

Release of Information Reimbursement Laws and Regulations (2004 update)

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Editor's note: The following information supplants information contained in the January 1999 "Release of Information Laws and Regulations" practice brief.

Background

Releasing health information to other healthcare providers and authorized users is a basic function when managing health information. To the untrained eye, the distribution (or release) of health information may appear to be a simple task. Closer analysis of the process reveals that many forces and factors must be addressed to ensure that the release of information (ROI) is prompt, accurate, complete, and confidential.

Factors that affect the cost of release of information include: [1,2,3](#)

- labor costs involved with ensuring authorization appropriateness
- labor costs and software associated with logging requests in a database
- labor costs and expenses involved in physically retrieving health information from on-site and off-site storage facilities
- capital costs associated with copying equipment (copy machines, microfilm, and microfiche readers/printers)
- expense costs for paper, toner, and equipment maintenance involved in copying
- labor costs associated with the physical copying of health information
- labor costs associated with re-filing retrieved health information
- supplies and handling expense involved in preparing a document for mailing
- postal expense
- expense associated with invoicing for copies
- collections and bad debt expense
- real estate costs: work space and storage space for the ROI and copying functions

Typically, the HIM unit of a healthcare organization faces the challenge of providing the ROI function with limited budget allocations. Departments that cannot commit resources to this function must choose between operating with a constant backlog of requests or outsourcing all or part of the ROI function. In addition, "non-billable" requests may become an overhead expense to healthcare providers that outsource the ROI function. HIM professionals working in states that have established release of health information laws or regulations face the additional challenge of providing the ROI service within the constraints of the state laws or regulations.

Federal Requirements

HIPAA's final privacy rule section 164.524(c), Access of individuals to protected health information, Implementation specifications: Provision of access, states:

- (4) Fees. If the individual requests a copy of the 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 protected health information requested by the individual;
 - (ii) Postage, when the individual has requested that the copy or the summary or explanation be mailed; and

- (iii) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(ii) of this section

Section 164.524(c)(2), Forms of access requested, states:

- (ii) The covered entity may provide the individual with a summary of the protected health information requested ... or may provide an explanation of the protected health information to which access has been provided, if:
 - (A) The individual agrees in advance to such a summary or explanation; and
 - (B) The individual agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.

The December 28, 2000, final privacy rule was clarified by the August 14, 2002, *Federal Register* update to say that section "164.524(c)(4) limits only the fees that may be charged to individuals, or to their personal representatives in accordance with § 164.502(g) . . . The fee limitations . . . do not apply to any other permissible disclosures . . ." Distinguishing the requestor is an issue for providers. For example, attorney requests are sometimes disguised as patient requests.

It can be noted that retrieval and processing labor are not specifically stated in the rule's criteria for calculating reasonable, cost-based fees. When taken literally, copying is the only labor cost allowed. The preamble states, "Covered entities may not charge any fees for retrieving or handling the information or for processing the request." It should also be noted that HIPAA's reference to record copy fees is positioned within the sections covering patient rights. Because many healthcare organizations waive patient fees for personal use, the impact may be minimal.

HIPAA further allows for charging for patient requests for accountings of disclosures. Section 164.528(c)(2) states:

the covered entity must provide the first accounting to an individual in any 12 month period without charge. The covered entity may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12 month period, provided that the covered entity informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

HIPAA is designed to work with other federal laws and regulations, not to preempt them. Specific federal programs may have regulations referencing copy fee guidelines that should be considered when arriving at a 'reasonable' definition. For example:

- Effective January 5, 2004, the Centers for Medicare and Medicaid Services raised release of health information cost reimbursement for Quality Improvement Organizations' (QIOs, formerly known as PROs, Peer Review Organizations) requests for health information on Medicare patients to 12 cents per page.
- The State Operations Manual for Long Term Care Facilities, regulation F153(2)(ii), directs LTC facilities to allow an individual to purchase copies of his/her own records "at a cost not to exceed the community standard." The correspondent interpretive guideline § 483.10(b)(2) further instructs an organization to follow the state standard, if defined, or if not, a rate such as one used by the public library, the Post Office, or a commercial copy center.
- In 29CFR1910.1020(e), the Occupational Safety and Health Administration (OSHA) provides for related records requested by an employee or designated representative to be supplied without cost the first time and allows reasonable charges for additional copies of the same information. "Reasonable" is defined as "non-discriminatory administrative costs (i.e. search and copying expenses but not including overhead expenses)"

State Regulations

Because HIPAA's requirements do not address charging for record copy requests other than from patients, state regulations continue to provide the most specific guidelines. The preamble of the privacy rule leads us to believe that reliance on more specific state laws can be presumed acceptable. However, since it's not part of the rule, it could be legally tested. The Department of Health and Human Services Office for Civil Rights (OCR), the governmental enforcing arm for HIPAA's privacy rule, clarified for AHIMA that covered entities (CEs) should use state laws as guidance in fee setting.

The most recently passed state statutes represent a compromise between the parties and are representative of the costs involved in the ROI process. The majority of states have specific laws and regulations that should be used in establishing facility release of information copy cost fee schedules. These state ROI cost laws and regulations tend to vary depending on

the requesting entity, i.e., workers' compensation, state disability, or attorney/patient. State laws and regulations should be verified to ensure compliance with ROI cost guidelines that vary with the requesting entity.

While HIM managers recognize the potential for specific state laws to preempt HIPAA under a more stringent status and where greater privacy rights would prevail, copy costs represent one of several areas within HIPAA, not necessarily pertaining to privacy issues, where federal law differs from state laws. Because many states have case law addressing the reasonableness definition, interpretation against HIPAA's description will be determined over time. The OCR clarified for AHIMA that each CE should determine reasonable cost-based fees for its own operations. If a complaint is received, OCR would look at the fee structure defined as "reasonable" by the organization and how it was determined and consider state law in evaluating unique organizational circumstances. OCR reminds us of its intention to work supportively with CEs, applying "good faith effort" to HIPAA compliance practices.

Recommendations

- Work with your organization's cost accountant to determine copy costs. The accountant will be knowledgeable of Medicare cost report requirements related to non-revenue generating departments such as square footage, teaching services, and capital. Together, HIM and accounting staff have information needed to complete the project accurately. [Three AHIMA documents, available through AHIMA's FORE Library: HIM Body of Knowledge to members only, may be of assistance: [Cost Items for Release of Information Services \(ROI\)](#)", a flow chart, "[Processing a Protected Health Information Request](#)", and "[Accounting for Disclosure Cost Analysis Worksheet](#)."]]
- While developing or updating your organization's policies and procedures, investigate and become knowledgeable about the HIPAA privacy law and any other federal and state laws and regulations addressing the patient's right to access and acquire copies of his or her health records.
- Ensure policies and procedures address the use of an external copy service, if applicable.
- Each healthcare provider should develop a ROI policy and reasonable copy cost fee schedule representing the needs of its patients, physicians, researchers, third party payers, and other legitimate requesters. The policy should comply with legal and regulatory requirements.
- Policies and procedures should ensure reasonable responsiveness. Release of patient health information should be respectful of the needs of continued patient care, legal requirements, research, education, and other legitimate uses and should meet HIPAA's timeliness requirements.
- While fees may differ for different types of requests, they should be consistently applied for each type of request unless otherwise mandated. Organizations may use copy service vendors yet handle some ROI requests internally, both within the same department or within the organization. Consistency throughout the organization is essential.
- If charging a fee for accounting of disclosure listings, include the fees in the ROI policy.
- If charging for medical record copies related to research requests, such as flat or per case fees, include this factor in the ROI policy.
- Cost calculation records used to determine copy charge policy should be retained to demonstrate how "reasonable" charges were determined.
- Periodically recalculate copy costs. Actual costs and a definition of "reasonable" may vary as operations change, such as when releasing information from an electronic system with expedited retrieval, no re-filing requirements, and potential electronic transmission.
- Consider federal regulations other than HIPAA if your organization receives reimbursement from federal programs for patient services.
- In the absence of specific state or federal regulatory requirements for ROI cost, providers should establish fees that are appropriate and legitimately cover the reasonable costs of the organization. Comparing ROI fee schedules with other

- local facilities could be interpreted as price-fixing and could lead to antitrust implications.
- HIM professionals should be involved in the negotiation of managed care contracts to ensure adequate reimbursement for copies.
- A healthcare provider would be wise to include a clause in the managed care contract that reserves the right to renegotiate the copy fee portion of the contract should ROI laws change.
- When dealing with out-of-state requests for health information, the ROI cost law/regulation of the state where the healthcare provider is located normally prevails.

Accessing State Laws on Copy Fees

State health authorities are the most dependable resource for current state copy costs, because state laws change periodically. Other Web resources are also helpful:

- Contact information for public health officials is available at http://www.health.gov/hpcomments/Guide/state_PH.htm.
- Many states have government Web sites that may post laws related to healthcare. These sites typically have URLs like <http://www.statename.gov>.
- All state laws for all 50 states are accessible at http://www.alllaw.com/state_resources/. This site is most useful if you know the citations.
- Facilitators for AHIMA's geographic Communities of Practice (CoP) have been asked to post and maintain current state copy fees within respective state CoP "Resources" sections for easy member reference. Community members aware of changes in state law are encouraged to initiate updates for this important reference.
- The law offices of Thomas J. Lamb, P.A., have compiled an online state-by-state reference to copy fees at <http://www.lamblawoffice.com/medical-records-copying-charges.html>.

Notes

- Dunn, Rose. "Copying Records: The Saga Continues." *For the Record* 9, no. 7 (1997): 18-25.
- Dunn, Rose. "Copying Costs: Help is as Close as Your 1040." *For the Record* 10, no. 7 (1998): 22-23.
- Dunn, Rose. "Cost Items for Release of Information Services (ROI)."

References

Dunn, Rose. "Calculating Costs for Accounting of Disclosures." *Journal of AHIMA* 74, no. 5 (May 2003): 65-66.

Dunn, Rose. "Copying Records." *For the Record* 4, no. 18 (1992)

Dunn, Rose. "HIPAA Copy Charges for Medical Records." *Healthcare Financial Management* 57, no. 12 (2003): 36-38.

"Medicare Program; Photocopying Reimbursement Methodology." 42 CFR Parts 412, 413, 476, and 484. *Federal Register* Volume 68, no. 234 (December 5, 2003). Available at <http://www.gpo.gov/fdsys/pkg/FR-2003-12-05/html/03-30096.htm>

Occupational Safety and Health Administration, Department of Labor. "Occupational Safety and Health Standards, Toxic and Hazardous Substances, Access to employee exposure and medical records. 29 CFR 1910.1020(e) *Code of Federal Regulations* Title 29, Volume 6 (revised as of July 1, 2003). Available at <http://www.gpo.gov/fdsys/pkg/CFR-2003-title29-vol6/xml/CFR-2003-title29-vol6-sec1910-1020.xml>

"Standards for Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR Part 164. *Federal Register* 65, no. 250 (December 28, 2000). Available at <http://aspe.hhs.gov/admnimp/>.

"Standards for Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR Parts 160 and 164. *Federal Register* 67, no. 157 (August 14, 2002). Available at <http://aspe.hhs.gov/admnimp/>.

State Operations Manual for Long Term Care Facilities, regulation F153(2)(ii), p. 84. (June 1995)
<http://www.cms.hhs.gov/manuals/pub07pdf/AP-P-PP.pdf>

Thompson, Ann L. "Medical Records Copying Services: Are They Worth the Cost?" *For the Record* 9, no. 25 (1997): 4.

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