

## 2011 DRAFTING REQUEST

### Bill

Received: **02/04/2011**

Received By: **fknepp**

Wanted: **As time permits**

Companion to LRB:

For: **Administration-Budget 267-9546**

By/Representing: **Silver**

May Contact:

Drafter: **fknepp**

Subject: **Health - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **fern.knepp@legis.wisconsin.gov**  
**tamara.dodge@legis.wisconsin.gov**

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### Pre Topic:

DOA:.....Silver, BB0311 -

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### Topic:

Authorize DHS to set medical record copy fees by rule

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### Instructions:

See attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	fknepp 02/08/2011	nmatzke 02/11/2011	rschluet 02/11/2011	_____	cduerst 02/11/2011		
/1	fknepp 02/14/2011	jdyer 02/14/2011	rschluet 02/14/2011	_____	sbasford 02/14/2011		
/2	fknepp 02/28/2011	jdyer 02/28/2011	mduchek 02/28/2011	_____	lparisi 02/28/2011		

FE Sent For:

<END>

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/1	fknepp 02/14/2011	jdye 02/14/2011	rschluet 02/14/2011	_____	sbasford 02/14/2011		
	fknepp			_____			
				_____			

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/1	fknepp 02/14/2011	jdyer 02/14/2011	rschluet 02/14/2011	_____	sbasford 02/14/2011		

FE Sent For:

*1/2/28 jld*  
*[Signature]*  
*2/28*

<END>

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/P1	fknepp 02/08/2011	nmatzke 02/11/2011	rschluet 02/11/2011	_____	cduerst 02/11/2011		

FE Sent For:

1 2  
14 jld  
2/14/11

<END>

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Wanted: **As time permits**

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Authorize DHS to set medical record copy fees by rule

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/P1	fknepp	/P1 nwn 2/9		_____	_____		

FE Sent For:

<END>

**Knepp, Fern**

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**From:** Hanaman, Cathlene  
**Sent:** Friday, February 04, 2011 11:51 AM  
**To:** Dodge, Tamara; Knepp, Fern  
**Subject:** FW: Statutory Language Drafting Request

---

**From:** DOADLBASADMININTERNETSHAREPOINT@WI.GOV  
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]  
**Sent:** Friday, February 04, 2011 10:57 AM  
**To:** Hanaman, Cathlene  
**Cc:** Hetzel, Shayna - DOA; Thornton, Scott - DOA; Gauger, Michelle C - DOA; Silver, Karina B - DOA  
**Subject:** Statutory Language Drafting Request

Topic: Medical Record Copy Fees

Tracking Code: BB0311

SBO Team: HSI

SBO Analyst: Silver, Karina B - DOA  
Phone: (608) 267-9546  
E-mail: Karina.Silver@Wisconsin.gov

Agency Acronym: DHS

Agency Number: 435

Priority: High

Intent:  
Provide the Department of health services with authority to set medical record copy fees in administrative rule.

Attachments: False

## Knepp, Fern

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**From:** Silver, Karina B - DOA [karina.silver@wisconsin.gov]  
**Sent:** Friday, February 04, 2011 1:21 PM  
**To:** Knepp, Fern  
**Subject:** RE: Medical records fees draft

That is correct. Thanks Fern.

Karina Silver  
(608) 267-9546

---

**From:** Knepp, Fern [mailto:Fern.Knepp@legis.wisconsin.gov]  
**Sent:** Friday, February 04, 2011 1:18 PM  
**To:** Silver, Karina B - DOA  
**Subject:** Medical records fees draft

Karina,

I just got the request to authorize DHS to set fees for medical record copy fees by rule. Based on conversation this morning, I am assuming that you want me to repeal what was done in the last budget and recreate the prior law. Is this correct?

Thanks,  
Fern

Fern F. Knepp  
Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 261-6927  
fern.knepp@legis.wisconsin.gov



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1310/P1

FFK:f:...

nwn

*note* IN 2-8-11

DOA:.....Silver, BB0311 - Authorize DHS to set medical record copy fees by rule

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

SA ✓  
X-ref ✓

1 *don't gen.*  
AN ACT ...; relating to: the budget. ✓

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES ✓**

**HEALTH ✓**

Under current law, the fees that a health care provider may charge for copies of patient health care records are set by statute. ✓ This bill eliminates statutory fees for copies of patient health care records ✓ and requires that DHS promulgate rules to establish maximum fees that a health care provider may charge for copies of patient health care records under certain circumstances.

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

2 SECTION 1. 146.83<sup>^</sup> (1c) (a) of the statutes is created to read:

3 146.83 (1c) (a) Inspect the health care records of a health care provider  
4 pertaining to that patient at any time during regular business hours, upon  
5 reasonable notice. ✓

SECTION 2. 146.83 (1c) (b) of the statutes is created to read:

146.83 (1c) (b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub. (3f).

SECTION 3. 146.83 (1c) (c) of the statutes is created to read:

146.83 (1c) (c) Receive a copy of the health care provider's X-ray reports or have the X-rays referred to another health care provider of the patient's choice upon payment of fees, as established by rule under sub. (3f).

SECTION 4. 146.83 (1d) of the statutes is renumbered 146.83 (1c) (intro.) and amended to read:

146.83 (1c) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or person authorized by the patient may, upon submitting a statement of informed consent, inspect the health care records of a health care provider pertaining to that patient. Except as provided in sub. (1g), the health care provider shall make the records available for inspection by the patient or person authorized by the patient during regular business hours, after the health care provider receives notice from the patient or person authorized by the patient. A health care provider may not charge a fee for inspection under this subsection.

History: 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109; 2005 a. 387; 2009 a. 28.

SECTION 5. 146.83 (1f) of the statutes is repealed.

SECTION 6. 146.83 (1g) of the statutes is repealed.

SECTION 7. 146.83 (1h) of the statutes is repealed.

SECTION 8. 146.83 (1k) of the statutes is repealed.

SECTION 9. 146.83 (1m) of the statutes is renumbered 146.83 (1m) (a).

SECTION 10. 146.83 (1m) (b) of the statutes is created to read:

1           146.83 (1m) (b) The health care provider under par. (a) may be charged  
2 reasonable costs for the provision of the patient's health care records.

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

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

13           1. Operating expenses, such as wages, rent, utilities, and duplication  
14 equipment and supplies.

15           2. The varying cost of retrieval of records, based on the different media on which  
16 the records are maintained.

17           3. The cost of separating requested patient health care records from those that  
18 are not requested.

19           4. The cost of duplicating requested patient health care records.

20           5. The impact on costs of advances in technology.

21           (b) By July 1, 2014, and every 3 years thereafter, the department shall revise  
22 the rules under par. (a) to account for increases or decreases in actual costs.

23           **SECTION 12.** 146.84 (2) (a) 1. of the statutes is amended to read:

1 146.84 (2) (a) 1. Requests or obtains confidential information under s. 146.82  
2 or 146.83 (1d), (1f), or (1h) (1c) under false pretenses.✓

History: 1991 a. 39; 1993 a. 445; 1999 a. 9; 79; 2009 a. 28

3 SECTION 13. 908.03 (6m) (a) 1. of the statutes is amended to read:

4 908.03 (6m) (a) 1. "Health care provider" has the meanings given in ss. 146.81  
5 (1) and 655.001 (8).

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; Sup. Ct. Order No. 04-09, 2005 WI 148, 283 Wis. 2d xv; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28.

6 SECTION 14. 908.03 (6m) (c) 3. of the statutes is amended to read:

7 908.03 (6m) (c) 3. If upon a properly authorized request of an attorney, the  
8 health care provider refuses, fails, or neglects to supply within 2 business days a  
9 legible certified duplicate of its records for the fees established under ~~ss. 146.83 (1f)~~  
10 (e) or (d) or (1h) (b) or (e), ~~whichever are applicable par. (e).~~ ✓ plain

11 SECTION 15. 908.03 (6m) (e) of the statutes is created to read:

12 908.03 (6m) (e) Fees. The department of health services shall, by rule, prescribe  
13 uniform fees that are based on an approximation of actual costs. The fees, plus  
14 applicable tax, are the maximum amount that a health care provider may charge for  
15 certified duplicate patient health care records. ✓ The rule shall also allow the health  
16 care provider to charge for actual postage or other actual delivery costs. ✓ For duplicate  
17 patient health care records and duplicate X-ray reports or the referral of X-rays to  
18 another health care provider that are requested before commencement of an action,  
19 s. 146.83 (1c) (b) ✓ and (c) ✓ and (3f) ✓ applies. ✓

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; Sup. Ct. Order No. 04-09, 2005 WI 148, 283 Wis. 2d xv; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28.

20 SECTION 9121. Nonstatutory provisions; Health Services. ✓

21 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. Using the procedure under  
22 section 227.24 of the statutes, the department of health services shall promulgate  
23 rules required under sections 146.83 (3f) ✓ and 908.03 (6m) (e) ✓ of the statutes, as

1 created by this act, for the period before the effective date of the permanent rules  
 2 promulgated under sections 146.83 (3f) and 908.03 (6m) of the statutes, as created  
 3 by this act, but not to exceed the period authorized under section 227.24 (1) (c) and  
 4 (2) of the statutes. *subject to extension under section 227.24(2)* Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the  
 5 statutes, the department of health services is not required to provide evidence that  
 6 promulgating a rule under this subsection as an emergency rule is necessary for the  
 7 preservation of public peace, health, safety, or welfare and is not required to provide  
 8 a finding of emergency for a rule promulgated under this subsection.

**SECTION 9321. Initial applicability; Health Services.**

*Create A R A*

10 *Xref A* (1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83  
 11 (1c) (a), (b), and (c), (1d), (1f), (1g), (1h), (1k), (1m), (1m) (b), and (3f), 146.84 (2) (a)  
 12 1., and 908.03 (6m) (c) 3. and (e) of the statutes *first applies* to requests to inspect  
 13 patient health care records and requests for copies of patient health care records that  
 14 are made on the effective date of this subsection. *apply*

**SECTION ~~94XX~~ 9421. Effective dates; Health Services**

*e 9421*

16 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83  
 17 (1c) (a), (b), and (c), (1d), (1f), (1g), (1h), (1k), (1m), (1m) (b), and (3f), 146.84 (2) (a)  
 18 1., and 908.03 (6m) (c) 3. and (e) of the statutes and SECTION 9321 (Xref A) of this act  
 19 takes effect on the first day of the 4th month beginning after publication. *use A R A*

(END)

*the renumbering of section 146.83(1m) of the statutes, the creation of section 146.83(1m)(b) of the statutes*

*D-note the renumbering of section 146.83(1m) of the statutes, and the creation of section 146.83(1m)(b) of the statutes*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1310/P1dn

FFK:j:....

nwn

Date

To Karina:

As we discussed, I repealed the changes made to patient health care records, primarily in s. 146.83, <sup>the</sup> in 2009 Wisconsin Act 28. In doing so, I eliminated s. 146.83 (1g) which relates to an exemption from certain requirements if a patient is eligible for medical assistance and the health provider is Department of Health Services (DHS) or the Department of Corrections. Is this consistent with the intent of the request?

Additionally, I included nonstatutory provisions that require DHS to promulgate emergency rules and delay the effect of the remainder of the bill until the fourth month following publication to allow time for the DHS to promulgate such emergency rules. Please let me know if this delayed effective date will give DHS enough time to promulgate emergency rules related to this bill.

Fern Knepp  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: fern.knepp@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1310/P1dn  
FFK:nwn:rs

February 11, 2011

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Legislative Attorney  
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## Knepp, Fern

---

**From:** Silver, Karina B - DOA [karina.silver@wisconsin.gov]  
**Sent:** Saturday, February 12, 2011 5:19 PM  
**To:** Knepp, Fern  
**Subject:** FW: Authorize DHS to set medical record copy fees by rule  
**Importance:** High

Hi Fern,

We have a couple of changes to the Medical Record Copy fees draft. Please put back in 146.839(1g) and 1f)(d). Everything else looks good. ☺

Thanks,

Karina Silver  
(608) 267-9546

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**From:** DOADLBASADMININTERNETSHAREPOINT@WI.GOV  
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]  
**Sent:** Friday, February 11, 2011 5:30 PM  
**To:** Silver, Karina B - DOA  
**Cc:** Thornton, Scott - DOA; Gauger, Michelle C - DOA  
**Subject:** Authorize DHS to set medical record copy fees by rule

We have received an LRB draft for DOA Tracking Code: BB0311

LRB Draft Number: 1310/P1

Drafter: FFK

Drafting Attorney: Fern F. Knepp  
Phone: (608) 261-6927  
E-mail: fern.knepp@legis.wisconsin.gov

### Drafter's Note:

As we discussed, I repealed the changes made to patient health care records, primarily in s. 146.83, in 2009 Wisconsin Act 28. In doing so, I eliminated s. 146.83 (1g) which relates to an exemption from certain requirements if a patient is eligible for medical assistance and the health provider is the Department of Health Services (DHS) or the Department of Corrections. Is this consistent with the intent of the request?

Additionally, I included nonstatutory provisions that require DHS to promulgate emergency rules and delay the effect of the remainder of the bill until the fourth month following publication to allow time for the DHS to promulgate such emergency rules. Please let me know if this delayed effective date will give DHS enough time to promulgate emergency rules related to this bill.

The document can be found in the Stat Language site on SharePoint.



State of Wisconsin  
2011 - 2012 LEGISLATURE

RMR  
LRB-1310/P1/1  
FFK:nwn:rs  
+ jld

In  
2-14-11

DOA:.....Silver, BB0311 - Authorize DHS to set medical record copy fees by rule

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

X  
1

Don't gen ✓  
AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**HEALTH**

Under current law, the fees that a health care provider may charge for copies of patient health care records are set by statute. This bill eliminates statutory fees for copies of patient health care records and requires that DHS promulgate rules to establish maximum fees that a health care provider may charge for copies of patient health care records under certain circumstances.

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

2  
3  
4  
5

**SECTION 1.** 146.83 (1c) (a) of the statutes is created to read:

146.83 (1c) (a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

1 SECTION 2. 146.83 (1c) (b) of the statutes is created to read:

2 146.83 (1c) (b) Receive a copy of the patient's health care records upon payment  
3 of fees, as established by rule under sub. (3f).

4 SECTION 3. 146.83 (1c) (c) of the statutes is created to read:

5 146.83 (1c) (c) Receive a copy of the health care provider's X-ray reports or  
6 have the X-rays referred to another health care provider of the patient's choice upon  
7 payment of fees, as established by rule under sub. (3f).

8 SECTION 4. 146.83 (1d) of the statutes is renumbered 146.83 (1c) (intro.) and  
9 amended to read:

10 146.83 (1c) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or  
11 person authorized by the patient may, upon submitting a statement of informed  
12 consent, inspect the health care records of a health care provider pertaining to that  
13 patient. Except as provided in sub. (1g), the health care provider shall make the  
14 records available for inspection by the patient or person authorized by the patient  
15 during regular business hours, after the health care provider receives notice from the  
16 patient or person authorized by the patient. A health care provider may not charge  
17 a fee for inspection under this subsection. ✓

Ins  
2-17

18 SECTION 5. 146.83 (1f) of the statutes is repealed. ✓  
19 SECTION 6. 146.83 (1g) of the statutes is repealed. ✓

20 SECTION 7. 146.83 (1h) of the statutes is repealed.

21 SECTION 8. 146.83 (1k) of the statutes is repealed.

22 SECTION 9. 146.83 (1m) of the statutes is renumbered 146.83 (1m) (a).

23 SECTION 10. 146.83 (1m) (b) of the statutes is created to read:

24 146.83 (1m) (b) The health care provider under par. (a) may be charged  
25 reasonable costs for the provision of the patient's health care records.

1           **SECTION 11.** 146.83 (3f) of the statutes is created to read:

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

10           1. Operating expenses, such as wages, rent, utilities, and duplication  
11           equipment and supplies.

12           2. The varying cost of retrieval of records, based on the different media on which  
13           the records are maintained.

14           3. The cost of separating requested patient health care records from those that  
15           are not requested.

16           4. The cost of duplicating requested patient health care records.

17           5. The impact on costs of advances in technology.

18           (b) By July 1, 2014, and every 3 years thereafter, the department shall revise  
19           the rules under par. (a) to account for increases or decreases in actual costs.

20           **SECTION 12.** 146.84 (2) (a) 1. of the statutes is amended to read:

21           146.84 **(2)** (a) 1. Requests or obtains confidential information under s. 146.82  
22           or 146.83 ~~(1d), (1f), or (1h)~~ (1c) under false pretenses.

23           **SECTION 13.** 908.03 (6m) (c) 3. of the statutes is amended to read:

24           908.03 **(6m)** (c) 3. If upon a properly authorized request of an attorney, the  
25           health care provider refuses, fails, or neglects to supply within 2 business days a

1 legible certified duplicate of its records for the fees established under ~~s. 146.83 (1f)~~  
2 ~~(e) or (d) or (1h) (b) or (c), whichever are applicable par. (e).~~

3 **SECTION 14.** 908.03 (6m) (e) of the statutes is created to read:

4 908.03 **(6m)** (e) *Fees.* The department of health services shall, by rule,  
5 prescribe uniform fees that are based on an approximation of actual costs. The fees,  
6 plus applicable tax, are the maximum amount that a health care provider may  
7 charge for certified duplicate patient health care records. The rule shall also allow  
8 the health care provider to charge for actual postage or other actual delivery costs.  
9 For duplicate patient health care records and duplicate X-ray reports or the referral  
10 of X-rays to another health care provider that are requested before commencement  
11 of an action, s. 146.83 (1c) (b) and (c) and (3f) applies.

12 **SECTION 9121. Nonstatutory provisions; Health Services.**

13 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. Using the procedure under  
14 section 227.24 of the statutes, the department of health services shall promulgate  
15 rules required under sections 146.83 (3f) and 908.03 (6m) (e) of the statutes, as  
16 created by this act, for the period before the effective date of the permanent rules  
17 promulgated under sections 146.83 (3f) and 908.03 (6m) of the statutes, as created  
18 by this act, but not to exceed the period authorized under section 227.24 (1) (c),  
19 subject to extension under section 227.24 (2) of the statutes. Notwithstanding  
20 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services  
21 is not required to provide evidence that promulgating a rule under this subsection  
22 as an emergency rule is necessary for the preservation of public peace, health, safety,  
23 or welfare and is not required to provide a finding of emergency for a rule  
24 promulgated under this subsection.

25 **SECTION 9321. Initial applicability; Health Services.**

- 5 -  
(a), (b), (c), (d) 1.  
and 2.

1 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83  
2 (1c) (a), (b), and (c), (1d), (1f), (1g), (1h), (1k), and (3f), 146.84 (2) (a) 1., and 908.03 (6m)  
3 (c) 3. and (e) of the statutes, the renumbering of section 146.83 (1m) of the statutes,  
4 and the creation of section 146.83 (1m) (b) of the statutes first apply to requests to  
5 inspect patient health care records and requests for copies of patient health care  
6 records that are made on the effective date of this subsection.

7 **SECTION 9421. Effective dates; Health Services**

8 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83  
9 (1c) (a), (b), and (c), (1d), (1f), (1g), (1h), (1k), and (3f), 146.84 (2) (a) 1., and 908.03 (6m)  
10 (c) 3. and (e) of the statutes, the renumbering of section 146.83 (1m) of the statutes,  
11 the creation of section 146.83 (1m) (b) of the statutes, and SECTION 9321 (1) of this act  
12 take effect on the first day of the 4th month beginning after publication.

13 (END)

(a), (b), (c), and (d) 1. and 2.

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1310/lins  
FFK:.....

INSERT 2-17

- 1           **SECTION 1.** 146.83 (1f) (a) ~~x~~ of the statutes is repealed.
- 2           **SECTION 2.** 146.83 (1f) (b) ~~x~~ of the statutes is repealed.
- 3           **SECTION 3.** 146.83 (1f) (c) ~~x~~ of the statutes is repealed.
- 4           **SECTION 4.** 146.83 (1f) (d) 1. ~~x~~ of the statutes is renumbered ~~x~~ 146.83 (1f) (am) and ~~x~~  
5 amended to read: ~~x~~

6           146.83 (1f) (am) If a patient or person authorized by the patient requests copies  
7 of the patient's health care records under this ~~subsection~~ section ~~x~~ for use in appealing  
8 a denial of social security disability insurance, under 42 USC 401 to 433, or  
9 supplemental security income, under 42 USC 1381 to 1385, the health care provider  
10 may charge the patient or person authorized by the patient no more than the amount  
11 that the federal social security administration reimburses the department for copies  
12 of patient health care records.

13 **History:** 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109; 2005 a. 387; 2009 a. 28. ~~x~~

- 13           **SECTION 5.** 146.83 (1f) (d) 2. ~~x~~ of the statutes is renumbered 146.83 (1f) (bm) and  
14 amended to read:

15           146.83 (1f) (bm) ~~x~~ Except as provided in sub. (1g), a health care provider may not  
16 charge a fee for providing one set of copies of a patient's health care records under  
17 this ~~subsection~~ section ~~x~~ if the patient is eligible for medical assistance, as defined in  
18 s. 49.43 (8). A health care provider may require that a patient or person authorized  
19 by the patient provide proof that the patient is eligible for medical assistance before  
20 providing copies under this subdivision without charge. A health care provider may  
21 charge the fees ~~under par. (e)~~ established by rule under sub. (1c) ~~x~~ for providing a 2nd  
22 or additional set of copies of patient health care records for a patient who is eligible  
23 for medical assistance.

**History:** 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109; 2005 a. 387; 2009 a. 28. ~~x~~

2-17 CONT

1 SECTION 6. 146.83 (1g) of the statutes is amended to read:

2 146.83 (1g) The time limit for making records available for inspection and for

3 providing copies of records under sub. (1d) ~~(1c)~~, ~~the time limits for providing copies~~

4 ~~of records under sub. (1f) (a) and (b)~~, and the requirement under sub. (1f) (d) ~~2. (bm)~~

5 to provide one set of copies of records without charge if the patient is eligible for

6 medical assistance do not apply if the health care provider is the department or the

7 department of corrections.

History: 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109; 2005 a. 387; 2009 a. 28.

(end ins 2-17)



State of Wisconsin  
2011 - 2012 LEGISLATURE

RMR



LRB-1310/2

FFK:nwn&jld:rs

In 2-28-11

DOA:.....Silver, BB0311 - Authorize DHS to set medical record copy fees by rule

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

X

Don't gen

1

AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**HEALTH**

Under current law, the fees that a health care provider may charge for copies of patient health care records are set by statute. This bill eliminates statutory fees for copies of patient health care records and requires that DHS promulgate rules to establish maximum fees that a health care provider may charge for copies of patient health care records under certain circumstances.

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

2

**SECTION 1.** 146.83 (1c) (a) of the statutes is created to read:

3

146.83 (1c) (a) Inspect the health care records of a health care provider

4

pertaining to that patient at any time during regular business hours, upon

5

reasonable notice.

1           **SECTION 2.** 146.83 (1c) (b) of the statutes is created to read:

2           146.83 (1c) (b) Receive a copy of the patient's health care records upon payment  
3 of fees, as established by rule under sub. (3f).

4           **SECTION 3.** 146.83 (1c) (c) of the statutes is created to read:

5           146.83 (1c) (c) Receive a copy of the health care provider's X-ray reports or  
6 have the X-rays referred to another health care provider of the patient's choice upon  
7 payment of fees, as established by rule under sub. (3f).

8           **SECTION 4.** 146.83 (1d) of the statutes is renumbered 146.83 (1c) (intro.) and  
9 amended to read:

10           146.83 (1c) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or  
11 person authorized by the patient may, upon submitting a statement of informed  
12 consent, ~~inspect the health care records of a health care provider pertaining to that~~  
13 ~~patient. Except as provided in sub. (1g), the health care provider shall make the~~  
14 ~~records available for inspection by the patient or person authorized by the patient~~  
15 ~~during regular business hours, after the health care provider receives notice from the~~  
16 ~~patient or person authorized by the patient. A health care provider may not charge~~  
17 ~~a fee for inspection under this subsection.;~~

18           **SECTION 5.** 146.83 (1f) (a) of the statutes is repealed.

19           **SECTION 6.** 146.83 (1f) (b) of the statutes is repealed.

20           **SECTION 7.** 146.83 (1f) (c) of the statutes is repealed.

21           **SECTION 8.** 146.83 (1f) (d) 1. of the statutes is renumbered 146.83 (1f) (am) and  
22 amended to read:

23           146.83 (1f) (am) If a patient or person authorized by the patient requests copies  
24 of the patient's health care records under this ~~subsection~~ section for use in appealing  
25 a denial of social security disability insurance, under 42 USC 401 to 433, or

1 supplemental security income, under 42 USC 1381 to 1385, the health care provider  
2 may charge the patient or person authorized by the patient no more than the amount  
3 that the federal social security administration reimburses the department for copies  
4 of patient health care records.

5 **SECTION 9.** 146.83 (1f) (d) 2. of the statutes is renumbered 146.83 (1f) (bm) and  
6 amended to read:

7 146.83 (1f) (bm) Except as provided in sub. (1g), a health care provider may not  
8 charge a fee for providing one set of copies of a patient's health care records under  
9 this ~~subsection~~ section if the patient is eligible for medical assistance, as defined in  
10 s. 49.43 (8). A health care provider may require that a patient or person authorized  
11 by the patient provide proof that the patient is eligible for medical assistance before  
12 providing copies under this subdivision without charge. A health care provider may  
13 charge the fees ~~under par. (e)~~ established by rule under sub. (1c) for providing a 2nd  
14 or additional set of copies of patient health care records for a patient who is eligible  
15 for medical assistance.

16 **SECTION 10.** 146.83 (1g) of the statutes is amended to read:

17 146.83 (1g) The time limit for making records available for inspection and for  
18 providing copies of records under sub. (1d), ~~the time limits for providing copies of~~  
19 ~~records under sub. (1f) (a) and (b), (1c) and the requirement under sub. (1f) (d) 2. (bm)~~  
20 to provide one set of copies of records without charge if the patient is eligible for  
21 medical assistance do not apply if the health care provider is the department or the  
22 department of corrections.

23 **SECTION 11.** 146.83 (1h) of the statutes is repealed.

24 **SECTION 12.** 146.83 (1k) of the statutes is repealed.

25 **SECTION 13.** 146.83 (1m) of the statutes is renumbered 146.83 (1m) (a).

1           **SECTION 14.** 146.83 (1m) (b) of the statutes is created to read:

2           146.83 **(1m)** (b) The health care provider under par. (a) may be charged  
3 reasonable costs for the provision of the patient's health care records.

4           **SECTION 15.** 146.83 (3f) of the statutes is created to read:

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

13           1. Operating expenses, such as wages, rent, utilities, and duplication  
14 equipment and supplies.

15           2. The varying cost of retrieval of records, based on the different media on which  
16 the records are maintained.

17           3. The cost of separating requested patient health care records from those that  
18 are not requested.

19           4. The cost of duplicating requested patient health care records.

20           5. The impact on costs of advances in technology.

21           (b) By July 1, 2014, and every 3 years thereafter, the department shall revise  
22 the rules under par. (a) to account for increases or decreases in actual costs.

23           **SECTION 16.** 146.84 (2) (a) 1. of the statutes is amended to read:

24           146.84 **(2)** (a) 1. Requests or obtains confidential information under s. 146.82  
25 or 146.83 ~~(1d), (1f), or (1h)~~ (1c) under false pretenses.

1           **SECTION 17.** 908.03 (6m) (c) 3. of the statutes is amended to read:

2           908.03 **(6m)** (c) 3. If upon a properly authorized request of an attorney, the  
3 health care provider refuses, fails, or neglects to supply within 2 business days a  
4 legible certified duplicate of its records for the fees established under ~~s. 146.83 (1f)~~  
5 ~~(e) or (d) or (1h) (b) or (c), whichever are applicable par. (e).~~

6           **SECTION 18.** 908.03 (6m) (e) of the statutes is created to read:

7           908.03 **(6m)** (e) *Fees.* The department of health services shall, by rule,  
8 prescribe uniform fees that are based on an approximation of actual costs. The fees,  
9 plus applicable tax, are the maximum amount that a health care provider may  
10 charge for certified duplicate patient health care records. The rule shall also allow  
11 the health care provider to charge for actual postage or other actual delivery costs.  
12 For duplicate patient health care records and duplicate X-ray reports or the referral  
13 of X-rays to another health care provider that are requested before commencement  
14 of an action, s. 146.83 (1c) (b) and (c) and (3f) applies.

15           **SECTION 9121. Nonstatutory provisions; Health Services.**

16           (1) PATIENT HEALTH CARE RECORDS FEES; RULES. Using the procedure under  
17 section 227.24 of the statutes, the department of health services shall promulgate  
18 rules required under sections 146.83 (3f) and 908.03 (6m) (e) of the statutes, as  
19 created by this act, for the period before the effective date of the permanent rules  
20 promulgated under sections 146.83 (3f) and 908.03 (6m) <sup>(e)</sup> of the statutes, <sup>✓</sup> as created  
21 by this act, but not to exceed the period authorized under section 227.24 (1) (c),  
22 subject to extension under section 227.24 (2) of the statutes. Notwithstanding  
23 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services  
24 is not required to provide evidence that promulgating a rule under this subsection  
25 as an emergency rule is necessary for the preservation of public peace, health, safety,

1 or welfare and is not required to provide a finding of emergency for a rule  
2 promulgated under this subsection.

3 **SECTION 9321. Initial applicability; Health Services.**

4 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83  
5 (1c) (a), (b), and (c), (1d), (1f) (a), (b), (c), and (d) 1. and 2., (1g), (1h), (1k), and (3f),  
6 146.84 (2) (a) 1., and 908.03 (6m) (c) 3. and (e) of the statutes, the renumbering of  
7 section 146.83 (1m) of the statutes, and the creation of section 146.83 (1m) (b) of the  
8 statutes first apply to requests to inspect patient health care records and requests  
9 for copies of patient health care records that are made on the effective date of this  
10 subsection.

11 **SECTION 9421. Effective dates; Health Services.**

12 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83  
13 (1c) (a), (b), and (c), (1d), (1f) (a), (b), (c), and (d) 1. and 2., (1g), (1h), (1k), and (3f),  
14 146.84 (2) (a) 1., and 908.03 (6m) (c) 3. and (e) of the statutes, the renumbering of  
15 section 146.83 (1m) of the statutes, the creation of section 146.83 (1m) (b) of the  
16 statutes, and SECTION 9321 (1) of this act take effect on the first day of the 4th month  
17 beginning after publication.

18 (END)



DOA:.....Silver, BB0311 - Authorize DHS to set medical record copy fees by rule

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

1 **AN ACT** ...; **relating to:** the budget.

---

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**HEALTH**

Under current law, the fees that a health care provider may charge for copies of patient health care records are set by statute. This bill eliminates statutory fees for copies of patient health care records and requires that DHS promulgate rules to establish maximum fees that a health care provider may charge for copies of patient health care records under certain circumstances.

---

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

2 **SECTION 1.** 146.83 (1c) (a) of the statutes is created to read:

3 146.83 (1c) (a) Inspect the health care records of a health care provider  
4 pertaining to that patient at any time during regular business hours, upon  
5 reasonable notice.

1           **SECTION 2.** 146.83 (1c) (b) of the statutes is created to read:

2           146.83 (1c) (b) Receive a copy of the patient's health care records upon payment  
3 of fees, as established by rule under sub. (3f).

4           **SECTION 3.** 146.83 (1c) (c) of the statutes is created to read:

5           146.83 (1c) (c) Receive a copy of the health care provider's X-ray reports or  
6 have the X-rays referred to another health care provider of the patient's choice upon  
7 payment of fees, as established by rule under sub. (3f).

8           **SECTION 4.** 146.83 (1d) of the statutes is renumbered 146.83 (1c) (intro.) and  
9 amended to read:

10           146.83 (1c) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or  
11 person authorized by the patient may, upon submitting a statement of informed  
12 consent, ~~inspect the health care records of a health care provider pertaining to that~~  
13 ~~patient. Except as provided in sub. (1g), the health care provider shall make the~~  
14 ~~records available for inspection by the patient or person authorized by the patient~~  
15 ~~during regular business hours, after the health care provider receives notice from the~~  
16 ~~patient or person authorized by the patient. A health care provider may not charge~~  
17 ~~a fee for inspection under this subsection.;~~

18           **SECTION 5.** 146.83 (1f) (a) of the statutes is repealed.

19           **SECTION 6.** 146.83 (1f) (b) of the statutes is repealed.

20           **SECTION 7.** 146.83 (1f) (c) of the statutes is repealed.

21           **SECTION 8.** 146.83 (1f) (d) 1. of the statutes is renumbered 146.83 (1f) (am) and  
22 amended to read:

23           146.83 (1f) (am) If a patient or person authorized by the patient requests copies  
24 of the patient's health care records under this subsection ~~section~~ for use in appealing  
25 a denial of social security disability insurance, under 42 USC 401 to 433, or

1 supplemental security income, under 42 USC 1381 to 1385, the health care provider  
2 may charge the patient or person authorized by the patient no more than the amount  
3 that the federal social security administration reimburses the department for copies  
4 of patient health care records.

5 **SECTION 9.** 146.83 (1f) (d) 2. of the statutes is renumbered 146.83 (1f) (bm) and  
6 amended to read:

7 146.83 (1f) (bm) Except as provided in sub. (1g), a health care provider may not  
8 charge a fee for providing one set of copies of a patient's health care records under  
9 this ~~subsection~~ section if the patient is eligible for medical assistance, as defined in  
10 s. 49.43 (8). A health care provider may require that a patient or person authorized  
11 by the patient provide proof that the patient is eligible for medical assistance before  
12 providing copies under this subdivision without charge. A health care provider may  
13 charge the fees ~~under par. (e)~~ established by rule under sub. (1c) for providing a 2nd  
14 or additional set of copies of patient health care records for a patient who is eligible  
15 for medical assistance.

16 **SECTION 10.** 146.83 (1g) of the statutes is amended to read:

17 146.83 (1g) The time limit for making records available for inspection and for  
18 providing copies of records under sub. (1d), ~~the time limits for providing copies of~~  
19 ~~records under sub. (1f) (a) and (b), (1c) and the requirement under sub. (1f) (d) 2. (bm)~~  
20 to provide one set of copies of records without charge if the patient is eligible for  
21 medical assistance do not apply if the health care provider is the department or the  
22 department of corrections.

23 **SECTION 11.** 146.83 (1h) of the statutes is repealed.

24 **SECTION 12.** 146.83 (1k) of the statutes is repealed.

25 **SECTION 13.** 146.83 (1m) of the statutes is renumbered 146.83 (1m) (a).

1           **SECTION 14.** 146.83 (1m) (b) of the statutes is created to read:

2           146.83 **(1m)** (b) The health care provider under par. (a) may be charged  
3 reasonable costs for the provision of the patient's health care records.

4           **SECTION 15.** 146.83 (3f) of the statutes is created to read:

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

13           1. Operating expenses, such as wages, rent, utilities, and duplication  
14 equipment and supplies.

15           2. The varying cost of retrieval of records, based on the different media on which  
16 the records are maintained.

17           3. The cost of separating requested patient health care records from those that  
18 are not requested.

19           4. The cost of duplicating requested patient health care records.

20           5. The impact on costs of advances in technology.

21           (b) By July 1, 2014, and every 3 years thereafter, the department shall revise  
22 the rules under par. (a) to account for increases or decreases in actual costs.

23           **SECTION 16.** 146.84 (2) (a) 1. of the statutes is amended to read:

24           146.84 **(2)** (a) 1. Requests or obtains confidential information under s. 146.82  
25 or 146.83 ~~(1d), (1f), or (1h)~~ (1c) under false pretenses.

1           **SECTION 17.** 908.03 (6m) (c) 3. of the statutes is amended to read:

2           908.03 **(6m)** (c) 3. If upon a properly authorized request of an attorney, the  
3 health care provider refuses, fails, or neglects to supply within 2 business days a  
4 legible certified duplicate of its records for the fees established under ~~s. 146.83 (1f)~~  
5 ~~(e) or (d) or (1h) (b) or (c), whichever are applicable~~ par. (e).

6           **SECTION 18.** 908.03 (6m) (e) of the statutes is created to read:

7           908.03 **(6m)** (e) *Fees.* The department of health services shall, by rule,  
8 prescribe uniform fees that are based on an approximation of actual costs. The fees,  
9 plus applicable tax, are the maximum amount that a health care provider may  
10 charge for certified duplicate patient health care records. The rule shall also allow  
11 the health care provider to charge for actual postage or other actual delivery costs.  
12 For duplicate patient health care records and duplicate X-ray reports or the referral  
13 of X-rays to another health care provider that are requested before commencement  
14 of an action, s. 146.83 (1c) (b) and (c) and (3f) applies.

15           **SECTION 9121. Nonstatutory provisions; Health Services.**

16           (1) PATIENT HEALTH CARE RECORDS FEES; RULES. Using the procedure under  
17 section 227.24 of the statutes, the department of health services shall promulgate  
18 rules required under sections 146.83 (3f) and 908.03 (6m) (e) of the statutes, as  
19 created by this act, for the period before the effective date of the permanent rules  
20 promulgated under sections 146.83 (3f) and 908.03 (6m) (e) of the statutes, as created  
21 by this act, but not to exceed the period authorized under section 227.24 (1) (c),  
22 subject to extension under section 227.24 (2) of the statutes. Notwithstanding  
23 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services  
24 is not required to provide evidence that promulgating a rule under this subsection  
25 as an emergency rule is necessary for the preservation of public peace, health, safety,

1 or welfare and is not required to provide a finding of emergency for a rule  
2 promulgated under this subsection.

3 **SECTION 9321. Initial applicability; Health Services.**

4 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83  
5 (1c) (a), (b), and (c), (1d), (1f) (a), (b), (c), and (d) 1. and 2., (1g), (1h), (1k), and (3f),  
6 146.84 (2) (a) 1., and 908.03 (6m) (c) 3. and (e) of the statutes, the renumbering of  
7 section 146.83 (1m) of the statutes, and the creation of section 146.83 (1m) (b) of the  
8 statutes first apply to requests to inspect patient health care records and requests  
9 for copies of patient health care records that are made on the effective date of this  
10 subsection.

11 **SECTION 9421. Effective dates; Health Services.**

12 (1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83  
13 (1c) (a), (b), and (c), (1d), (1f) (a), (b), (c), and (d) 1. and 2., (1g), (1h), (1k), and (3f),  
14 146.84 (2) (a) 1., and 908.03 (6m) (c) 3. and (e) of the statutes, the renumbering of  
15 section 146.83 (1m) of the statutes, the creation of section 146.83 (1m) (b) of the  
16 statutes, and SECTION 9321 (1) of this act take effect on the first day of the 4th month  
17 beginning after publication.

18 (END)