



## 2023 South Dakota Legislature

# Senate Bill 181

Introduced by: **Senator** Diedrich

1 **An Act to authorize the provision of medical records and the imposition of related**  
 2 **fees.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That chapter 36-2 be amended with a NEW SECTION:**

5 Terms used in this Act mean:

6 (1) "Electronic health information," an electronic record of information about a  
 7 patient's health, which is:

8 (a) Created, gathered, consulted, and managed by the patient's health care  
 9 provider; and

10 (b) Made available to the patient through a patient portal;

11 (2) "Health care provider," any licensed health care facility or any person licensed,  
 12 certified, or otherwise authorized or permitted by law to provide health care;

13 (3) "Medical record," information, in any form or medium, that pertains to a patient's  
 14 health care, including the patient's medical history, diagnosis, prognosis, medical  
 15 condition or billing, and is maintained by a health care provider for purposes of  
 16 caring for the patient's health, provided the term does not include any information  
 17 subject to the provisions of § 62-7-8;

18 (4) "Medical records company," an entity that stores, locates, or copies medical records  
 19 for a health care provider;

20 (5) "Patient," any of the following:

21 (a) An individual who receives or has received health care from a health care  
 22 provider;

23 (b) Any person authorized to make health care decisions for an individual  
 24 referenced in subsection (a), pursuant to chapter 29A-5 or 34-12C, or §§  
 25 59-7-2.1 and 59-7-2.4; or

1           (c) If the individual referenced in subsection (a) is a minor, the minor's parent,  
2           unless the minor lawfully obtained the health care documented in the  
3           applicable medical record without the consent or notification of the parent;  
4           and

5           (6) "Patient Portal," a secure online website that:

6           (a) Is owned and operated by a health care provider; and

7           (b) Gives a patient access to the patient's electronic health information from  
8           anywhere, using an internet connection.

9           **Section 2. That chapter 36-2 be amended with a NEW SECTION:**

10           Upon receiving a written request or an authorization for release of a medical record,  
11           signed by a patient, a health care provider or medical records company shall provide a  
12           copy of the patient's medical record, if available, to the patient or to any person duly  
13           authorized by the patient to receive the record.

14           **Section 3. That chapter 36-2 be amended with a NEW SECTION:**

15           A health care provider may not charge a patient a fee for access to the patient's  
16           electronic health information through a patient portal.

17           **Section 4. That chapter 36-2 be amended with a NEW SECTION:**

18           A health care provider or a medical records company may charge the following  
19           fees:

20           (1) For a paper copy of a medical record not specified below, the fee may not exceed  
21           ten dollars for the first ten pages and thirty-three cents for each additional page;

22           (2) For an electronic copy of a medical record not specified below, the fee may not  
23           exceed twenty-five cents per page;

24           (3) For a printed copy of an x-ray, magnetic resonance imaging, computerized  
25           tomography scan, or any other form of medical imaging, the fee may not exceed  
26           ten dollars; and

27           (4) For an x-ray, magnetic resonance imaging, computerized tomography scan, or any  
28           other form of medical imaging copied onto a compact disc, digital video disc, or  
29           other transportable electronic media, the fee may not exceed fifteen dollars.

30           A health care provider or medical records company may also impose a charge to  
31           cover the cost of postage or shipping, together with any applicable tax.

1 **Section 5. That chapter 36-2 be amended with a NEW SECTION:**

2 If a patient directs a health care provider or a medical records company to provide  
3 a copy of the patient's medical record directly to another person designated by the patient,  
4 or if a third party requests a copy of a patient's medical record pursuant to an authorization  
5 signed by the patient, the healthcare provider or medical records company may charge,  
6 in addition to any other fee allowed under this Act, a fee to search for the medical record,  
7 regardless of whether any record is found. The search fee may not exceed eighteen  
8 dollars.

9 **Section 6. That chapter 36-2 be amended with a NEW SECTION:**

10 A health care provider or medical records company may charge a fee for providing  
11 a signed certification, attesting that the copy of the medical record is an accurate and  
12 complete copy of the patient's original medical record on file for the time period specified  
13 in the request. The certification fee may not exceed ten dollars.

14 **Section 7. That chapter 36-2 be amended with a NEW SECTION:**

15 Sections 1 to 6, inclusive, of this Act apply to any medical record produced by a  
16 health care provider or medical records company pursuant to a subpoena issued under  
17 the authority of a court, an administrative body, or other tribunal.

18 **Section 8. That § 36-2-17 be AMENDED:**

19 **36-2-17.** A licensee, complying in good faith with the provisions of ~~§ 36-2-~~  
20 ~~16~~sections 1 to 7, inclusive, of this Act, may not be held liable for any injury or damage  
21 proximately resulting from that compliance with ~~§ 36-2-16.~~

22 **Section 9. That § 36-2-16 be REPEALED:**

23 ~~A licensee of the healing arts shall provide copies of all medical records, reports~~  
24 ~~and X-rays pertinent to the health of the patient, if available, to a patient or the patient's~~  
25 ~~designee upon receipt by the licensee of a written request or a legible copy of a written~~  
26 ~~request signed by the patient. A violation of this section is a Class 2 misdemeanor. The~~  
27 ~~licensee may require before delivery that the patient pay the actual reproduction and~~  
28 ~~mailing expense.~~