

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

391B0655

SENATE BILL NO. 228

Introduced by: Senators Hutmacher, Dunn (Rebecca), Lange, Lawler, Paisley, Reedy, and Whiting and Representatives Fischer-Clemens, Belatti, Collier, Cutler, Duniphan, Haley, Kazmerzak, Lucas, Sokolow, and Volesky

1 FOR AN ACT ENTITLED, An Act to ensure a patient's right to access the patient's own health
2 information and amend the information under certain circumstances.

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

4 Section 1. For the purposes of this Act, a custodian is any health care provider, health care
5 facility, or health insurer that creates, controls, or retains health care information, or any person
6 who obtains health care information for lawful purposes. The term, custodian, includes natural
7 persons only when acting in the course of their employment or agency.

8 Section 2. No later than twenty days after receipt of a written request from an individual to
9 examine or receive a copy of the individual's health care information, a custodian shall:

10 (1) Provide a copy of the information requested to the individual or permit the individual
11 to examine the information during regular business hours;

12 (2) Notify the individual that:

13 (a) The custodian does not have the information and, if known, inform the
14 individual of the name and address of the person who has the information
15 requested or when the information will be available; or

1 (b) Access to the information is delayed due to unusual circumstances and the date
2 that the information will be available or denied, which may be no later than
3 forty days after receipt of the request; or

4 (3) Deny the request in whole or in part if the custodian determines any of the following:

5 (a) Knowledge of the information would adversely and substantially affect the
6 individual's health;

7 (b) Knowledge of the information would reasonably be expected to identify a
8 person who provided the information in confidence and under circumstances
9 in which confidentiality was appropriate; or

10 (c) The information was compiled solely for litigation, law enforcement
11 investigation, quality assurance, or peer review purposes.

12 Section 3. If a request to examine or copy information is denied in whole or in part, the
13 custodian shall notify the individual in writing of the reasons for the denial and the individual's
14 rights under section 4 of this Act. To the extent possible, the information to which access has
15 been denied shall be separated from information that may be disclosed and the individual shall
16 be permitted to examine or copy the disclosable information.

17 Section 4. A custodian who has denied access in whole or in part under subsection (3)(a) or
18 (3)(b) of section 2 of this Act shall permit a health care provider selected by the individual to
19 examine and copy the information. If the custodian denying access is a health care provider, the
20 reviewing health care provider shall be licensed or certified to treat the individual for the same
21 condition as the custodian denying access. If the reviewing health care provider also denies the
22 request, the individual may petition the court for access to the health care information. The court
23 shall resolve the matter based on criteria in subdivision (3) of section 2 of this Act.

24 Section 5. A custodian that is a health care provider, health care facility, or health insurer
25 shall, on reasonable request, explain any code, abbreviation, term, or notation used by that

1 custodian in the health care information.

2 Section 6. If a custodian does not maintain the information in the form requested by the
3 individual, the custodian is not required to create a new record or reformulate an existing record
4 in order to meet the request.

5 Section 7. The custodian may charge a reasonable fee for providing requested health care
6 information. A reasonable fee is the usual commercial rate for actual reproduction of the
7 information. The custodian may also charge an additional fee of no more than five dollars for
8 each hour of personnel time required to reproduce the health care information. The custodian
9 shall provide a detailed bill accounting for the disclosure charges.

10 Section 8. An individual may request in writing that a custodian amend the individual's health
11 care information in order to improve the accuracy or completeness of the information, if the
12 amendment does not delete, erase, or obliterate any of the original information. Within thirty
13 days after receipt of a written request from an individual to amend the individual's health care
14 information, a custodian shall do one of the following:

- 15 (1) Amend the information as requested; or
- 16 (2) Notify the individual that the request has been denied, the reason for the denial, and
17 that the individual may file a concise statement of what the individual believes to be
18 the correct information and the reasons the individual disagrees with the denial. This
19 statement by the individual shall be retained in the health care information.

20 For the purposes of this section, the term, amend, means to indicate one or more disputed
21 entries in health care information or to change the entry without obliterating the original
22 information.