

# HIPAA ON FEES FOR MEDICAL RECORDS — IT'S NOT WHAT SOME ATTORNEYS THINK IT IS

By Jeanine Freeman, JD

Medical practices and attorneys seem to be at perpetual impasse on the issue of fees for medical records. HIPAA has added fuel to the fire of this debate. Pay close attention to the HIPAA mandate and what it does – and does not – require.

HIPAA's Privacy Rule has two key components: permissible use and disclosure of protected health information (PHI) and rights of individuals relating to their PHI. Individual, a term of art under HIPAA, means the person who is the subject of the PHI. Individual rights belong to that person or to a personal representative of that person. The Office of Civil Rights (OCR), the federal agency that enforces the Privacy Rule, says that a personal representative is a person with authority under state law to act on the individual's behalf on matters related to health care.

An attorney representing a client in litigation is not that client's personal representative under HIPAA. An attorney-in-fact or agent, named by the patient in a durable power for health care, is a personal representative under HIPAA. The distinction is important.

Privacy Rule 164.524(c)(4) addresses fees a health care covered entity may charge the individual (or the individual's personal representative). If the individual requests a copy of the individual's own PHI or agrees to a summary or explanation of such PHI, the covered entity may impose a reasonable, cost-based fee reflecting *only* the cost of –

1. Copying, including the cost of supplies for and labor of copying;
2. Postage, if the individual requests that the copy or the summary be mailed; and

3. Preparing an explanation or summary of the PHI if agreed to by the individual.

The OCR has clarified: the fee may not include costs associated with searching for and retrieving the requested PHI.

Again, the Privacy Rule does not regulate fees for medical records when a person other than the individual or the individual's personal representative requests copies. As a result, many medical practices have adopted two medical record fee schedules.

Fees for medical records in worker compensation cases are set by regulation of the Iowa Industrial Commissioner. In all other cases, "reasonableness" is the standard that governs fees charged for medical records in non-HIPAA cases. AMA Ethical Opinion 7.02 states that physicians may charge a reasonable fee for copying medical records. Medical reports should not be withheld because of an unpaid bill for medical services.

## Iowa's Worker Compensation Fee Schedule for Medical Records:

- \$20 for 1 to 20 pages
- \$20 plus \$1 per page for 21-30 pages
- \$30 plus \$.50 per page for 31-100 pages
- \$65 plus \$.25 per page for 101-200 pages
- \$90 plus \$.10 per page for more than 200 pages. Postage may be added.

An IMS workgroup is reviewing this fee schedule, established a decade ago, to assess its current reasonableness.



Jeanine Freeman, JD, is Senior Vice President of Legal Affairs for the Iowa Medical Society.