

## **MEDICAL RECORD FEES IN IOWA – A RESOURCE ADVISORY**

Medical records management is an essential as well as costly and demanding operational function of any hospital, physician's office, or other health care service provider. Persons seeking legitimate access to their medical records or the medical records of others are sometimes taken aback by the fee charged for receipt of requested copies. On the other hand, the provider's costs in managing a medical records system continue to escalate.

From the outside, medical records management seemingly is simple. In fact, functions associated with medical records management are complex and often demand difficult judgment calls. Confidentiality and the risks associated with breaches of confidentiality underlie each request for record release. Similarly, federal and state laws and regulations, as well as principles of medical ethics, come into play. Coordination of multi-state legal requirements is a particularly challenging for Iowa health care providers in border communities doing business in more than one state.

The ordinary task of releasing a medical record requires several steps: retrieving the record (sometimes in off-site storage); reviewing the record for sensitive information specifically protected by law (i.e., HIV/AIDS, substance abuse, mental health) and requiring special treatment; redacting medical record information as appropriate; obtaining authorizations if needed or reviewing authorizations received for legal sufficiency; in-office consultations as needed prior to release; negotiating with attorneys or other requesters when necessary; verifying the identity of the person requesting release; assuring release of only those records appropriate to the request; and copying and, if requested, mailing the record copies. Fees charged differ among health care providers depending upon the type of medical facility or practice, size, complexity of their medical records system, numbers and expertise of their medical record personnel, storage, and other costs associated with their medical record functions. Fees also may differ depending upon the party requestor and applicable legal, ethical or contractual responsibilities, if any, relevant to that request.

This resource advisory seeks to assist persons in better understanding the legal, regulatory, and ethical provisions or principles that come into play in assessing the appropriate fee to charge for copies of medical records. Health care providers should consider the resources noted below in developing their fees for medical record production and release. Health care providers also should consider a written medical record fee policy that can be shared and explained when a requester has questions.

The following organizations cooperated in the development of this advisory: the Iowa Health Information Management Association, the Iowa Hospital Association, the Iowa Medical Group Management Association, the Iowa Medical Society, and the Iowa Osteopathic Medical Association.

This resource advisory is informational in nature and does not constitute, and shall not be relied upon as, legal advice.

## IOWA BOARD OF MEDICAL EXAMINERS

### **Standards of Practice – Office Practices**

#### **Transfer of Medical Records**

Iowa Administrative Code, r. 653-13.7(7)

A physician must provide a copy of all medical records generated by the physician in a timely manner to the patient or another physician designated by the patient, upon written request when legally requested to do so by the subject patient, except as otherwise required or permitted by law.

#### **Principles of Medical Ethics - Fees**

Iowa Administrative Code r. 653-13.20(2)

Any fee charged by a physician shall be reasonable.

*Discussion:* These rules of the Iowa Board of Medical Examiners (BME) are enforced by the BME through discipline of physician licensees. It should be noted that rule 13.20(2) references “fees” in general and is not focused specifically on medical records. Please further note that the BME can discipline a physician for violation of professional medical ethics (*see below*).

## AMA PRINCIPLES OF MEDICAL ETHICS

### **Records of Physicians: Information and Patients**

AMA Ethical Opinion 7.02

Physicians may charge a reasonable fee for copying medical records. Medical reports should not be withheld because of an unpaid bill for medical services.

*Discussion:* Medical ethics are enforceable as disciplinary rules by the Iowa Board of Medical Examiners. This ethical opinion is focused on requests for medical records by the patient or to third parties as authorized by the patient.

## PRINCIPLES OF COOPERATION FOR ATTORNEYS AND PHYSICIANS

### **The Iowa Medical Society and the Iowa State Bar Association**

Approved in 1993

A physician may assess a reasonable charge for providing the requested records or reports to either the patient’s attorney or opposing counsel.

In the case of medical records, the reasonable charge should include only copying costs and a charge that reflects the actual time spent by the office staff and the physician in reviewing the records and processing the requests.

In the case of medical reports, the reasonable charge should include compensation for the actual time spent by the physician in reviewing the records, formulating an opinion and drafting the report and the actual time spent by the physician's office staff in typing and processing the report.

If the patient's attorney requests medical records or reports, the patient has the responsibility for payment to the physician, but the patient's attorney has the responsibility of seeing that the payment is promptly made. The physician may consider the patient's ability to pay in assessing the charge.

**Discussion:** The *Principles of Cooperation* seek a balancing of interests between physicians and attorneys in litigation situations. While voluntary, both professional organizations take this joint statement seriously and encourage membership compliance with its governing principles.

## **HIPAA PRIVACY RULE**

### **Medical Record Fees**

45 CFR (Code of Federal Regulations) 164.524(c)(4)

If the individual requests a copy of the PHI [protected health information] or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

- (i) Copying, including the cost of supplies for and labor of copying, the PHI requested by the individual;
- (ii) Postage, when the individual has requested the copy, or the summary or explanation be mailed; and
- (iii) Preparing an explanation or summary of the PHI, if agreed to by the individual as required by paragraph (c)(2)(ii) of this section.

### **OCR December 3, 2002 Guidance**

Frequently Asked Question (FAQ) Answer ID 353

*If patients request copies of their medical records as permitted by the Privacy Rule, are they required to pay for the copies?*

The Privacy Rule permits the covered entity to impose reasonable, cost-based fees. The fee may include only the cost of copying (including supplies and labor) and postage, if the patient requests that the copy be mailed. If the patient has agreed to receive a summary or explanation of his or her PHI, the covered entity may also charge a fee for preparation of the summary or explanation. The fee may not include costs associated with searching for and retrieving the requested information.

**Discussion.** HIPAA's Privacy Rule addresses copies of medical records, or PHI, requested by the individual subject of that PHI. HIPAA's "individual rights" belong only

to the individual or to a personal representative of the individual. The Office of Civil Rights (OCR), the federal agency that enforces the HIPAA Privacy Rule, has clarified 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, such as an agent under a medical durable power of attorney. FAQ, Answer ID 224.

An attorney representing a client in litigation is not that client’s personal representative within the meaning of the Privacy Rule. HIPAA’s rule on charges for medical records does not apply to the person’s legal counsel unless that attorney is making the request in the capacity of a named agent under the individual’s medical durable power or in another legally recognized capacity to make health care decisions on the individual’s behalf.

With the advent of HIPAA, some covered entity health care providers now have two medical record fee schedules, one for the individual’s copy requests and the second for others which more accurately represents the costs of the many functions associated with producing and copying a medical record.

## **IOWA INDUSTRIAL COMMISSIONER - WORKERS’ COMPENSATION**

### **Exchange of Records – Fees**

Iowa Administrative Code r. 876-8.9

Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed:

- \$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.

The actual expense of postage may be added. No other expenses shall be allowed.

*Discussion.* The workers’ compensation fee schedule applies only to medical record production in workers’ compensation cases. Many physicians and hospitals believe this fee, more than decade old at the time of this writing, no longer fairly represents their reasonable costs.

*Please note:* HIPAA’s Privacy Rule defers to state law on workers’ compensation matters. Rule 164.512(1). Fees charged to individuals requesting their medical records in worker compensation cases are governed by this state regulation and not by HIPAA.

## **MALPRACTICE LITIGATION**

### **Testimonial Privilege – Release Pursuant to Patient Waiver**

Iowa Code section 622.10(3)(d)

Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records to or consults with the counsel for the adverse party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and consultation. Any party seeking consultation shall be responsible for payment of all charges. The fee for copies of any records shall be based upon actual cost of production.

**Discussion.** Iowa Code section 622.10 addresses the testimonial privilege that attaches to professional relationships in patient care and patient waiver of the privilege when the patient alleges medical negligence stemming from medical services provided in the course of that professional relationship.

Section 622.10(3)(a) specifically establishes a process whereby the attorney for the defense in a medical malpractice case can obtain the plaintiff's medical records and/or consult with the plaintiff's physician or other health practitioner by requesting the plaintiff to execute a legally sufficient waiver. Upon receipt of the plaintiff patient's waiver, the physician or other health practitioner is required to provide a complete copy of the patient's records, including reports or diagnostic imaging, relating to the condition alleged and/or to consult with the attorney for the defense prior to providing testimony regarding the plaintiff's medical history and the alleged condition.

Section 622.10(3)(c) grants immunity to the physician or other health practitioner who provides such information in good faith compliance with the statute.

Section 622.10(3)(d) addresses fees for the medical records produced and charges for the consult that is provided. Medical record fees shall be reasonable and based upon the actual cost of production.

## **CONTRACTUAL OBLIGATIONS**

**Discussion.** Physicians, hospitals, and other health care providers sometimes are bound to certain fees for medical record production by contract or under provider agreements with governmental and commercial third party payers. Those fees, however, are applicable only to the contractual relationship at hand and subject to the terms and conditions set forth in the agreement.