

**1999 DRAFTING REQUEST**

**Bill**

Received: **12/10/98**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Russell Decker (608) 266-2502**

By/Representing: **Pat (aide)**

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

Drafter: **kenneda**

May Contact: **Matt Bromley -  
State Bar Assoc.**

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **TAY**

**Pre Topic:**

No specific pre topic given

**Topic:**

Health care record fees

**Instructions:**

Same as 97 SB 250

**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>
/?	kenneda 03/23/99	jgeller 03/23/99		_____			S&L
/1			martykr 03/23/99	_____	lrb_docadmin 03/23/99		S&L
/2	kenneda 04/12/99	jgeller 04/12/99	jfrantze 04/12/99	_____	lrb_docadmin 04/12/99	lrb_docadmin 04/19/99	

FE Sent For: *6/15/99*

<END>

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/2	kenneda 04/12/99	jgeller 04/12/99	jfrantze 04/12/99	_____	lrb_docadmin 04/12/99		

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1?	kenneda	1 3/23 jlg	3/23 km	3/23 km			

FE Sent For:

<END>

12/10/98 From Matt Browley 250-6128

(A) In 908.03 (6m)(d) of 1997 SB250:

- ✓ (1) Keep "The commencement of an action is not a prerequisite for the applic. of this paragraph."
- ✓ (2) Keep repeal of "under par. (c) 3."
- ✓ (3) Keep "maximum amt"
- ✓ (4) Do not keep repeal of delivery costs
- ✓ (5) Do not keep "that are requested by an attorney on behalf his/her client"

(B) In 146.83

- ① Amend to change "reasonable costs" to "actual costs as specified by the department by rule under s. 908.03 (6m), regardless whether certified or not."

look at other aspects of '97 sub

Goal: DHS has prom. rules under s. 908.03 (6m)(d) - bill should not necessitate new rules

Try - def. of "actual costs" in 146.83 that refers to rules under s. 908.03 (6m)(d)


**STATE BAR  
OF WISCONSIN**

402 W. Wilson Street  
P.O. Box 7158  
Madison, WI 53707-7158

Post-It® Fax Note	7671	Date	1/7/99	# of pages	1
To	Debra Kennedy	From	Matt Bromley		
Co./Dept	LRB	Co.	State Bar		
Phone #		Phone #	250-6128		
Fax #	264-8522	Fax #			

**MEMORANDUM**

**To:** Atty. Debra Kennedy  
Legislative Reference Bureau

**From:** Matt Bromley, Government Relations Coordinator

**Copy:** Patrick Walsh, Senator Decker's office

**Date:** January 7, 1999

**Re:** Senator Decker's draft request relating to cost of medical record photocopies

It was recently brought to my attention that health care providers sometimes do not respond in a timely fashion to requests for copies of medical records from patients and their authorized agents. For many attorneys and their clients, receiving medical records in a timely fashion is critical to the efficient adjudication of the client's claim.

Therefore could you include in Senator Decker's draft on medical record photocopy costs a provision requiring the health care provider to provide copies of medical records within a specific amount of time, such as 30 days, or face penalties, such as reducing the amount a health care provider may charge.

The proposed language could read as follows:

**s. 146.83 WI Statutes**

Any health care provider who receives a proper statement of informed consent requesting copies of a patient's health care records must, upon payment of fees identified in par. ( ), furnish the requested information within 30 days of the receipt of the statement of informed consent.

**Penalties**

Health care providers that fail to comply with par. (above paragraph) shall be limited to collecting 25% of the total charges incurred for the services rendered which are the subject of the request to which the health care provider failed to provide a timely response.

Thank you for your help. If you have any questions, please feel free to call me at 250-6128.

3/22 Questions for Matt Browley

~~For 908.03(1)(d) - proposed language refers to "actual costs" - to put the reference to fees~~  
"whether certified or not" - should modify pt here case records

ok For 908.03(6m)(d) - add "plus applicable state tax" to fees, as in sub. amt?

ok "actual" postage?  
ok "actual" delivery costs?

## Chapter HFS 117

## FEES FOR COPIES OF HEALTH CARE PROVIDER RECORDS

HFS 117.01 Authority and purpose.  
 HFS 117.02 Applicability.  
 HFS 117.03 Definitions.

HFS 117.04 Request for duplicate records.  
 HFS 117.05 Fees for duplicate records.

Note: Chapter HSS 117 was created as emergency rule effective January 1, 1993. Chapter HSS 117 was renumbered ch. HFS 117 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats, Register, May, 1998, No. 509.

**HFS 117.01 Authority and purpose.** This chapter is promulgated under the authority of s. 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 records requested by attorneys pursuant to s. 908.03 (6m) (c) 3., Stats.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.

**HFS 117.02 Applicability.** This chapter applies to all attorneys who request certified duplicate health care records under s. 908.03 (6m) (c) 3., Stats., and to all health care providers who supply those records.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.

**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), 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.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.

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

- (1) The correct name of the patient whose records are the subject of the attorney's request;
- (2) The patient's social security 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.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.

**HFS 117.05 Fees for duplicate records.** A health care provider may charge an attorney no more than the following fees for supplying certified duplicate health care provider records pursuant to s. 908.03 (6m) (c) 3., Stats.:

- (1) For records displayed on paper medium, the greater of the following:
  - (a) \$8.40 per request; or
  - (b) 45 cents per record page for the first 50 pages, and 25 cents per record page over 50 pages;
- (2) For X-rays, \$4.00 per X-ray copy; and
- (3) The actual costs of postage or other means of delivering the requested duplicate records to the attorney.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.



SOON - In edit 3/23

1999-2000 ~~1997~~ - 1998 LEGISLATURE

D. NOTE

1223/1  
LRB-~~03571~~  
DAK&RPW:lmg&jlg:jt

jlg

# 1997 SENATE BILL 250

June 26, 1997 - Introduced by Senators DECKER and MOEN, cosponsored by Representatives KREUSER, ALBERS, ZIEGELBAUER, STASKUNAS, JOHNSRUD and OTT. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

regenerate

1 AN ACT to amend 908.03 (6m) (d) of the statutes; relating to: uniform fees  
2 chargeable for certified duplicate health care records and granting  
3 rule-making authority.

✓  
massage therapists  
and bodyworkers

### Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) must, by rule, prescribe uniform fees that a health care provider may charge attorneys to obtain certified duplicate health care records that are subject to subpoena. (Health care providers affected by this law are chiropractors, dentists and physician assistants, nonpublic physicians and nurse anesthetists, and certain nonpublic facilities, associations or corporations.) The uniform fees are required to be based on an approximation of the actual costs but also permit the health care provider to charge for postage or other delivery costs. Currently, rules of DHFS permit a health care provider to charge attorneys the greater of \$8.40 per request or 45 cents per record page for the first 50 pages and 25 cents per record page for the remaining pages, \$4 for each X-ray copy and the actual costs of postage or other means of delivery of the records.

This bill eliminates the restriction on the type of health care records that are subject to the uniform fees established by DHFS. Because of that, under the bill, DHFS must establish by rule uniform fees, based on an approximation of actual costs, that a health care provider may charge for certified duplicate health care records that are requested by an attorney on behalf of his or her client. The filing of an action may not be used as a requirement for the application of the uniform fees.

**SENATE BILL 250**

INSERT  
ANAL

The bill also eliminates the authority for health care providers to charge for other delivery costs of the health care records.

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:*

INSERT  
2-1

PROOF W/STATS.

1  
2  
3  
4  
5  
6  
7  
8  
9

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

908.03 (6m) (d) Fees. The department of health and family services shall, by rule, prescribe uniform fees that are based on an approximation of the actual costs.

The fees are the maximum amount that a health care provider may charge under par-

(e) 3. for certified duplicate health care records ~~that are requested by an attorney on behalf of his or her client~~. The rule shall also allow the health care provider to charge

for postage or other delivery costs. The commencement of an action is not a prerequisite for the application of this paragraph.

(END)

actual

restore to plain text

Specify fees that

actual

keep scored

that are incurred by a health care provider in providing certified duplicate patient health care records

D-NOTE

**INSERT ANAL**

Under current law relating to patient health care records, patients or other persons may receive a copy of the patient's health care record upon submitting a statement of informed consent for the release and upon payment of reasonable costs.

This bill limits, to the uniform fee amounts prescribed by DHFS by rule, the amounts of fees that a health care provider may charge attorneys for supplying certified duplicate patient health care records. The bill requires that DHFS also specify fees, by rule, that a health care provider may charge for actual postage or other actual delivery costs. Under the bill, the filing of an action may not be used as a requirement for the application of the uniform fees.

The bill changes the patient health care records laws to authorize a patient or other person to receive a copy of the patient's health care records, whether certified or not, upon submittal of a statement of informed consent and payment of an approximation of actual costs. "Approximation of actual costs" is defined to mean, at a maximum, the fee amounts that are prescribed by rule by DHFS. Further, the bill limits to 25% of total costs incurred the amount that a health care provider may collect as payment if the health care provider provides a copy of the patient health care record after 30 days after receipt of a statement of informed consent.

**INSERT 2-1**

1           **SECTION 1.** 146.83 (1) (b) of the statutes is amended to read:

2           146.83 (1) (b) Receive a copy of the patient's health care records, whether  
3           certified or not, upon payment of reasonable an approximation of actual costs. In this  
4           paragraph, "approximation of actual costs" means, at a maximum, the fees that are  
5           prescribed by the department by rule under s. 908.03 (6m) (d).

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

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

7           146.83 (3m) If a health care provider provides a copy of a patient health care  
8           record after 30 days after receipt of a statement of informed consent for the release  
9           of the copy, the health care provider, notwithstanding sub. (1) (b) and s. 908.03 (6m)  
10          (d), may collect as payment no more than 25% of the total costs incurred for providing  
11          the copy.

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

LRB-1223/3<sup>1</sup>dn  
DAK.....  
jlg

To Senator Decker:

I would appreciate it if you would have Matt Bromley of the State Bar review this draft. In amending s. 908.03 (6m) (d), stats., despite the discussion I had with Matt on March 22, I decided not to include "plus applicable state tax", because it is unnecessary and may be confusing as to whether tax may or may not be charged with respect to records postage and delivery costs. Please also note that I ~~added~~ <sup>added</sup> "fees for" actual postage and other actual delivery costs in order to make s. 908.03 (6m) (d), stats., consistent with the rule (HFS 117.05, Wis. Admin. Code), which indicates that the term "fee" covers the charges for these costs as well as for the copies.

I would be happy to help if you need further assistance with this draft.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137

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

LRB-1223/1dn  
DAK:jl:km

March 23, 1999

To Senator Decker:

I would appreciate it if you would have Matt Bromley of the State Bar review this draft. In amending s. 908.03 (6m) (d), stats., despite the discussion I had with Matt on March 22, I decided not to include "plus applicable state tax", because it is unnecessary and may be confusing as to whether tax may or may not be charged with respect to records postage and delivery costs. Please also note that I added "fees for" actual postage and other actual delivery costs in order to make s. 908.03 (6m) (d), stats., consistent with the rule (HFS 117.05, Wis. Admin. Code), which indicates that the term "fee" covers the charges for these costs as well as for the copies.

I would be happy to help if you need further assistance with this draft.

Debra A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137

4/12/99: From Matt Bromley:

① Delete "total costs incurred ... copy" from (3m) + sub.  
"approx of actual costs, as specified in sub. (1)(b)".

② p. 3. line 3 - delete "fees" + place after  
"charge" same line

③ Final - 32A, just sent - delete "attorneys"

(SOON - Inedit 4/12)

1999 BILL

Reger

1 AN ACT to amend 146.83 (1) (b) and 908.03 (6m) (d); and to create 146.83 (3m)

2 of the statutes; relating to: uniform fees chargeable for certified duplicate

3 health care records and granting rule-making authority.

*Analysis by the Legislative Reference Bureau*

Under current law, the department of health and family services (DHFS) must, by rule, prescribe uniform fees that a health care provider may charge attorneys to obtain certified duplicate health care records that are subject to subpoena. (Health care providers affected by this law are chiropractors, dentists and physician assistants, nonpublic physicians, nurse anesthetists, massage therapists and bodyworkers and certain nonpublic facilities, associations or corporations.) The uniform fees are required to be based on an approximation of the actual costs but also permit the health care provider to charge for postage or other delivery costs. Currently, rules of DHFS permit a health care provider to charge attorneys the greater of \$8.40 per request or 45 cents per record page for the first 50 pages and 25 cents per record page for the remaining pages, \$4 for each X-ray copy and the actual costs of postage or other means of delivery of the records.

Under current law relating to patient health care records, patients or other persons may receive a copy of the patient's health care record upon submitting a statement of informed consent for the release and upon payment of reasonable costs.

This bill limits, to the uniform fee amounts prescribed by DHFS by rule, the amounts of fees that a health care provider may charge ~~attorneys~~ for supplying certified duplicate patient health care records. The bill requires that DHFS also

**BILL**

specify ~~that~~, by rule, that a health care provider may charge for actual postage or other actual delivery costs. Under the bill, the filing of an action may not be used as a requirement for the application of the uniform fees.

The bill changes the patient health care records laws to authorize a patient or other person to receive a copy of the patient's health care records, whether certified or not, upon submittal of a statement of informed consent and payment of an approximation of actual costs. "Approximation of actual costs" is defined to mean, at a maximum, the fee amounts that are prescribed by rule by DHFS. Further, the bill limits to 25% of ~~total costs incurred~~ the amount that a health care provider may collect as payment if the health care provider provides a copy of the patient health care record after 30 days after receipt of a statement of informed consent.

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

*the approximation of actual costs*

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

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

2 146.83 (1) (b) Receive a copy of the patient's health care records, whether  
3 certified or not, upon payment of reasonable an approximation of actual costs. In this  
4 paragraph, "approximation of actual costs" means, at a maximum, the fees that are  
5 prescribed by the department by rule under s. 908.03 (6m) (d).

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

7 146.83 (3m) If a health care provider provides a copy of a patient health care  
8 record after 30 days after receipt of a statement of informed consent for the release  
9 of the copy, the health care provider, notwithstanding sub. (1) (b) and s. 908.03 (6m)  
10 (d), may collect as payment no more than 25% of the ~~total costs incurred for providing~~

11 ~~the copy.~~ *approximation of actual costs, as specified under*  
*Sub. (1) (b)*

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

13 908.03 (6m) (d) *Fees*. The department of health and family services shall, by  
14 rule, prescribe uniform fees that are based on an approximation of the actual costs  
15 that are incurred by a health care provider in providing certified duplicate patient



**BILL**

1 health care records. The fees are the maximum amount that a health care provider  
2 may charge under par. (e) 3. for certified duplicate patient health care records. The  
3 rule shall also ~~allow~~ specify fees that the health care provider ~~to~~ may charge for  
4 actual postage or other actual delivery costs. The commencement of an action is not  
5 a prerequisite for the application of this paragraph.

6 (END)

fees

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

---

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

---

**Date:** 4/12/99

**To:** Senator Decker

**Relating to LRB drafting number:** LRB-1223

**Topic**

Health care record fees

**Subject(s)**

Health - miscellaneous

1. **JACKET** the draft for introduction

*Russ Decker*

in the **Senate**  or the **Assembly** \_\_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Debra A. Kennedy, Managing Attorney  
Telephone: (608) 266-0137