcare provider has contracted for off-site*
36 *records storage and management, any additional labor costs outside*
37 *storage retrieval, not to exceed \$25, as adjusted annually pursuant to*
38 *subsection (g);*

39 (2) *not more than \$25, plus copying in the amount of \$.60 per page*
40 *for the cost of supplies and labor;*

41 (3) *postage, to include packaging and delivery cost; and*

42 (4) *certification or notary fee, not to exceed \$2.00, if requested.*

43 (e) (1) *Any ~~health care healthcare~~ provider, patient, authorized*

1 representative or any other entity authorized by law to obtain or reproduce
2 such records may bring a claim or action to enforce the provisions of this
3 section. The petition shall include an averment that the party bringing the
4 action has in good faith conferred or attempted to confer with the other
5 party concerning the matter in dispute without court action. Upon a
6 showing that the failure to comply with this section was without just cause
7 or excuse, the court shall award the costs of the action and order the
8 records produced without cost or expense to the prevailing party.

9 (2) *The transfer of the patient's record performed in good faith shall
10 not render the healthcare provider liable to the patient or any other
11 person for any consequences that resulted or may result from the
12 disclosure of such patient's record.*

13 (f) *A healthcare provider may disclose a deceased patient's
14 healthcare records or payment records to the executor or administrator of
15 the deceased person's estate or pursuant to a valid, unrevoked power of
16 attorney for healthcare that specifically directs that the deceased person's
17 healthcare records can be released to an agent after death. If an executor,
18 administrator or agent has not been appointed, the decedent, prior to
19 death, did not specifically object to the disclosure of such decedent's
20 healthcare records in writing and such disclosure is not inconsistent with
21 any prior expressed preference of the deceased that is known to the
22 healthcare provider, a deceased patient's healthcare records may be
23 released upon written request of a person who is deemed as the personal
24 representative of the deceased person under this subsection. Priority shall
25 be given to the deceased patient's spouse, and the healthcare records shall
26 be released on the affidavit of the surviving spouse that such person is the
27 surviving spouse. If there is no surviving spouse, the healthcare records
28 may be released to the following persons:*

29 (1) *The acting trustee of a trust created by the deceased patient either
30 alone or with the deceased patient's spouse;*

31 (2) *an adult child of the deceased patient based on the affidavit that
32 such person is the adult child of the deceased patient;*

33 (3) *a parent of the deceased patient based on the affidavit that such
34 person is the parent of the deceased patient;*

35 (4) *an adult brother or sister of the deceased patient based on the
36 affidavit that such person is the adult brother or sister of the deceased
37 patient;*

38 (5) *a guardian or conservator of the deceased patient at the time of
39 the patient's death based on the affidavit that such person is the guardian
40 or conservator of the deceased patient; or*

41 (6) *a guardian ad litem of the deceased's minor child based on the
42 affidavit that such person is the guardian ad litem of the deceased's minor
43 child.*

1 (g) *On and after July 1, 2027, the fees listed in subsection (d) shall be
2 increased or decreased annually on July 1 based on the annual percentage
3 change in the unadjusted average, annual average inflation rate of the
4 medical care component of the United States city average consumer price
5 index for all urban consumers. The current reference base of the index, as
6 published by the bureau of labor statistics of the United States department
7 of labor, shall be used as the reference base for the annual adjustment.
8 For the purposes of this subsection, the annual average inflation rate shall
9 be based on a 12-month calendar year beginning in January and ending in
10 December of each preceding calendar year. The secretary of the
11 department of health and environment shall report the annual adjustment
12 and the adjusted fees authorized in this subsection in the Kansas register
13 each year.*

14 (h) Nothing in this section shall be construed to prohibit the state
15 board of healing arts from adopting and enforcing rules and regulations not
16 inconsistent with this section or 45 C.F.R. § 164.524 that require licensees
17 of the board to furnish ~~health care~~ healthcare records to patients or to their
18 authorized representative. To the extent that the board determines that an
19 administrative disciplinary remedy is appropriate for violation of such
20 rules and regulations, ~~that such~~ remedy is separate from and in addition to
21 the provisions of this section.

22 (i) *The provisions of this act are severable. If any portion of this act
23 is held by a court to be unconstitutional or invalid, or the application of
24 any portion of this act to any person or circumstance is held by a court to
25 be unconstitutional or invalid, the invalidity shall not affect other portions
26 of this act that can be given effect without the invalid portion or
27 application, and the applicability of such other portions of this act to any
28 person or circumstance remains valid and enforceable.*

29 Sec. 2. K.S.A. 65-6836 is hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after its
31 publication in the statute book.