

Joint Committee for Review of Administrative Rules

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- 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 (HIPAA) 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 HIPAA 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.