



COPYING

What Are They Worth Under HIPAA?

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The current Health and Human Services' (HHS) Health Insurance Portability and Accountability Act (HIPAA) Privacy Law is relatively clear about fees which may be charged for copying records. Selected excerpts from the Preamble and Section 164.524(c) (Provision of Access from the Federal Register of Dec. 28, 2000) are noted as follows:

"... In general, state statutes provide individuals with some access to medical records about them ... The amount that entities are allowed to charge for copying of individuals' records varies widely from state to state. A study conducted by the American Health Information Management Association found considerable variation in the amounts, structure, and combination of fees for search and

retrieval, and the copying of the record ...

... In 35 states, there are laws or regulations that set a basis for charging individuals inspecting and copying fees. Charges vary not only by state, but also by the purpose of the request and the facility holding the health information. Also, charges vary by the number of pages and whether the request is for x-rays or for standard medical information ...

... Of the 35 states with laws regulating inspection and copying charges, seven states either do not allow charges for retrieval of records or require that the entity provide the first copy free of charge. Some states may prohibit hospitals from charging patients a retrieval and copying fee, but allow clinics to do so. Many states allow fee structures, while 11 states specify only that the record holder may charge 'reasonable/actual costs' ...

... The amount of time an entity is given to supply the individual with his or her record varies widely ...

... The final regulation establishes the right of individuals to inspect and copy protected health information about them. Although this is an important right, the HHS does not expect it to result in dramatic increases in requests from individuals ...

... We agree that covered entities should be able to recoup their reasonable costs for copying of protected health information, and include such provision in the regulation. We are not specifying a set fee because copying costs could vary significantly depending on the size of the covered entity and the form of such copy (eg, paper, electronic, or film). Rather, covered entities are permitted to charge a reasonable, cost-based fee for copy-



COSTS:

ing (including the costs of supplies and labor), postage, and summary or explanation (if requested and agreed to by the individual) of information supplied. The rule limits the types of costs that may be imposed for providing access to protected health information, but does not preempt applicable state laws regarding specific allowable fees for such costs. The inclusion of a copying fee is not intended to impede the ability of individuals to copy their records ...

... We proposed in the NPRM [Notice of Proposed Rule Making] to permit the covered entity to charge a reasonable, cost-based fee for copying the information ...

... We clarify this provision in the final rule. If the individual requests a copy of protected health information, a covered entity may charge a reasonable, cost-based fee for

the copying, including the labor and supply costs of copying. If hard copies are made, this would include the cost of paper. If electronic copies are made to a computer disk, this would include the cost of the computer disk. Covered entities may not charge any fees for retrieving or handling the information or for processing the request. If the individual requests the information to be mailed, the fee may include the cost of postage. Fees for copying and postage provided under state law, but not for other costs excluded under this rule, are presumed reasonable. If such per page costs include the cost of retrieving or handling the information, such costs are not acceptable under this rule ...

... If the individual requests an explanation or summary of the information provided, and agrees in advance to any associated fees,

the covered entity may charge for preparing the explanation or summary as well ...

... The inclusion of a fee for copying is not intended to impede the ability of individuals to copy their records. Rather, it is intended to reduce the burden on covered entities. If the cost is excessively high, some individuals will not be able to obtain a copy. We encourage covered entities to limit the fee for copying so that it is within reach of all individuals ..."

In effect, this tells us that the only charges a covered entity (healthcare organization or provider) may impose under HIPAA for an individual's request for records are for copying and postage, or in the case of a summary explanation, the time to prepare the summary. Further, it says it "does not preempt state laws regarding specific allowable [under

HIPAA] fees for such costs." What does this mean? It says that if your state law permits "retrieval fees" that are not "allowable" under HIPAA, then HIPAA preempts your state law and you may not charge these "retrieval fees" to individuals as to do so may "impede the ability of individuals to copy their records."

However, if your state law allows a per-page fee, under HIPAA you will be able to charge no more than the state-permitted fee even if your costs are higher.

Here's what can be higher:

- Copying costs: labor and supplies
- Postage
- Time to prepare summaries

What's included in "copying costs?" This depends on how literally one interprets the words in the law. Since the law uses the term "reasonable cost," health information professionals are encouraged to confer with their cost accounting colleagues at their organizations or their healthcare accounting firms if the provider does not have a cost accountant. Cost accountants are often involved in the preparation of the organization's Cost Report for Medicare and therefore have gained the expertise to recognize what, under Medicare's view, is considered "reasonable."

The HHS's intention that there will not be an increase in requests amazes many HIM professionals. After all, this is the same regulator that allows the Professional Review Organization (oops, Quality Improvement Organization) to pay \$0.07 per page for copies of records needed for review functions. So, will there be an increase in individual requests? Now is the time to capture the volume of individual requests. Having current data and comparing them to a time(s) following HIPAA's implementation in April 2003 will tell us if the HHS's hypothesis was correct.

The HIPAA rules apply only to individuals who request that their records be copied; state-regulated rates apply to other requesters. Should we anticipate that third parties will interpret HIPAA as a way to obtain copies of records at a lower cost than the state-mandated fees? Should we expect that they will encourage their clients to obtain copies for the third party's use at the HIPAA-allowable "reasonable costs" rate?

The HIPAA regulations state "the proposal and the final rule establish the right to access and copy records only for individuals, not other entities; the reasonable fee is only applicable to the individual's request." Therefore, the individual makes the request, pays the lower fee, and turns the copied records over to his or her attorney, insurance company, or other third party, thus circumventing the state-required fees.

Some say they already see this happening in states that have mandated that free copies be made available to ensure "continuity of care." How many laypeople know this phrase? Thus, when someone walks through the door and

says, "I want a copy of my medical records for continuity of care," it should make us wonder about the request's origination. Many organizations require that the records be sent directly to the healthcare organization/provider that is providing for the "continuity."

How much will these regulations cost healthcare providers? With the variation in state laws, it's hard to predict, but for every state that allows retrieval and/or handling fees with HIPAA, this revenue will be lost. Instead it will become costs absorbed by the healthcare organizations already under significant financial pressures.

Clearly, legislators do not understand the release of information process. Healthcare providers are in the business of providing healthcare. Copies provided between providers for continuity of care are shared in the ordinary course of business and the HHS has facilitated this release under HIPAA. However, the HHS has interpreted the sharing of information between providers, often done at the time of care when the record is readily available to the provider to identify what is to be released and pass it directly to the support staff, as the same process that occurs for all the extraneous requests received days, weeks, and years after the fact.

Anyone working in health information that is operating in a paper record environment—as most are—knows there are many steps involved in locating a record. One flowchart created by representatives of the Association of Health Information Outsourcing Services (AHIOS) depicts approximately 90 steps to the process. However, every organization has its idiosyncrasies and for one to say that he or she has included all costs and all possible steps in this process is not accurate. Each provider/healthcare organization needs to detail its own processes and costs.

Receiving a request for release of information after the fact is not an ordinary occurrence in the course of providing healthcare. It's a function that is in addition to providing healthcare. Lastly, another section of the Preamble reads "the economic impact on small businesses of requiring covered entities to provide individuals with access to protected health information should be relatively small." In fact, the U.S. Office of Management and Budget has estimated these costs for five years at \$405 million.¹ When coupled with the number of small—as well as large—firms that employ thousands of individuals in the copying service industry, the impact could be well beyond "significant." If copy services are only reimbursed for "copying," then who will pay the costs for the other steps of the process. HIPAA's error in not covering the costs associated with the entire function (receipt, verification, locating, identification, reassembling, and refiling) will most likely

result in cost shifting or loss to the bottom line. Both will impact healthcare.

The irony is that in 1997 the federal government increased its copying fees to \$23 for producing a copy of one's income tax return.² The study that substantiated these charges indicated an average request of five pages (or an average of approximately \$4 per page) and included many items outside the literal meaning of "copying" but similar to the "other" functions healthcare providers must do to validate the authenticity of a request. It's my understanding that these documents are all retained electronically. That is, there are not acres of file cabinets in which all of our tax returns are stored. Furthermore, unlike medical records, these records don't require attention by one or more individuals to "complete" them. So, why is it that the IRS can charge \$23, yet healthcare organizations are only paid \$0.07 per page by the government? Logic does not prevail.

Healthcare providers are encouraged to appeal to the senses of their state and federal legislators to understand the repercussions of this issue in the HIPAA legislation. Doing this electronically is relatively easy.³ Contact:

- your local senators and representatives (you can find them at <http://thomas.loc.gov> by clicking on "Congress and Legislative Agencies," then selecting either "House" or "Senate")
- your state hospital association
- Robin Sue Frohboese (robin.sue.frohboese@hhs.gov), principal deputy and acting director of the Office of Civil Rights, HHS
- Susan McAndrew (susan.mcandrew@hhs.gov), privacy policy specialist and senior advisor of health information at the Office of Civil Rights, HHS
- Louis Altarescu, Esq. (louis.altarescu@hhs.gov), counsel at the Office of Civil Rights, HHS
- Larry Hughes (lhughes@aha.org), American Hospital Association

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References

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2. Dunn R. Copying costs: Help is as close as your 1040. *For the Record*. 1998;10(7): 22-23.
3. AHIOS letter. May 23, 2002.