2005 DRAFTING REQUEST

Bill

Received: **04/01/2005**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gottlieb (608) 267-2369**

By/Representing: **Ron Sklansky**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **Ron Sklansky (Leg Council)**

Submit via email: **YES**

Requester's email: **Rep.Gottlieb@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Prohibit DHFS from promulgating rules on fees for duplicate health care records below specified amounts

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Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	dkennedy 04/08/2005	csicilia 04/10/2005		_____ _____			S&L
/1			chaugen 04/11/2005	_____ _____	mbarman 04/11/2005		S&L
/2	dkennedy 04/12/2005	csicilia 04/12/2005	jfrantze 04/12/2005	_____ _____	mbarman 04/12/2005	mbarman 04/20/2005	S&L
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				_____	mbarman	mbarman	
				_____	04/28/2005	04/28/2005	

FE Sent For:

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At Intro.

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/3 cjs 4/28/05 4/28 p8

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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3/31/05

Motion

The Joint Committee for Review of Administrative Rules, pursuant to s. 227.19 (4) (d) 6. and (5) (d), Stats., objects to Clearinghouse Rule 03-111.

PROPOSED ORDER
OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING AND RECREATING RULES

To amend sections HFS 117.01 to 117.04 and repeal and recreate section HFS 117.05, relating to fees for copies of health care records.

Analysis Prepared by the Department of Health and Family Services

- Rule Summary

Section 146.83 (3m), Stats., as created by 2001 Wisconsin Act 109 and s. 908.03 (6m) (d), Stats., as amended by 2001 Wisconsin Act 109, requires that the Department prescribe by rule fees for reproducing patient health care records that are the maximum amount a health care provider may charge. The fee limits are to be based on an approximation of actual costs. The statutes allow health care providers to also charge for postage or other delivery costs.

Unless superseded by fees established by other applicable law, the fee limits proposed by the Department in HFS 117 will apply to all persons who, upon request, provide copies of health care records to either individuals who are the subject of the records, their personal representatives, or other parties who are authorized to receive copies of records. The Department has proposed separate fee limits dependent on who is requesting the copy of the record. One set of fee limits, in HFS 117.05 (2), applies only to individuals and their personal representatives as defined in this rule who make the request for record copies. In such cases, a record supplier may charge no more than $0.31 per page for copies of the records. Postage is extra. A second fee limit, in HFS 117.05 (3), applies to all others making a request for another person's records they are authorized to receive. In such cases, the record supplier may charge no more than $15.00 per request (or no more than $12.50 per request for requests totaling under five pages) plus $0.31 per page. The "per request" amount may be deemed a retrieval fee that individuals need not pay for copies of their own records. The fee limit for copies of x-rays is proposed to be $5.25 per page, regardless of the number of x-ray images on the page or who requests the copy. Finally, the Department is also proposing a fee limit of $7.50 (or $5.00 for requests totaling less than five pages) if the requester wishes the provider to certify the records supplied.

The Department's authority to amend and repeal and recreate these rules is found in ss. 146.83 (3m) and 908.03 (6m) (d), Stats. The rules interpret ss. 146.83 (3m) and 908.03 (6m) (d), Stats.

- Summary of Factual Data and Analytical Methodologies Used to Develop or Support the Proposed Rule, and How Any Related Findings Support the Chosen Regulatory Approach

To develop these rules, the Department formed a 14-member advisory committee in early February, 2003. The committee consisted of equal representation of those who maintain health care records (medical record professionals, medical care provider representatives, and persons associated with firms that reproduce medical records for medical care providers) and those who request records (attorneys and insurers.) Over the following three months, the Department also created a website on which it posted pertinent documents for review by interested parties and encouraged persons to register to receive email notifications of new Department postings on the website.
(http://dhfs.wisconsin.gov/news/rules/HFS_117/HFS_117_Medical_Record_Fee_Limits.htm)

The Department began its effort by distributing a four-page project plan to advisory committee members on February 18th. The plan stated the Department's intent "to develop a rule that complies and is consistent with what it believes to be applicable state and federal law, and is based on an approximation of actual medical record reproduction costs." Basically, the Department stated its intent to construct a cost-based model of the components of reproducing a health care record. The Department also identified and shared what it considered to be the major factors and considerations bearing on the specification of a fee limit. These factors and considerations were the following:

1. The recent federal Health Insurance Portability and Accountability Act (HIPAA) regulations and federal commentary related thereto, particularly the issues of:

a. Who, and the circumstances under which, a person will be considered someone's "personal representative" for the purposes of requesting a copy of that person's health care record; and
b. Whether the costs associated with record retrieval should be included in fee limits for subject persons or their personal representatives.

2. The Department's desire to approximate total health care record reproduction costs by attempting to identify the component tasks and estimated costs associated with health care record reproduction. Issues bearing on doing so included the following:

a. Whether and how the health care record medium affects the length of time to reproduce a record;
b. Whether the health care provider setting (i.e., hospital, clinic, etc.) or subject patient group (e.g., children, elderly, etc.) affects the time and effort needed to reproduce records; and
c. The steps involved in reproducing health care records and whether those steps are different for different record mediums and record maintainer settings.

The Department invited all committee members, and those who were "virtual" participants via the Department's website postings, to submit documents to the Department on these major factors and considerations, asking that the documents be submitted, if possible, by March 7th. Specifically, the Department requested the following input:

1. Committee members' thoughts regarding the appropriateness and acceptability of the Department's intended approach and, if it is not, how it is not, and how and why the commenter would propose it to be different.

2. Information on the following subjects:

- How HIPAA bears on the revision of ch. HFS 117.
- Whether the categories of paper, electronic, microfilm, microfiche and traditional x-ray comprise the universe of health care record mediums for the purposes of this project, and if not, what other mediums should be addressed.
- Whether the steps involved in the reproduction of health care records within a particular health care record maintainer setting or for a particular patient group are sufficiently different to suggest a significantly different reproduction cost.
- The sequence of steps and time associated with each step typically required for health care record reproduction, by health care record medium, setting or patient group, as appropriate.
- Existing health care record fee limit policies.

After reviewing, analyzing and compiling information from about 20 documents, the Department circulated a preliminary report to committee members on March 31, 2003. The preliminary report included an initial draft of ch. HFS 117, as did the Department's subsequent iterations of the report. The Department's initial draft of the rules acknowledged the HIPAA federal regulatory requirement that individuals and their personal representatives should only be charge for the actual cost to copy (not retrieve) the individual's medical record by establishing two different fee limits; one for individuals (and their personal representatives) and another for everyone else. The Department's initial rule specified a fee limit for individuals of $3.20 per request and $0.04 per page. The draft rule specified a fee limit for all others of $21.00 per request and $0.42 per page. The Department asked that committee members and others submit comments on the Department's preliminary report by April 14th.

In response to comments it received on its preliminary report, the Department revised its preliminary report (known in its second iteration as the "interim" report) and created a table of comments and Department responses. The Department revised its original proposed rules by increasing by 50% the limit that may be assessed for certifying records, increasing the imputed average size of a medical record request from 20 to 25 pages, increasing the fee limit for x-ray copies from $5.00 to $5.25, eliminating the "per request" component of the fee limit applicable to individuals and increasing the "per page" fee limit applicable to individuals from $0.04 to $0.20, clarifying that the Department's proposed fee limit for all others was meant to be somewhere in the range of $14.00 to $21.00 per request and ($0.28 to $0.40 per page, depending on whether and how the factors of "profit" and "bad debt subsidization" were accounted for. The Department subsequently modified the comment and response table to reflect comments the Department received through April 30th. The Department circulated these documents to committee members prior to convening the first and only meeting of the advisory committee on April 25th.

In the course of the advisory committee meeting, a variety of outstanding issues were discussed. However, with one exception, there was virtually no consensus on any of the issues between members representing health care record maintainers and members representing health care record requesters. The one exception was that members encouraged the Department to develop a single fee structure to the extent possible.

Following the April 25th advisory committee meeting, the Department chose its positions on the remaining outstanding issues, electing to reflect a 10% profit factor in its propose fee limits, but not reflect costs related to bad debts. It revised its interim report to become its "final" report, titled "*Department HFS 117 Report*," and created a "final" iteration of its comment and response table, titled "*Comments on Department HFS 117 Preliminary and Interim Reports and Department Responses.*" The Department's initial proposed rulemaking order resulted from these efforts.

On December 15, 2003, the Department held a public hearing on its initial proposed rules in Madison. Fifteen persons attended. The Department received 35 written comments on initial proposed rules. In response to these comments, and those provided by the Legislative Council Rules Clearinghouse, the Department made minor revisions to its proposed rulemaking order.

- *Small Business Effect Analysis and Supporting Documentation*

The revision of ch. HFS 117 will affect many small businesses, principally law firms that request health care records on behalf of clients, and small health provider offices that maintain and supply their patients' health care records to those authorized to request those records. The fee limits specified in ch. HFS 117 also will effect a small number of businesses that reproduce medical records on behalf of health care providers and transmit those records to authorized record requesters.

Chapter HFS 117 does not require compliance with any reporting, bookkeeping or other procedures. Nor does the proposed rule impose new requirements for professional skills that are not currently required to comply with requests for copies of health care records. HFS 117 imposes no new requirement on the private sector that has an associated compliance cost. Given this, the question of exempting particular small businesses from some or all of HFS 117's provisions is moot.

The Department believes that exempting certain law firms and health care providers from the rule's applicability would be contrary to the legislature's intent that the rule, to the extent possible, specify a single fee limit for all parties. Similarly, the Department believes that specifying a lower fee limit for particular law firms (or a higher fee limit for particular health care providers) would also be contrary to legislative intent.

- Private Sector Fiscal Effect

Once it becomes effective, HFS 117 will have far broader applicability than it currently has, in that the fee limits it contains will apply to most requests for copies of health care records. The Department cannot reliably estimate the fiscal effect of the proposed rule on the private sector. While the Department has developed what it believes to be a reasonable approximation of the average actual cost to reproduce an average health care record, the true cost of doing so may be less or more. Without actual operating data (such as those resulting from one or more time studies of actual medical record maintainers) upon which to base an estimate, verifiable private sector fiscal effects are likely to be most reasonably known only to medical record maintainers and professionals. To all others, the true fiscal effects may only be roughly deduced.

The Department points out that 14 medical record provider representatives who commented on the Department initial proposed rule asserted that the Department's proposed fee limits are lower than their cost of providing copies of records. (Commenters did not provide the assumptions upon which their assertions were based; nor did commenters state that their assertions applied only to the fee limit for individuals.) Consequently, many of those commenters asserted that, due to HFS 117 as proposed by the Department, the commenters' cost of supplying medical record copies would need to be subsidized by other services. Based on assertions made by several commenters (each communicating to the Department through what appeared to be "form" letters, and none of which offered supporting documentation upon which their estimate was based), one is led to conclude that the cumulative cost of HFS 117 to hospitals statewide would be millions, perhaps tens of millions, of dollars. On the other hand, ***if*** much profit (in addition to health care provider convenience) exists in the (largely monopolistic) system under which some record reproduction is not subject to any fee constraint, and ***if*** the fee limits specified in HFS 117 do not result in attorneys suggesting to their clients that the client make the request for the client's record (thereby subject to the low fee limit applicable to "individuals"), then there it is possible that HFS 117 may reduce overall private sector costs because attorneys may need to pay less than they currently do for client medical records.

- Relation to Federal Regulations

The Department believes that there is only one federal regulation that has a direct bearing on HFS 117. In the Department's opinion, those regulations, 45 CFR Parts 160 and 164, issued on August 14, 2002, and commonly known as the "Health Insurance Portability and Accountability Act (or '*HIPAA*') Regulations," bear on the following issues:

1. Whether "billing statements" should be included under HFS 117 as a "health care record."

2. Whether an attorney retained by an individual qualifies as a "personal representative" of that individual for the purposes of requesting and receiving that individual's health care records is subject to the same HFS 117 fee limit that applies if the record had been requested by the individual.

3. The most a medical record maintainer may charge to an individual (or that individual's personal representative) for a copy of his or her own medical records.

Were the Department to create requirements in HFS 117 that were not compatible with those expressed in 45 CFR 164 and commentary, the Department would be doing the public a disservice insofar as medical record maintainers would have more difficulty administering disjoint laws, and the confusion and dissention that has been prevalent between medical record requesters and medical record maintainers over the past 10 years would continue.

With respect to **what qualifies as health care records**, as defined under HFS 117.03 (3), 45 CFR 164.524(c)(1) declares that a health care provider must provide the access (to medical records) requested by individuals, including inspection or obtaining a copy, or both, of the protected health information about them in designated record sets. "Designated record set" is a special term defined by 45 CFR 164.501(1) to include the "medical records and billing records" about individuals. To be consistent with 45 CFR 164.501(1)(i) and to promote the clear, consistent and easy administration of HFS 117, the Department is proposing to include billing statements as a type of "health care provider record" and subject to the fee limits under HFS 117.

With respect to **what persons qualify as a "personal representative" of an individual** for the purposes of requesting a copy of the individual's health care record (and for the purposes of paying a much lower fee for record copies), 45 CFR 164.502(g) and 164.524(c)(4) are relevant to HFS 117. 45 CFR 164.502(g) defies who, under HIPAA, maybe considered a "personal representative" of an individual. The federal HIPAA definition of "personal representative" in 45 CFR 164.502(g) is not identical to the Wisconsin definition of "person authorized by the patient" in s. 146.81 (5), Stats., and the definition in that Wisconsin statute is not the only Wisconsin standard that could apply to a medical record situation. For example, s. 146.835, Stats., notes that parents who have been denied physical placement do not have the traditional parental authority relating to record access. The federal focus is on a person who can make health care decisions on behalf of the patient; in contrast, the Wisconsin definition in s. 146.81 (5), Stats., includes someone who has received the patient's consent for access to records. The intent of the proposed HFS 117 definition is to compel the reduced fee only when the requester is someone other than the actual patient who both qualifies to obtain record access under Wisconsin law **and** meets the "personal representative" definition under HIPAA. To maintain consistency with the federal HIPAA regulations and policy interpretations, the Department believes that HFS 117 needs to clearly specify that the lower "individual" fee limit does not apply to an attorney requesting a client's medical records. The Department's position is strongly influenced by federal commentary responding to a comment on page 53254 of the August 14, 2002 Federal Register. In the response, the federal government clarifies that the limited cost components specified under 45 CFR 164.524(c)(4) apply ***only*** to individuals' and individuals' personal representatives' requests for copies of individuals' medical records. The federal regulations are very specific about who qualifies as a personal representative of a patient under what circumstances. They are defined to be ***only*** parents or guardians of minors, or administrators of estates of deceased persons. It also states that "The fee limitations in 164.524(c)(4) do not apply to any other permissible disclosures by the covered entity, including disclosures that are permitted for treatment, payment or health care operations, disclosures that are based on an individual's authorization that is valid under 164.508, or other disclosures permitted without the individual's authorization as specified in

164.512." Consequently, the Department believes that the medical record requester is the person or entity that transmits the request to the health care provider. If the patient signs a form authorizing an attorney to obtain records, gives the signed form to the attorney, and the attorney then sends the authorization to the health care provider along with a request that the health care provider give the attorney the records, the requester is the attorney. If the patient makes the request directly to the health care provider, the requester is the patient. Consequently, personal representatives ***are not*** attorneys requesting the records of clients on behalf of those clients. While this may be problematic, and may alter current medical record request practices, the Department believes it is the inevitable result of the HIPAA language. The Department believes that Wisconsin law cannot constrain and should not conflict with the parameters specified in federal law, and consequently, the Department it must attempt to comply with the federal regulation.

With respect to **making the fee limits expressed in HFS 117 consistent with federal regulations**, the Department has been criticized for insisting that HFS 117 must specify fee limits for ***two*** groups of persons making the request for the records, instead of specifying a ***single*** fee limit that applies to everyone. These two groups are: 1) individuals and their personal representatives for the individual's records; and 2) all other persons. 45 CFR 164.524(c)(4) requires that medical record maintainers charge individuals or their personal representatives no more than their cost to copying the individual's records, including copying supplies and postage. Given that "copying" is a variable expense, dependent primarily on the number of pages copied (in addition to a small share of associated/attributable costs), the Department has proposed that only the "per page" portion of its derived fee limit (without the "per request" portion) be stated as the limit applicable to individuals' requests for copies of their own records. The Department believes that such costs are only a fraction of the costs required to reproduce the records. For various reasons (discussed in detail in the Department's April, 2003 "HFS 117 Report"), the costs associated with ***retrieving*** records is normally the major cost associated with reproducing medical records. Given the clarity and specificity of the cost component fee limit specified in 45 CFR 164.524(c)(4), the Department does not know how it can avoid specifying fee limits for two groups. To do otherwise would not only be illegal insofar as it conflicts with federal law, but it would cause needless confusion among affected parties trying to operate under disjoint laws. The Department's two-group fee approach is designed to compel the reduced fees only in categories of situations where HIPAA would require reduced fees. Health care providers have the discretion to voluntarily offer reduced copying fees; however, in order for a requester to be **entitled** to a reduced copying fee under HIPAA, the requester must either be the individual patient or be a person who falls within the HIPAA definition of "personal representative." Furthermore, the cost model the Department constructed to estimate the fee limits conformed with the requirements of s. 146.83 (3m) (a), and the fee limits expressed in s. HFS 117.05 (2) reflect the circumscribed cost components expressed permitted under 45 CFR 164.524(c)(4).

Assuming that any previous legislative intent for HFS 117 was prior to (and therefore, without knowledge of) final federal HIPAA regulations, the Department believes it should incorporate recognition of the two-group fee intent implied by the HIPAA regulations. One group fee limit would be applicable to individuals and individuals' personal representatives and would reflect the Department's estimate of actual costs for the cost components specified in 45 CFR 524(c)(4). The other group's (everyone else) fee limit would be based on all of the ***applicable*** cost components the department has specified in its medical record cost model.

The Department understands that a two-group system will result in the situation that an attorney making a request for a client's medical records may be charged by a medical record maintainer significantly more than if the client of that attorney made the request of the medical record maintainer. However, the Department sees no viable alternative. Whether this discrepancy will significantly alter current record request practices remains to be seen.

- Relation to Similar Rules in Minnesota, Iowa, Michigan and Illinois

Minnesota – A medical care provider or the provider's representative may charge a patient or a patient's representative (defined similarly to HFS 117 "personal representative") no more than $13.79 plus $1.05 per page for time spent retrieving and copying the patient's medical records. These limits are adjusted annually based on changes in the Minneapolis-St. Paul Consumer Price Index. The 2003 fee limit for a copy of a 25-page medical record would be $40.04. The statutes prohibit a provider from charging a fee for copies of records requested by a patient if the request for copies of records is for purposes of appealing a denial of social security disability income or benefits. The provider may charge a patient no more than the actual cost of copying x-rays plus no more than $10 for the time spent retrieving and copying the x-rays. These fee limits are specified Issue Brief 2003-1 of the Minnesota Department of Health, and has the following weblink:
http://www.health.state.mn.us/divs/hpsc/dap/maxcharge.pdf
These limits are based on Minnesota statutes section 144.335, subdivision 5.

Iowa – Iowa limits only the fees for copies of medical records under workers' compensation. In such cases, the limits are the following:

1 – 20 pages	$20
21 – 30 pages	$20 plus $1 per page
31 – 100 pages	$30 plus $0.50 per page
101 – 200 pages	$65 plus $0.25 per page
200+ pages	$90 plus $0.10 per page

Under this schedule, the fee limit on a 25-page record would be $25.

Michigan – The following fee limits apply only to medical records relating to a specific work-related condition, treatment or request for payment of treatment. It does not pertain to records requested by a subpoena that are part of litigation.
Patients may receive the first 30 pages of medical record copies free of charge, and are charged $0.48 per page for a complete copy of medical records over 30 pages. Attorneys are charged a $23.50 clerical fee and $0.90 for each page ($1.35 per page for microfilm copies.) Insurance companies are charged $35.00 for for a 1-5 page request; $50.00 for a 6-30 page request; and $65.00 for a 31-50 page request. For 51 pages or more, insurance companies are charged a flat $65.00 plus $0.75 for each page, and $1.30 per page for microfiche.
Under this schedule, a patient would pay nothing for a 25-page record (but up to $14.88 for a 31-page record.)

Illinois – In 2003, medical providers or their representatives are limited to charging $20.48 plus $0.77 per page to individuals or their attorneys for the first 25 pages; $0.51 per page for pages 26- 50; and $0.26 per page for each page in excess of 50. Charges for copies made from microfiche or microfilm cannot exceed $1.28 per page. Providers may also charge for the reasonable cost of duplication of x-rays.
Under this schedule, a patient would pay no more than $39.73 for a 25-page record.

For an average 25-page request, the fee limits in the adjacent states and as proposed in these rules for Wisconsin are the following:

Minnesota:	$40.04
Iowa:	$25.00
Michigan:	$46.00 (attorneys); $50.00 (insurers)
Illinois:	$39.73
Wisconsin:	$7.75 (individuals); $22.75 (all others)

The Department does not know which, if any, of the preceding states, in setting its fee limit, deemed the fee limit to approximate the actual costs of those who reproduce the records.

SECTION 1. HFS 117.01 to 117.04 are amended to read:

HFS 117.01 Authority and purpose. This chapter is promulgated under the authority of ~~s.~~ ss. 146.83 (3m) and 908.03 (6m) (d), Stats., to establish uniform fees that are the maximum fees that may be charged for ~~providing certified duplicate health care provider~~ a copy of health care records ~~requested by attorneys pursuant to s.~~ under s. 146.83 (1) (b) or (c) or 908.03 (6m) ~~(c) 3.~~, Stats.

HFS 117.02 Applicability. ~~This~~ Unless superseded by fees established by other applicable law, this chapter applies to all ~~attorneys~~ persons and entities who request ~~certified~~ duplicate health care records under ~~s.~~ ss. 146.83 or 908.03 (6m) ~~(c) 3.~~, Stats., and to all health care providers who supply those records, either directly or indirectly through the provider's agent.

Note: An example of other applicable law is the fee limits imposed under s. 102.13 (2) (b), Stats., for worker's compensation cases.

Note: The fee limits in this chapter apply to requests for health care records whether or not a court action or administrative action has been commenced.

HFS 117.03 Definitions. In this chapter:

(1) "Department" means the Wisconsin department of health and family services.

(2) "Health care provider" ~~means a chiropractor licensed under ch. 446, Stats., a dentist licensed under ch. 447, Stats., or a health care provider as defined in s. 655.001 (8)~~ includes any persons or entities specified in ss. 146.81 (1), 655.001 (8) or 908.03 (6m) (a), Stats.

(3) "Health care ~~provider~~ records" ~~means all records related to the health of a patient prepared by or under the supervision of a health care provider~~ has the meaning specified in s. 146.81 (4), including any billing statements.

(4) "Personal representative" means a person who both has authority under state law to act on behalf of the patient and qualifies as a "personal representative" under 45 CFR 164.502(g).

HFS 117.04 Request for duplicate records. ~~An attorney~~ A person requesting duplicate health care ~~provider~~ records ~~concerning a patient~~ shall provide sufficient identifying information about the patient and the pertinent records to permit identification and location of the specific records. The request shall include all of the following:

(1) The correct name of the patient whose records are the subject of the ~~attorney's~~ request~~;~~.

(2) The patient's ~~social security~~ identifying number, if known~~;~~.

(3) The patient's date of birth, if known~~;~~.

(4) A description of the records requested~~; and~~.

(5) The written informed consent of the patient or person authorized by the patient to give consent to release of the records, if required by law.

SECTION 2. HFS 117.05 is repealed and recreated to read:

HFS 117.05 Fees for duplicate records. (1) DEFINITION. In this section, "x-ray copy" means a page containing one or more radiographic images.

(2) REQUESTS FOR RECORDS FROM THE PATIENT OR REQUESTS FROM THE PERSONAL REPRESENTATIVE OF THE PATIENT. If a patient or if the personal representative of the patient requests copies of the patient's health care records, the health care provider may charge no more than the following fees:

(a) For other than X-rays, all of the following:

1. Thirty-one cents per record page.

2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

(b) For X-rays, all of the following:

1. $5.25 per X-ray copy.

2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

Note: Sales taxes, if applicable, also may be added to the fees charged under this subsection.

Note: When records are needed by or on behalf of indigents, the Department encourages health care providers to provide those records at as low a cost as possible.

(3) REQUESTS FOR RECORDS FROM INDIVIDUALS OTHER THAN THE PATIENT OR THE PATIENT'S PERSONAL REPRESENTATIVE. If a person is requesting copies of another person's health care records and the person making the request is not the personal representative of the patient, a health care provider may charge the requester no more than the following fees:

(a) For other than X-rays, all of the following:

1. a. For a request generating a total of up to 5 pages, $12.50 per request.

b. For a request generating a total of 5 or more pages, $15.00 per request.

2. Thirty-one cents per record page.

Note: The "per page" fee limit under subdivision 2. above applies to the total number of pages, and is in addition to the "per request" fee limit.

3. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

(b) For X–rays, all of the following:

1. $5.25 per X–ray copy.

2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

(c) 1 For certifying up to 5 pages of records, an additional $5.00 per request.

2. For certifying 5 or more pages of records, an additional $7.50 per request.

Note: Sales taxes, if applicable, may also be added to the fees charged.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and Family Services

Dated:

By:_____
Helene Nelson
Secretary

SEAL:

MONDAY 10:00 a.m

State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–~~2635/?~~ 2636/1
DAK:.....

~~PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION~~

requested after commencement of an action

Gen cat

AN ACT...; **relating to:** prohibiting the department of health and family services from promulgating a rule limiting fees for copies of patient health care records and X–rays to certain amounts.

Analysis by the Legislative Reference Bureau

Under current law relating to patient health care records, the Department of Health and Family Services (DHFS) must, after considering certain factors, promulgate rules that prescribe fees for copies of patient health care records and X–ray reports. The fees must be based on an approximation of actual costs. The rules must be revised by January 1, 2006, and every three years thereafter to account for increases or decreases in actual costs. Under current law relating to evidence, after December 31, 2002, DHFS must prescribe fees ~~for after commencement of an action~~ for copies of patient health care records and X–rays that are based on an approximation of actual costs and that allow a health care provider to charge actual postage and delivery costs.

This bill prohibits DHFS from promulgating a rule that prescribes fees for copies of patient health care records and X–rays in amounts that equal or are less than the following amounts:

1. For requests from the patient or the patient's personal representative, $.31 per patient health care record copy page and $5.25 per X–ray copy, plus actual postage or other delivery costs and any applicable sales tax.

2. For requests from individuals other than the patient or the patient's personal representative:

a. For patient health care record copies, $.31 per page, plus $12.50 per request (for a request generating a total of four or fewer pages), and $15.00 per request (for

per copy

clearinghouse rule 03-111

under

a request generating a total of five or more pages, plus actual postage or other delivery costs and any applicable sales tax.

b. For X–ray copies, $5.25, plus actual postage or other delivery costs and any applicable sales tax. (use 2x)

on X-ray copies

c. For certification of copies, $5.00 per request (for four or fewer pages) and $7.50 per request (for five or more pages).

portion of the

The bill is introduced as required by s. 227.19 (5) (e), stats., in support of the objection of the Joint Committee for Review of Administrative Rules on March 31, 2005, to the issuance of a portion of the proposed repeal and recreation of section DHFS 117.05, Wis. Admin. Code, by DHFS. The proposed rule limited fees applicable to current law relating to patient health care records and to evidence, for copies of patient health care records or X–rays and for certification of the copies, as requested by a patient, the patient's personal representative, or other individuals.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

objected to

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.83 (3m) (a) (intro.) of the statutes is amended to read:

2 146.83 **(3m)** (a) (intro.) ~~The~~ Except as provided in par. (c), the department shall,
3 by rule, prescribe fees that are based on an approximation of actual costs. The fees,
4 plus applicable tax, are the maximum amount that a health care provider may
5 charge under sub. (1) (b) for duplicate patient health care records and under sub. (1)
6 (c) for duplicate X–ray reports or the referral of X–rays to another health care
7 provider of the patient's choice. The rule shall also permit the health care provider
8 to charge for actual postage or other actual delivery costs. In determining the
9 approximation of actual costs for the purposes of this subsection, the department
10 may consider all of the following factors:

History: 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109.

11 **SECTION 2.** 146.83 (3m) (c) of the statutes is created to read:

12 146.83 **(3m)** (c) The department may not promulgate rules that prescribe fees
13 for duplicate patient health care records or duplicate X–rays in amounts that equal
14 or are less than the following amounts:

31 cents

1. For requests from the patient or the personal representative of the patient, $.31 per patient health care record copy page and $5.25 per X–ray copy, plus actual postage or other delivery costs and any applicable sales tax.

2. For requests from individuals other than the patient or the personal representative of the patient:

31 cents

a. For patient health care record copies, $.31 per page; plus $12.50 per request, for a request generating a total of 4 or fewer pages, and $15.00 per request, for a request generating a total of 5 or more pages; plus actual postage or other delivery costs and any applicable sales tax.

per copy

b. For X–ray copies, $5.25, plus actual postage or other delivery costs and any applicable sales tax.

certification of

certification of

c. For certification of copies, $5.00 per request, for a total of 4 or fewer pages, and $7.50 per request, for a total of 5 or more pages.

or X-ray copies

<use 2x>

SECTION 3. 908.03 (6m) (d) of the statutes is amended to read:

908.03 **(6m)** (d) *Fees.* ~~After December 31, 2002, the~~ Except as provided in par. (e), the department of health and family services shall, by rule, prescribe uniform fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge for certified duplicate patient health care records. The rule shall also allow the health care provider to charge for actual postage or other actual delivery costs. For duplicate patient health care records and duplicate X–ray reports or the referral of X–rays to another health care provider that are requested before commencement of an action, s. 146.83 (1) (b) and (c) and (3m) applies.

Cross Reference: Cross Reference: Cross Reference: See also ch. HFS 117, Wis. adm. code.**Cross Reference:**
History: Sup. Ct. Order, 59 Wis. 2d R250; Sup. Ct. Order, 67 Wis. 2d vii (1975); 1983 a. 447; Sup. Ct. Order, 158 Wis. 20d xxv (1990); 1991 a. 32, 269; 1993 a. 105; 1995 a. 27 s. 9126 (19); 1997 a. 67, 156; 1999 a. 32, 85, 162; 2001 a. 74, 109.

SECTION 4. 908.03 (6m) (e) of the statutes is created to read:

908.03 **(6m)** (e) The department may not promulgate rules that prescribe fees for duplicate patient health care records or duplicate X–rays in amounts that equal or are less than the following amounts:

31 cents

1. For ~~requests from~~ the patient or the personal representative of the patient, $.31 per patient health care record copy page and $5.25 per X–ray copy, plus actual postage or other delivery costs and any applicable sales tax.

2. For requests from individuals other than the patient or the personal representative of the patient:

31 cents

a. For patient health care record copies, $.31 per page; plus $12.50 per request, for a request generating a total of 4 or fewer pages, and $15.00 per request, for a request generating a total of 5 or more pages; plus actual postage or other delivery costs and any applicable sales tax.

per copy

b. For X–ray copies, $5.25, plus actual postage or other delivery costs and any applicable sales tax.

certification of

c. For certification of copies, $5.00 per request, for a total of 4 or fewer pages, and $7.50 per request, for a total of 5 or more pages.

(END)

certification of

or X-ray copies

<use 2x>

ceive the information promptly, work on a different request.

(c) *Preliminary draft and drafter's note.* Writing a preliminary draft, together with a drafter's note explaining what is left out of the draft, what research remains to be done, and what clarifications are needed to finish the draft, lets you leave the difficult or time–consuming areas of a request for later. Often this also helps you prepare a draft more nearly accomplishing the requester's intent because the requester gets involved and helps develop the draft. It also permits you to work on other pressing matters until the requester replies. Sometimes it is useful to do a preliminary draft and ask the requester to circulate it among the interested parties for comments. Using a preliminary draft is particularly helpful when a legislator is not going to introduce the draft or will not decide whether to introduce the draft until he or she reviews it. A preliminary draft is incomplete in at least some respect and may not be introduced. "PRELIMINARY — NOT READY FOR INTRODUCTION" is placed at the top of the first page of the proposal whenever the LRB number has a "/P." If you do not want a preliminary draft to be submitted to the requester, use the nonsubmittal form as described in sub. (6s). See sec. 1.08, Drafting Manual, regarding the use of drafter's notes.

(d) *Resolution rather than bill.* A joint or simple resolution requesting the Joint Legislative Council, a standing committee, or a state agency to study the subject of the request is occasionally more appropriate than a bill. If the requester has only a general idea of a problem or is not committed to a specific method of solving a problem, or if solving the problem may require the advice of experts, a resolution may be the only alternative. It is also a useful way to permit a legislator to begin working publicly on an issue while waiting for a bill draft.

(e) *Bill to direct an agency to submit legislation or perform a study.* During the busy part of the legislative session, you may be unable to draft a time–consuming bill as quickly as a requester would like. In that case, ask the requester if he or she would prefer a bill directing an agency to study the subject of the request or to submit proposed legislation to the legislature. If the bill is enacted, you can then draft the more time–consuming bill for the agency during the interim period. The requester may prefer this approach because you can respond to his or her initial request more promptly than would otherwise be possible.

(em) *Agency budget request.* You may direct a state agency to incorporate a proposed solution to a problem in its next biennial budget request. See 2001 Wisconsin Act 109, section 9115 (2x).

(f) *Counsel the requester.* Legislation is not the answer to every problem. Sometimes current law already covers the problem, but an official or agency responsible for administration or enforcement of the law is unaware of it or is unable or unwilling to commit the necessary resources to administer or enforce it. Requesting an attorney general's opinion or referring a local official to a state agency with expertise may resolve an issue of his interpretation of current law. Other times the problem can be better addressed by a rule change, which the legislator can pursue through informal channels. Therefore, if it appears that legislation is unnecessary or would be ineffective, counsel the requester so that he or she may pursue a more productive course of action.

(15) Bills to Support Suspension or Prevent Promulgation of Rules. If you draft a bill to support a rule suspension under s. 227.26 (2) (f), stats., or to prevent a promulgation under s. 227.19 (5) (e), stats., notify the LRB program assistants when you turn in the draft to the legislative editors. The program assistants will arrange to obtain and print the reports required as an appendix to the bill under ss. 227.19 (6) (a) and 227.26 (2) (g), stats. See sec. 4.036 (3), Drafting Manual, for an example of the last paragraph of the analysis to a bill to support suspension or prevent promulgation of a rule.

1.03 USE OF DRAFTING FORMS. (2) Bill Form. Unless you use the computer system to draft or are using another draft as your base document, use the appropriate green form as the first page of a bill or substitute amendment. Use plain paper for additional pages and inserts.

– 2635/1
– 2636/1

Kennedy, Debora

From: Sklansky, Ron
Sent: Tuesday, April 12, 2005 2:28 PM
To: Kennedy, Debora
Subject: rule objection bill

Debora:

The bill draft is fine. I suggest a minor change to the analysis, however. While the standing committee and JCRAR clearly objected to the fees in the rule, the formal objections were to the entire rule rather than to a portion of the rule. Thus, the second to last paragraph of the analysis should read:

> The bill is introduced...in support of the objection to clearinghouse rule 03-111 by DHFS. The proposed rule limited fees applicable...or other individuals.

Thanks.

Ron

(WEDNESDAY, please)

State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–2636/E2
DAK:cjs:ch

Stays

2005 BILL

Reg cat.

AN ACT *to amend* 146.83 (3m) (a) (intro.) and 908.03 (6m) (d); and *to create* 146.83 (3m) (c) and 908.03 (6m) (e) of the statutes; **relating to:** prohibiting the Department of Health and Family Services from promulgating a rule limiting fees for copies of patient health care records and X–rays to certain amounts.

Analysis by the Legislative Reference Bureau

Under current law relating to patient health care records, the Department of Health and Family Services (DHFS) must, after considering certain factors, promulgate rules that prescribe fees for copies of patient health care records and X–ray reports. The fees must be based on an approximation of actual costs. The rules must be revised by January 1, 2006, and every three years thereafter to account for increases or decreases in actual costs. Under current law relating to evidence, after December 31, 2002, DHFS must prescribe fees for copies of patient health care records and X–rays requested after commencement of an action that are based on an approximation of actual costs and that allow a health care provider to charge actual postage and delivery costs.

This bill prohibits DHFS from promulgating a rule that prescribes fees for copies of patient health care records and X–rays in amounts that equal or are less than the following amounts:

1. For requests from the patient or the patient's personal representative, $0.31 per patient health care record copy page and $5.25 per X–ray copy, plus actual postage or other delivery costs and any applicable sales tax.

2. For requests from individuals other than the patient or the patient's personal representative:

a. For patient health care record copies, $0.31 per page, plus $12.50 per request (for a request generating a total of four or fewer pages), and $15.00 per request (for a request generating a total of five or more pages, plus actual postage or other delivery costs and any applicable sales tax.

b. For X–ray copies, $5.25 per copy, plus actual postage or other delivery costs and any applicable sales tax.

c. For certification of copies, $5.00 per request (for four or fewer pages or X–ray copies) and $7.50 per request (for five or more pages or X–ray copies).

The bill is introduced as required by s. 227.19 (5) (e), stats., in support of the objection of the Joint Committee for Review of Administrative Rules on March 31, 2005, to the issuance of ~~a portion of~~ clearing house rule 03–111 by DHFS. The ~~portion of the~~ proposed rule ~~objected to~~ limited fees applicable under current law relating to patient health care records and to evidence, for copies of patient health care records or X–rays and for certification of the copies, as requested by a patient, the patient's personal representative, or other individuals.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.83 (3m) (a) (intro.) of the statutes is amended to read:

2 146.83 **(3m)** (a) (intro.) ~~The~~ Except as provided in par. (c), the department shall,
3 by rule, prescribe fees that are based on an approximation of actual costs. The fees,
4 plus applicable tax, are the maximum amount that a health care provider may
5 charge under sub. (1) (b) for duplicate patient health care records and under sub. (1)
6 (c) for duplicate X–ray reports or the referral of X–rays to another health care
7 provider of the patient's choice. The rule shall also permit the health care provider
8 to charge for actual postage or other actual delivery costs. In determining the
9 approximation of actual costs for the purposes of this subsection, the department
10 may consider all of the following factors:

11 **SECTION 2.** 146.83 (3m) (c) of the statutes is created to read:

146.83 **(3m)** (c) The department may not promulgate rules that prescribe fees for duplicate patient health care records or duplicate X–rays in amounts that equal or are less than the following amounts:

1. For requests from the patient or the personal representative of the patient, 31 cents per patient health care record copy page and $5.25 per X–ray copy, plus actual postage or other delivery costs and any applicable sales tax.

2. For requests from individuals other than the patient or the personal representative of the patient:

a. For patient health care record copies, 31 cents per page; plus $12.50 per request, for a request generating a total of 4 or fewer pages, and $15 per request, for a request generating a total of 5 or more pages; plus actual postage or other delivery costs and any applicable sales tax.

b. For X–ray copies, $5.25 per copy, plus actual postage or other delivery costs and any applicable sales tax.

c. For certification of copies, $5 per request, for certification of a total of 4 or fewer pages or X–ray copies, and $7.50 per request, for certification of a total of 5 or more pages or X–ray copies.

SECTION 3. 908.03 (6m) (d) of the statutes is amended to read:

908.03 **(6m)** (d) *Fees.* ~~After December 31, 2002, the~~ Except as provided in par. (e), the department of health and family services shall, by rule, prescribe uniform fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge for certified duplicate patient health care records. The rule shall also allow the health care provider to charge for actual postage or other actual delivery costs. For duplicate patient health care records and duplicate X–ray reports or the referral of X–rays to

1 another health care provider that are requested before commencement of an action,
2 s. 146.83 (1) (b) and (c) and (3m) applies.

3 **SECTION 4.** 908.03 (6m) (e) of the statutes is created to read:

4 908.03 **(6m)** (e) The department may not promulgate rules that prescribe fees
5 for duplicate patient health care records or duplicate X–rays in amounts that equal
6 or are less than the following amounts:

7 1. For requests from the patient or the personal representative of the patient,
8 31 cents per patient health care record copy page and $5.25 per X–ray copy, plus
9 actual postage or other delivery costs and any applicable sales tax.

10 2. For requests from individuals other than the patient or the personal
11 representative of the patient:

12 a. For patient health care record copies, 31 cents per page; plus $12.50 per
13 request, for a request generating a total of 4 or fewer pages, and $15 per request, for
14 a request generating a total of 5 or more pages; plus actual postage or other delivery
15 costs and any applicable sales tax.

16 b. For X–ray copies, $5.25 per copy, plus actual postage or other delivery costs
17 and any applicable sales tax.

18 c. For certification of copies, $5 per request, for certification of a total of 4 or
19 fewer pages or X–ray copies, and $7.50 per request, for certification of a total of 5 or
20 more pages or X–ray copies.

21 **(END)**

Barman, Mike

From: Tradewell, Becky
Sent: Tuesday, April 19, 2005 4:13 PM
To: Barman, Mike
Cc: Kennedy, Debora; Miller, Steve
Subject: JCRAR reports (-2635/2 & -2636/2) (-2674/2 & - 2675/2)

Importance: High

Mike,

Let me know if I should be doing something else with this besides forwarding it to you.

Becky

-----Original Message-----
From: Solie, Denise
Sent: Tuesday, April 19, 2005 4:11 PM
To: Kennedy, Debora; Tradewell, Becky; Miller, Steve
Cc: Emerson, James
Subject: Attached JCRAR reports
Importance: High

Attached are the required JCRAR reports for two bills drafted regarding the two rules objected to by JCRAR. Please jacket both the senate and the assembly bills for both rules.

For LRB 05-2675/2 and LRB 05-2674/2, regarding the JCRAR objection to NR 1.016 (Section 1 of CR 04-066):

JCRAR (LRB-2675).doc JCRAR (LRB-2674).doc

For LRB 2635/2 and LRB 2636/2, regarding the JCRAR objection to CR 03-111

JCRAR (LRB-2635).doc JCRAR (LRB-2636).doc

Thank you. Call me if questions.

Denise Kuchta Solie
JCRAR Committee Clerk
Rep. Mark Gottlieb
(608) 267-2369

LRB 05-2636/2

Joint Committee for Review of Administrative Rules

Office of Sen. Glenn Grothman
Office of Rep. Mark Gottlieb
Phone: 608.266.7513
Phone: 608.267.2369

- **CR 03-111**

Report to the Legislature
Clearinghouse Rule 03-111

The Joint Committee for Administrative Rules

Produced pursuant to 227.26(2)(g), Stats.

Clearinghouse Rule 03-111, promulgated by the Department of Health and Family Services, establishes the maximum fees for copies of health care records.

Description of the Problem

Wisconsin Statutes, as created and amended by 2001 Wisconsin Act 109, require the Department of Health and Family Services (DHFS) to prescribe by rule the maximum fees that may be charged for reproducing health care records. In early 2003, DHFS convened an advisory committee to develop the rule. The advisory committee did not reach consensus. The agency promulgated CR 03-111. The Senate Committee on Health, Children, Families, Aging & Long Term Care held public hearings, requested modifications, and objected to the rule when DHFS declined to make the modifications.

Many hospitals and health care providers outsource the administration of medical records to private companies. In addition to affecting the health care providers directly, this rule affects these businesses as well.

Arguments in Favor of Objection

- The fees established in this rule are not reasonable, and do not allow providers to cover the costs of reproducing the records.
- It can take between 30 and 90 minutes to recover and reproduce a document. The fees in the rule do not provide adequate compensation for document retrieval.
- Health care providers already provide free access for patients and a free copy when a patient is seeking a second opinion from another health care provider.

- Underpayment of document reproduction fees, as proposed by this rule, will result in those costs being shifted to all patients in the form of higher health care costs in general, meaning that all patients will subsidize these requests.
- The two-tier fee structure proposed in the rule will add an administrative burden to those who maintain and administer health care records.

Arguments Against Objection

- Statutes require DHFS to write rules to allow charges no greater than the actual cost of reproducing records. While health care providers claim that they cannot perform this function in-house at the rates that DHFS would allow under this rule, records retention businesses have not provided information about their actual cost of reproducing copies of health care records.
- Patient records belong to patients, who pay for specific health care services and for the records to document those services. Patients should not have to pay to obtain copies of their own health care records.
- The Health Insurance Portability and Accountability Act (HIPPA) limits the amount that may be charged to a patient or their personal representative to the actual cost to copy (not retrieve) the individual's medical record. Companies responding to HIPPA requests for documents charge as little as $0.28-0.31 per page for reproduction of documents. Thus, the fees in this rule are reasonable.
- Copy services are private, profit-making businesses. That demonstrates that their charges exceed the actual cost of copying the documents.
- In absence of a rule, medical record copying companies will continue to charge what the market will bear, which exceeds the actual costs of reproducing records.

Action by Joint Committee for Administrative Rules

On March 31, 2005, the Joint Committee for Review of Administrative Rules held a public hearing and executive session on Clearinghouse Rule 03-111. JCRAR concurred with the objection of the Senate Health Committee and passed a motion on a 5 to 4 vote, pursuant to s. 227.19(4)(d)6. and (5)(d), Stats., to object to Clearinghouse Rule 03-111 on the basis that it is arbitrary, capricious or imposes an undue hardship. This action prevents the DHFS from promulgating the proposed rule.

TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE: 4/28/05

CONVERSATION WITH: Ron Sklansky

OF: Leg Council

TELEPHONE NO:

REGARDING LRB # OR DRAFT TOPIC: 05-2635/2, 05-2636/2

INSTRUCTIONS: Redraft:

Delete "or are less than", bec. wd negate existing rule

TODAY

State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–2636/~~2~~3
DAK:cjs:~~jf~~

stays

2005 BILL

Sal

Reg cat

1 AN ACT ***to amend*** 146.83 (3m) (a) (intro.) and 908.03 (6m) (d); and ***to create***
2 146.83 (3m) (c) and 908.03 (6m) (e) of the statutes; **relating to:** prohibiting the
3 Department of Health and Family Services from promulgating a rule ~~limiting~~
4 fees for copies of patient health care records and X–rays ~~to~~ certain amounts.

equal

under which

Analysis by the Legislative Reference Bureau

Under current law relating to patient health care records, the Department of Health and Family Services (DHFS) must, after considering certain factors, promulgate rules that prescribe fees for copies of patient health care records and X–ray reports. The fees must be based on an approximation of actual costs. The rules must be revised by January 1, 2006, and every three years thereafter to account for increases or decreases in actual costs. Under current law relating to evidence, after December 31, 2002, DHFS must prescribe fees for copies of patient health care records and X–rays requested after commencement of an action that are based on an approximation of actual costs and that allow a health care provider to charge actual postage and delivery costs.

This bill prohibits DHFS from promulgating a rule that prescribes fees for copies of patient health care records and X–rays in amounts that equal ~~or are less than~~ the following amounts:

1. For requests from the patient or the patient's personal representative, $0.31 per patient health care record copy page and $5.25 per X–ray copy, plus actual postage or other delivery costs and any applicable sales tax.

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a. For patient health care record copies, $0.31 per page, plus $12.50 per request (for a request generating a total of four or fewer pages), and $15.00 per request (for a request generating a total of five or more pages, plus actual postage or other delivery costs and any applicable sales tax.

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c. For certification of copies, $5.00 per request (for four or fewer pages or X–ray copies) and $7.50 per request (for five or more pages or X–ray copies).

The bill is introduced as required by s. 227.19 (5) (e), stats., in support of the objection of the Joint Committee for Review of Administrative Rules on March 31, 2005, to the issuance of clearinghouse rule 03–111 by DHFS. The proposed rule limited fees applicable under current law relating to patient health care records and to evidence, for copies of patient health care records or X–rays and for certification of the copies, as requested by a patient, the patient's personal representative, or other individuals.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.83 (3m) (a) (intro.) of the statutes is amended to read:

2 146.83 **(3m)** (a) (intro.) ~~The~~ Except as provided in par. (c), the department shall,
3 by rule, prescribe fees that are based on an approximation of actual costs. The fees,
4 plus applicable tax, are the maximum amount that a health care provider may
5 charge under sub. (1) (b) for duplicate patient health care records and under sub. (1)
6 (c) for duplicate X–ray reports or the referral of X–rays to another health care
7 provider of the patient's choice. The rule shall also permit the health care provider
8 to charge for actual postage or other actual delivery costs. In determining the
9 approximation of actual costs for the purposes of this subsection, the department
10 may consider all of the following factors:

11 **SECTION 2.** 146.83 (3m) (c) of the statutes is created to read:

146.83 **(3m)** (c) The department may not promulgate rules that prescribe fees for duplicate patient health care records or duplicate X–rays in amounts that equal ~~or are less than~~ the following amounts:

1. For requests from the patient or the personal representative of the patient, 31 cents per patient health care record copy page and $5.25 per X–ray copy, plus actual postage or other delivery costs and any applicable sales tax.

2. For requests from individuals other than the patient or the personal representative of the patient:

a. For patient health care record copies, 31 cents per page; plus $12.50 per request, for a request generating a total of 4 or fewer pages, and $15 per request, for a request generating a total of 5 or more pages; plus actual postage or other delivery costs and any applicable sales tax.

b. For X–ray copies, $5.25 per copy, plus actual postage or other delivery costs and any applicable sales tax.

c. For certification of copies, $5 per request, for certification of a total of 4 or fewer pages or X–ray copies, and $7.50 per request, for certification of a total of 5 or more pages or X–ray copies.

SECTION 3. 908.03 (6m) (d) of the statutes is amended to read:

908.03 **(6m)** (d) *Fees.* ~~After December 31, 2002, the~~ Except as provided in par. (e), the department of health and family services shall, by rule, prescribe uniform fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge for certified duplicate patient health care records. The rule shall also allow the health care provider to charge for actual postage or other actual delivery costs. For duplicate patient health care records and duplicate X–ray reports or the referral of X–rays to

1 another health care provider that are requested before commencement of an action,
2 s. 146.83 (1) (b) and (c) and (3m) applies.

3 **SECTION 4.** 908.03 (6m) (e) of the statutes is created to read:

4 908.03 **(6m)** (e) The department may not promulgate rules that prescribe fees
5 for duplicate patient health care records or duplicate X–rays in amounts that equal
6 ~~or are less than~~ the following amounts:

7 1. For requests from the patient or the personal representative of the patient,
8 31 cents per patient health care record copy page and $5.25 per X–ray copy, plus
9 actual postage or other delivery costs and any applicable sales tax.

10 2. For requests from individuals other than the patient or the personal
11 representative of the patient:

12 a. For patient health care record copies, 31 cents per page; plus $12.50 per
13 request, for a request generating a total of 4 or fewer pages, and $15 per request, for
14 a request generating a total of 5 or more pages; plus actual postage or other delivery
15 costs and any applicable sales tax.

16 b. For X–ray copies, $5.25 per copy, plus actual postage or other delivery costs
17 and any applicable sales tax.

18 c. For certification of copies, $5 per request, for certification of a total of 4 or
19 fewer pages or X–ray copies, and $7.50 per request, for certification of a total of 5 or
20 more pages or X–ray copies.

21 **(END)**