



**STATE BAR
of WISCONSIN**

5302 Eastpark Blvd.
P.O. Box 7158
Madison, WI 53707-7158

MEMORANDUM

To: Members of the Senate Committee on Health, Utilities, Veterans and Military Affairs

From: Litigation Law Section of the State Bar of Wisconsin

Date: October 19, 1999

Re: Senate Bill 195 - Copies of Medical Records

The State Bar of Wisconsin's Litigation Law Section **urges you to support Senate Bill 195 and the substitute amendment** to be offered by Chair Moen when it comes before the Senate Committee on Health, Utilities, Veterans and Military Affairs for a vote on October 20.

The Litigation Law Section believes the following changes included in the substitute amendment provide for a fair compromise on SB 195. Changes included in the substitute amendment:

- 1) Requires the Department of Health and Family Services to establish, by rule, uniform fees for copies of medical records based on an approximation of actual costs.

This provision requires DHFS to establish a new rule regarding fees. This is to address any concern that the current rule, which sets fees for copies of medical records requested as part of a commenced court action, would apply under SB 195. DHFS, under the substitute amendment, would independently review the costs of copying medical records and establish a new rule to adequately reflect today's costs.

- 2) Deletes the provision in SB 195 that would have allowed the health care provider to collect only 25% of payment for the photocopying fees if the photocopies were not provided within 30 days of receipt of a statement for informed consent.

Deleting this provision is supported as an appropriate compromise on SB 195.



SB 195 Memo
Page 2

- 3) Include applicable state tax and postage and delivery costs in the fees that can be charged.

This provision is to address any concerns that the fees do not include the appropriate sales tax. The amendment addresses this concern by allowing "applicable sales tax" to be included in the costs. SB 195 will then allow for costs of postage, delivery charges, and sales taxes to be included in the fees charged.

The Litigation Law Section believes these changes offer a fair compromise on SB 195 in that the substitute amendment provides for an independent review by DHFS of the current fees, provides for DHFS to establish a new rule to reflect today's costs in place of the old fee structure, allows for additional costs to be included in those fees (sales tax), and eliminates the proposed penalty for failing to provide records in a timely manner.

The Litigation Law Section urges your support for this fair compromise to SB 195.

For more information contact Cory Mason at the State Bar at 608-250-6128 or Jenny Boese at 608-250-6045.



TO: State Senator Rodney Moen, Chair
Members, Senate Committee on Health, Utilities,
Veterans and Military Affairs

FROM: M. Colleen Wilson, Legislative Counsel
Government Relations

RE: Opposition to Senate Bill 195

DATE: September 15, 1999

The State Medical Society of Wisconsin appreciates the opportunity to express its opposition to Senate Bill 195 as proposed. The bill proposes that the Department of Health and Family Services approximate actual costs of reproducing health care records in administrative rule and specifies that health care providers charge that amount for any health care record duplication requests, including those made by attorneys. The bill specifies that the filing of an action may not be used as a requirement for the application of the uniform fees.

Reproducing a medical record does not merely involve a trip to Kinko's or its equivalent. It requires significant time, as highly trained medical records personnel must locate the requested record, and then carefully and thoroughly sift through it to find the requested information. Personnel have to take great care to make sure that no unauthorized information is released, especially information that is of a highly confidential nature, such as AODA treatment or the results of a test for HIV. Also, there are several provisions in state statute governing the release of health care information, and personnel must be sure to comply with these requirements.

The Medical Society has the following concerns about the proposed legislation:

- The bill does not allow health care providers to recover the actual costs of reproducing a health care record, only the approximated cost. When DHFS promulgated the current administrative rule relating to charges for reproduction of health care records in 1992, they ignored an exhaustive survey conducted by the Wisconsin Health Information Management Association that at that time determined that \$.65 per page was representative of the actual costs of reproducing health care records. If DHFS is to determine how much providers can charge for health care record reproduction, it should be required to base charges on **actual**, not approximate, costs.
- The original intent of statutorily determined fees was to minimize the need for costly court appearances by health care providers for purposes of identifying health care records. The State Bar of Wisconsin acknowledged the intent in its newsletter published shortly after adoption of this particular rule of evidence, stating that "The request for records emanates from an attorney involved in an actual case as the Wisconsin Rules of Evidence apply only to such situations." Health care providers did not agree to legislatively determined fee schedules for health care record duplication requests not related to a court case.

- The bill makes no allowance for the collection of sales tax. The Department of Revenue has determined that photocopying of health care records is a taxable sale, subject to the sales tax statute. At a minimum, health care providers must be able to collect this tax to comply with DOR's interpretation of the law. If they do not collect the tax, health care providers are nonetheless required to submit the tax to DOR out of their own coffers.

The physicians of the State Medical Society appreciate the Committee's consideration of these concerns. We look forward to working with members to address these important issues.

September 15, 1999

To: The Wisconsin Senate Committee on Health, Utilities,
Veterans and Military Affairs

From: Bernard T. McCartan

On Behalf Of: Litigation Section of the State Bar of Wisconsin

Re: Support of 1999 SB 195

Mr. Chairman and Members of The Wisconsin Senate Committee on
Health, Utilities, Veterans and Military Affairs:

I am an attorney licensed to practice law in Wisconsin, and am employed as Regional Claim Counsel - Wisconsin, by the American Family Mutual Insurance Company, Madison, WI. I make my comments to the committee in support of 1999 SB 195 on behalf of the Litigation Section of the State Bar of Wisconsin, of which I am a member.

The Wisconsin Statutes currently provide that a patient has the right to obtain a copy of his or her health care records, among other things, upon payment of "reasonable costs."¹ With the exception of a limited number of instances in which a person has a personal injury claim in litigation, the term "reasonable costs" is not defined. The result is that many patients needing copies of their records find themselves facing the prospect of paying copy fees at the hands of medical records copy services which to which the terms "outrageous" and "exorbitant" might properly apply.

The situation is starkly apparent to the members of the State Bar Litigation Section who represent parties in personal injury litigation. Earlier this year, my staff and I examined 49 copy service bills submitted to me from around the state. The bills were for duplication of records on personal injury claims which were not in suit and thus not subject to administrative regulation.² The average number of pages per request was 14 and the average cost per page was \$8.90. The lowest cost per page was \$1.26 per page on a 51 page request. The highest was a \$37.19 charge for one page. By contrast, had those claims been in suit and subject to the statutory and administrative rules governing claims in litigation, the cost would have been only \$3.81 per page. In other words, the average cost per page for those records, on claims which were not in litigation, was 234%

¹ § 146.83(1), Wis. Stats.

² § 908.03(6m)(d), Wis. Stats. and Wis. Adm. Code § HFS 117.05.

higher than the cost would have been had those people started a law suit.

The purpose of 1999 SB 195 is to redress this disparity by creating a uniform maximum for medical records copy charges which would apply to all requests for medical records. In effect the bill would extend well established administrative regulations now in effect for obtaining copies of medical records for purposes of personal injury litigation.³ The charges authorized by those regulations are specifically designed, by direction of the legislature, to approximate the actual cost of duplicating the records. They may be modified from time to time by the Department of Health and Family Services to reflect changes in those costs. We believe that system to be fair and reasonable.

Whether a person is obtaining records for purposes of making a personal injury claim or for any other reason, he or she should not be at the mercy of commercial copy services charging whatever they think the market will bear on a take-it-or-leave-it basis. 1999 SB 195 will establish needed uniformity and reasonableness with respect to the cost of medical records copies. I, therefore, respectfully urge favorable committee action on this bill.

³ Id.



STATE BAR
OF WISCONSIN

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

TO: Members of the Senate Committee on Health, Utilities, Veterans and Military Affairs.

FROM: State Bar of Wisconsin, Litigation Section

DATE: 15 September 1999

RE: Support for SB 195

The State Bar of Wisconsin Litigation Section **supports** SB 195, relating to: uniform fees chargeable for certified duplicate health care records and granting rule-making authority.

Patients and their authorized agents are continually being charged an exorbitant amount for simple photocopies of their medical records. It is not uncommon for the fee for a one-page document to approach \$20 (see attachment).

Unfortunately, consumers have no free market to hold down the costs of medical record photocopies. Health care providers essentially have a monopoly on photocopying, forcing patients and their authorized agents to pay whatever fees they deem acceptable.

Under the SB 195, the cost of obtaining copies of medical records would be limited by the amount currently prescribed by rule for records that are requested as part of a filed court case. The bill applies the current fee structure: 45 cents per record page for the first 50 pages and 25 cents per record page for the remaining pages. It also charges \$4 for each X-ray, to copies of medical records requested regardless of whether a court action has commenced. There is also a minimum fee of \$8.40 per transaction. The fee is the sum total of the costs per page or the \$8.40 flat rate, whichever is greater applies.

The State Bar of Wisconsin's **Litigation Section** supports SB 195 and encourages you to support reasonable fees for medical records.

If you have any further comments or questions, feel free to contact Cory Mason at the State Bar of Wisconsin at 608/250-6128 or 800/444-9404, ext. 6128.



Sample Charges for Copies of Medical Records (Invoices Attached)

- \$19.78 for a **one** page paper to paper copy of a patient's record in Rhinelander by a Green Bay copying firm.
- \$45.00 for a \$21.00 requested script for a record request in Lancaster by an Illinois copying firm. The cost included a \$24 fee to copy the file.
- \$40.86 for **eleven** paper to paper copies charged for a patients record in Eagle River by a California firm. The cost included a \$15 "basic fee," a \$10 "search and retrieval fee," and \$4.38 in a "shipping and handling" fee.



**HEALTH INFORMATION
MANAGEMENT SERVICES**
A DIVISION OF INFORMATION MANAGEMENT CORPORATION
P.O. BOX 8408
GREEN BAY, WI 54308-8408

INVOICE

[REDACTED]
P O Box 757
Rhineland WI 54501

INVOICE: WBX-1225

DATE: 9/19/95

PATIENT: **[REDACTED]**

CLAIM #:

As requested, HIMS has processed your release of information request for the Medical Records department at:

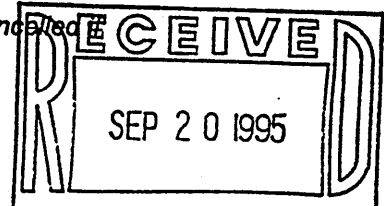
Howard Young Medical Center

 copies are enclosed. **PAYMENT DUE UPON RECEIPT.**

 copies will be sent upon receipt of payment. Requests are cancelled if payment is not received within 30 days.

 Paper-to-paper copies.

 Film-to-paper copies.



PROCESSING FEE	\$ 15.00
COPY CHARGE	.75
SHIPPING & HANDLING	3.00
SUBTOTAL	18.75
WI SALES TAX	1.03
LESS PREPAYMENT	
BALANCE DUE	\$ 19.78

**PLEASE MAKE CHECK PAYABLE TO:
HEALTH INFORMATION MANAGEMENT SERVICES,
A DIVISION OF
INFORMATION MANAGEMENT CORPORATION**

**FOR QUESTIONS CONCERNING YOUR BILL,
CALL 414-469-5011**

**FOR QUESTIONS CONCERNING COPIES OF
RECORDS, PLEASE CALL OUR HIMS
REPRESENTATIVE IN THE MEDICAL RECORD
DEPARTMENT AT THE ABOVE NAMED FACILITY**

FEDERAL I.D. #39-1530120

**PAST DUE INVOICES ARE SUBJECT TO 1.5% PER MONTH SERVICE CHARGE
CLIENT ORIGINAL**

\$19.78 for 1 page

Invoice

Re: *Greg Dersch*

Dear Sir/Madam:

Pursuant to your request, enclosed are the records for the above referenced patient. A complete search of the records maintained pursuant to the statutory retention period for pharmacy records was conducted.

Attached is an invoice for our services. Please remit payment together with the invoice promptly.

Sincerely,

Fran Rivera

Fran Rivera
Records Custodian
(217) 443-0410 ext. 8949
(217) 443-0552 fax
FEIN: 36-192-4025

\$45 777
The scripts only
Cost \$21+ !!!

FR

Enclosure

WALGREEN CO.

INVOICE FOR RECORD REQUEST SERVICES

Patient Name: *Greg Dersch*

Date Sent: *5/10/99*

Service Fee: *\$45.00*

Make Checks Payable To:

WALGREEN CO.
Records Custodian #700
P.O. Box 4039
Danville, IL 61834

COPY

STAPLE HERE

Smart Corporation

P.O. BOX 2826
TORRANCE, CA 90509-2826
FEDERAL TAX I.D. NO. 95-3313004

Questions? Call the Customer
Service Center at (310) 618-1992
Hours: 6:00 AM - 4:30 PM Pacific Time

INVOICE

No. F092290

(HOME OFFICE USE ONLY)

-

PLEASE SEE REVERSE SIDE
FOR IMPORTANT INFORMATION

COPY

S O L D T O	Requested by	ALEXANDER E. BROWN		
	Account Name	O'BRIEN ANDERSON ETAL		
	Address	BOX 29		
	City	State	Zip	
		EAGLE RIVER, WI	54521	

Approved By	
Position	
Amount	Date
Time	Phone

INVOICE DATE	SITE NUMBER	AREA NUMBER	REP NUMBER	Basic Fee		
9/26/95	49	50100	4157		15.00	
Copies From <u>Central Trust Co.</u>				Per Page Fee	Micro . Paper .8	
Patient Name _____				Page Count	Micro . Paper 11	
Insured Name _____				(1) Photocopy Charge ..	24.35	
Employer Name _____ DOB _____				(2) Facility's Retrieval/	10.00	
<input type="checkbox"/> Claim#	<input type="checkbox"/> Policy#	<input type="checkbox"/> Case#	<input type="checkbox"/> Provider#	(3) Shipping/Handling ..	4.38	
<input type="checkbox"/> Plan#	<input type="checkbox"/> Certificate#	<input type="checkbox"/> File#	<input type="checkbox"/> Subscriber#	(4) Sub Total ..	38.73	
<input type="checkbox"/> SS#	<input type="checkbox"/> Group#	<input type="checkbox"/> ID#	<input type="checkbox"/> Control#	(5) Sales Tax ..	2.13	
<input checked="" type="checkbox"/> ATTY	<input type="checkbox"/> SUBP	<input type="checkbox"/> DSS	<input type="checkbox"/> BOC	<input type="checkbox"/> PI	TOTAL CHARGES	40.86
<input type="checkbox"/> INS	<input type="checkbox"/> WC	<input type="checkbox"/> CC	<input type="checkbox"/> PAT	<input type="checkbox"/> OTHER	(Add lines 4 and 5)	
				Minus Payment	()	
				BALANCE DUE	40.86	
				Payment Enclosed	<input type="checkbox"/>	
				Check No. _____	Facility Kept	<input type="checkbox"/>
				Check No. _____	Payment	<input type="checkbox"/>

PINK CUSTOMER COPY - RETAIN FOR YOUR RECORDS

TO: Members of the Senate Committee on Health, Utilities, Veterans and Military Affairs

FROM: Kathy Callan, WHIMA member

DATE: September 15, 1999

RE: OPPOSITION to Senate Bill 195

WHIMA represents the health information professionals who daily balance the patient's right to privacy against requests for release of health care information. This balance is a delicate one, controlled by complex laws, regulations, and procedures that dictate the release and protection of this highly confidential information.

I am appearing on behalf of over 1,300 Wisconsin members to oppose Senate Bill 195.

Senate Bill 195 would broaden the applicability of the current record duplication fee from a very limited application relating to records requested under the subpoena limitations in a court proceeding, as stated in Wisconsin Statute 908.03, to all health care records requested.

A major concern of our professionals is that the current allowable charges set forth in SB195 and HFS 117 do not reflect the true costs related to processing requests for copies of health care records and x-ray films. They reflect a compromise authorizing artificially low costs so that medical records personnel do not have to appear in court. The current charge was set in 1993 and is not indexed. The statutory copying fees do not cover the actual costs incurred by health care providers when processing medical record copy requests because the actual process involved is substantially different than that for a standard copy request. One cannot simply send a clerk to a copy machine with a medical record file. The actual process for release of a record copy includes approximately 25 tasks/steps for an average of 24 pages of information per request. Many times the record is not immediately available which requires retrieval time as well as completion time. The steps in processing a request assure the patient's confidentiality is maintained as required by statute. If the charge is standardized, a reduction of qualified staff may compromise quality and threaten personal privacy.

The impact of this legislation would be that the difference between the departmentally determined fee and the actual duplication cost of the health care provider would be borne by the health care provider rather than the requesting individual. It would seem unfair to have health care providers, and ultimately the non-requesting patient population, bear this cost. As taxpayers and concerned citizens, we do not want the cost of reproduced records, which should legitimately be borne by the requestor, to increase health care costs. Therefore, we oppose SB 195, the expansion of the limited fee to all requests for records and the resulting cost effect being borne by all patients.

We ask that you support retaining the current law, which limits the applicability of the department-regulated fee to health care records involved in court cases. The specific applicability of this statutory section also allows health care professionals to ask for court case numbers to further identify these types of requests.

For the reasons enumerated above, we must oppose SB 195 and ask that current statutory language not be changed to eliminate the type and circumstance of health records that are subject to charges under Wisconsin Statute 908.03.

For these reasons WHIMA asks you to defeat Senate Bill 195.

If you have questions, please contact lobbyist Sybil Letzing at (608)252-9232.

September 15, 1999

MEMORANDUM

TO: Members of the Senate Committee on Health, Utilities, Veterans, and Military Affairs

FROM: Janet R. Swandby *Janet*
Lobbyist for the Association of Health Information Outsourcing Services (AHIOS)

RE: **Opposition to SB 195**

The Association of Health Information Outsourcing Services (AHIOS) is a national association of businesses which provide medical record retrieval services to hospitals, clinics, and other health care providers. A number of Wisconsin companies are members of AHIOS.

AHIOS requests that you consider the following as you review SB 195:

1. **Copying Medical Records is an OPTIONAL Service**

An attorney or insurance company representative can, at any time, come into a hospital or clinic and view medical records.

Attorneys and insurance companies who request copies of medical records are, however, asking someone to provide a service. When an individual believes it is more convenient to ask someone else to do their work for them, that service being the review and selection of information and delivery of that information, it should be reasonable to expect that they pay a fair rate for that service.

2. **Copying a Medical Record is not "Kinkos" Copying**

Medical records contain personal and sensitive information. If a medical record is improperly released, a patient can be harmed.

Copying a medical record is not simply placing a piece of paper on a copy machine. A medical record is not a book or a stack of 8 ½ X 11" sheets. Many records are trifold documents, onion skin, continuous readouts such as EKG strips, have information on the front and back of the page, small print copies, or are on microfilm and microfiche. Medical records have no table of contents.

And medical records professionals are not minimum wage clerks. These are highly trained people who must be familiar with the clinical aspects of a record to determine what must be copied to comply with a specific request.

3. **What is a "reasonable" fee?**

Recent studies conducted across the country indicate that the actual costs of copying a medical record are between \$1.32 and \$1.50 per page.

Twenty-three states have a statute setting fees which can be charged for the copying of a medical record. The fees set in other states range from \$24 to \$40 for a 20-page document. SB 195 would cap the fee for 20 pages at \$9.00. Almost all of these states set an administrative or base processing fee which can be charged to cover the fixed costs involved in copying any medical record whether it is one page or 100 pages. Many of these states also provide for some inflation index and all allow for charging for the actual cost of postage. In Wisconsin, sales tax must also be paid for the copying of a medical record and SB 195 does not address nor provide for these costs.

Here in Wisconsin, some attorneys are complaining when they are charged \$12 for three pages of a medical record. In the states of Washington and South Carolina, the law sets the uniform fee for a 3-page document at \$12. In Texas, the law states that \$30 can be charged for a 3-page document. You will hear from attorneys who cite examples of paying \$38 for a 28-page document. In New Jersey, state law calls for a \$48 fee for the same document.

Conclusion

AHIOS hopes that you will recognize that providing duplicate copies of medical records is not easy, nor can it be done cheaply if patient privacy is to be protected.

AHIOS is not opposed to a set fee for providing duplicate records. In June, AHIOS met with representatives of the State Bar of Wisconsin, the Wisconsin Trial Lawyers, and the Wisconsin Insurance Alliance and offered a number of fee structures which would cover the actual cost of providing a medical record. AHIOS is ready to negotiate with those groups which are proponents of SB 195, but the bill in its original form does not come close to covering the actual costs of providing this very specialized service.

Please vote to defeat SB 195 or to encourage its proponents to work with AHIOS to draft an amendment that will be acceptable to all who have an interest in medical records.

September 15, 1999

TESTIMONY

TO: Members of the Senate Committee on Health, Utilities, Veterans and
Military Affairs

FROM: Michael P. Wickman, President
Information Management Corporation
1030 Ontario Rd.
Green Bay, WI 54308

RE: OPPOSITION TO SENATE BILL 195

Information Management Corporation (IMC) is a document management service company that specializes in providing efficient and cost effective solutions to paper retention and distribution problems within the health care environment.

IMC was founded in Wisconsin in 1982, and is headquartered in Green Bay with offices in Milwaukee and Madison. IMC currently employs 500 people, and has annual revenue of \$14.5 million; 50% being comprised from the release of patient information.

Current law gives the Department of Health and Family Services (DHFS) the power to set the allowable fees which can be charged for the copying of medical records which are SUBJECT TO SUBPOENA. SB 195 would extend these rates set by DHFS to any record request made by an attorney or third party requestor regardless of whether the request is for a bona fide court case.

IMC opposes SB 195 because the cap on the fees set in this bill do not adequately cover the costs of copying a medical record.

IMC asks that you please consider the following:

1. COURT APPEARANCE VS. RECORD COPYING

The original fees set by the DHFS were based on negotiations between attorneys and providers of medical records. These negotiations were based on copies requested SPECIFICALLY for court use. By providing the copies for court



INFORMATION MANAGEMENT CORPORATION

1030 Ontario Road • P.O. Box 8408 • Green Bay, WI 54308-8408 • (920) 469-5000 • (920) 469-5010 Fax • www.fyii.com

use, the health care provider avoids an appearance in court to identify the documents. Court appearances by medical record personnel are extremely costly; therefore, providers were willing to agree to a fee schedule.

2. COPYING A MEDICAL RECORD IS NOT "KINKOS" COPYING

The copying of a medical record is not simply placing a piece of paper on a copy machine. In fact, a "copy" is merely a bi-product of the release of information process. During our first six months of 1999 (January - June), IMC has evaluated and honored 215,668 requests for patient information, produced 4,783,602 copies of medical documentation for attorneys, government agencies, insurance companies, hospitals, clinics, and other various agencies from those requests, and supported 81,217 direct employee hours to perform this release process. Of the 81,217 direct labor hours associated with the release of information process, only 1,615 hours (less than 2%) were consumed on the actual copying of these records. Therefore, the time consumed to produce copies is insignificant to the entire release of information (ROI) process. There are numerous steps involved in responding to a request for a copy of medical records. The staff is highly trained, and must be familiar with the clinical aspects as well as the statutory requirements and penalty provisions of a record.

I have attached for your review and consideration, a flow-chart that describes the actual steps involved in processing a health information record request. You will notice that there are in excess of seventy (70) considerations associated with the process. (SEE ATTACHMENT--NOTE THAT COPY PROCESS IS HIGHLIGHTED)

In addition, there are considerable overhead expenses that must be considered. These include but are not limited to the following factors:

- * Recruitment, supervision, training and management
- * Employee benefits
- * Capital expenditures for copying equipment including computer hardware/software and upgrades
- * Postal costs
- * Supply costs
- * Collection expense and bad debt expense

3. ACTUAL COSTS

Individuals who request records are asking that someone provide a service. Attorneys authorized by the patient, may review records at a health care facility at no cost. However, when an individual asks for a service for their convenience, that service being processing and delivery of that information, it should be reasonable to expect that they pay a fair rate for that service. This is no different

that the scenario presented in statement #1 (Court Appearance vs. Record Copying), however the "shoe is on the other foot" so to speak. The attorneys are asked to pay a reasonable rate in order to avoid the extremely costly expense of traveling to a health care facility to review, identify and copy medical record documents.

Currently, our average request that is "certified", or subject to subpoena, is requiring the processing of 95 pages. Our costs associated with that process are \$101.25 plus postage. Current law (908.03 6m) governs that we can charge only \$33.75 for that request. Therefore, for every attorney request that IMC honors that is subject to subpoena, our company is losing an average of \$67.50. if we were required to provide ALL requests based on SB 195 legislation, it would be devastating to our company, and it could force IMC out of business or require the shifting of costs to the patient health care provider. We estimate that the total impact on Wisconsin Hospitals and clinics if SB 195 passed would be an added cost of 18-21 million dollars annually that are not currently budgeted.

CONCLUSION

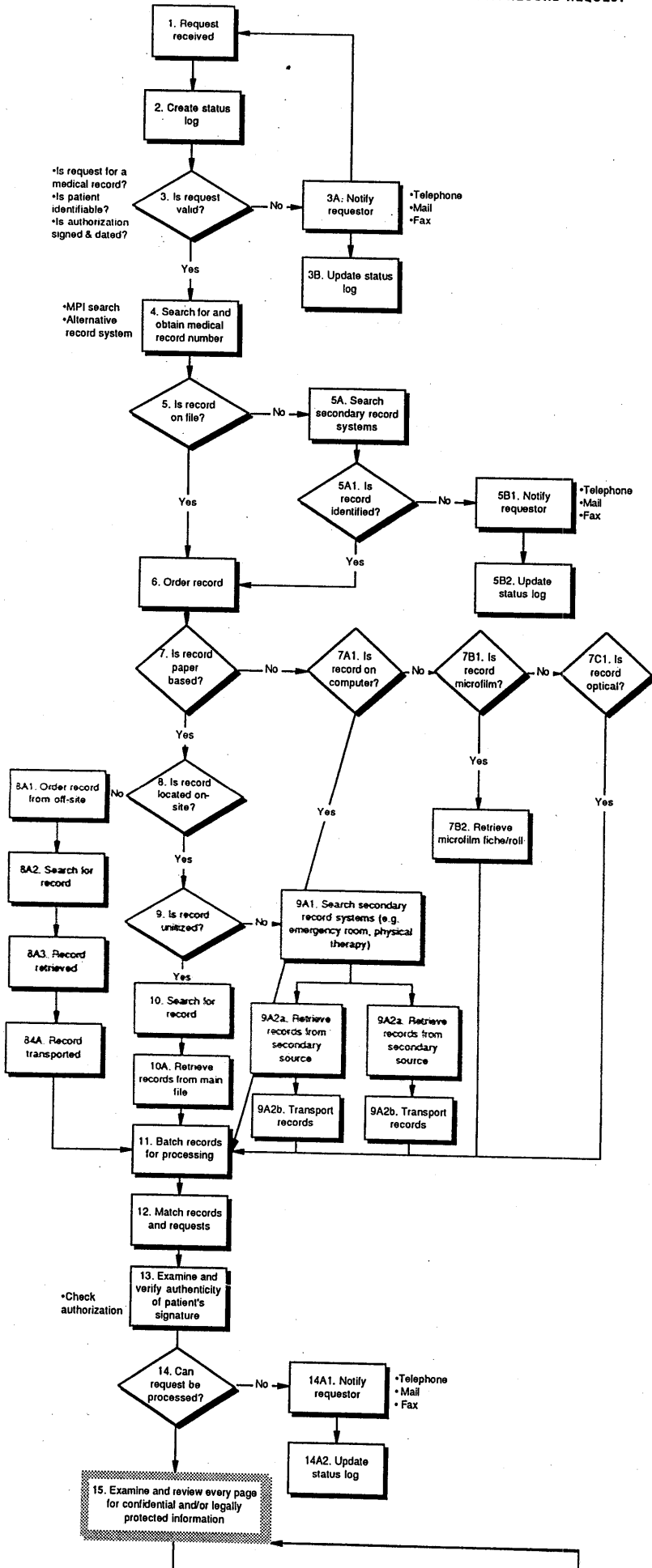
If SB 195 becomes law in Wisconsin, IMC would be severely affected. We would no longer be able to remain profitable or cover our costs of doing business. IMC would be forced to charge hospitals and clinics for copying of records in order to help defray the cost of providing processing services and copies at less than actual cost. IMC asks that you defeat SB 195.

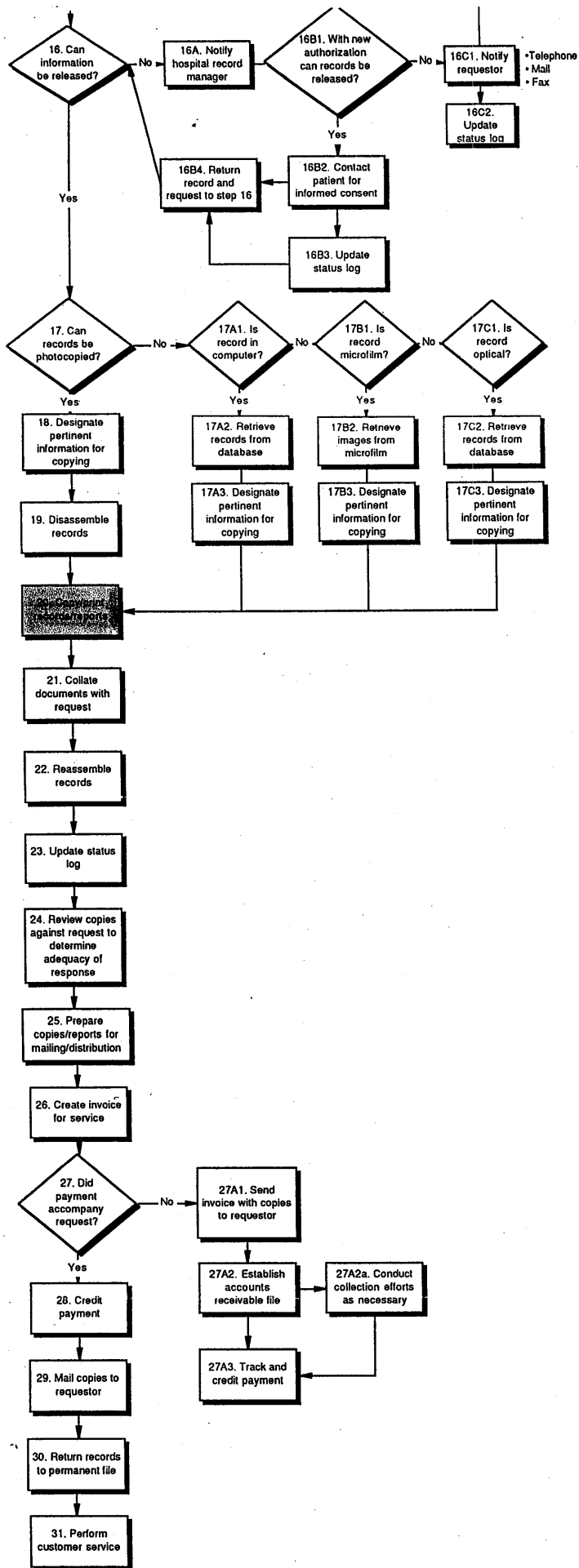
Thank you for your consideration.



Michael P. Wickman
President
Information Management Corporation

PROCESSING A HEALTH INFORMATION RECORD REQUEST







WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: October 20, 1999

TO: SENATOR RODNEY C. MOEN, CHAIRPERSON, AND MEMBERS OF THE SENATE COMMITTEE ON HEALTH, UTILITIES, VETERANS AND MILITARY AFFAIRS

FROM: Laura Rose, Senior Staff Attorney

SUBJECT: 1999 Senate Bill 195, Relating to Uniform Fees Chargeable for Certified Duplicate Health Care Records and Granting Rule-Making Authority, and Senate Substitute Amendment __ (LRB-0143/1) to the Bill

This memorandum describes 1999 Senate Bill 195, relating to uniform fees chargeable for certified duplicate health care records and granting rule-making authority, and Senate Substitute Amendment __ (LRB-0143/1) to the bill.

A. CURRENT LAW

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. The uniform fees must be based on an approximation of actual costs that a health care provider may charge for certified duplicate health care records. The rule must also allow the health care provider to charge for postage or other delivery costs. Currently, the DHFS rules permit a health care provider to charge attorneys the greater of \$8.40 per request or \$.45 per record page for the first 50 pages and \$.25 per record page for the remaining pages, \$4.00 for each x-ray copy and the actual costs of postage or other means of delivery of the records. [ch. HFS 117, Wis. Adm. Code.] Under a separate provision of 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. [s. 146.83 (1) (b), Stats.] The rules promulgated by DHFS under ch. HFS 117, Wis. Adm. Code, do not apply to these costs.

B. 1999 SENATE BILL 195

Under Senate Bill 195, the amounts of fees that a health care provider may charge for supplying certified duplicate patient health care records are limited to the uniform fee amounts prescribed by DHFS by rule. These uniform fee amounts would apply to requests for health care records made which are subject to subpoena, but would also apply to records requested by an attorney when no action has not been commenced. The uniform fees under the DHFS rule would also apply to patient health care records requested under s. 146.83, Stats.

In addition, under the bill, the DHFS rules which prescribe uniform fees must also specify that the health care provider may charge fees for *actual* postage or other *actual* delivery costs.

Finally, the bill limits to 25% of the approximation of actual costs the amount that a health care provider may collect as a payment for copies of patient health care records if the copies are provided after 30 days after receipt of a statement of informed consent.

C. SENATE SUBSTITUTE AMENDMENT — (LRB-0143/1)

The substitute amendment provides that the uniform fees promulgated by the DHFS by rule prior to April 1, 2001, are the maximum amount that a health care provider may charge for certified duplicate patient health care records. The substitute amendment clarifies that *applicable state tax* may also be charged by the health care provider for the patient health care records, and that the DHFS rules on uniform fees must allow the provider to charge fees for *actual* postage or other *actual* delivery costs. The substitute amendment also specifies, like the bill, that the commencement of an action is not a prerequisite for the application of the uniform fees that a health care provider may charge for certified duplicate patient health care records.

Further, the substitute amendment requires the DHFS to promulgate new rules which would apply after March 31, 2001. The fees, which must be based on an approximation of actual costs, plus applicable state tax, are the maximum amount that a health care provider may charge for certified duplicate patient health care records. The rules must also allow the health care provider to charge for *actual* postage or other *actual* delivery costs. Under the substitute amendment, the DHFS must promulgate rules for uniform fees for health care records that are requested by attorneys and that are subject to subpoena; that are requested prior to commencement of an action; and that are requested under s. 146.83, Stats.

The substitute amendment also provides that the rules must specify the maximum amount that a health care provider may charge for duplicate x-ray reports or the referral of x-rays to another health care provider of the patient's choice.

The substitute amendment requires the DHFS to submit the new rules which must be promulgated after March 31, 2001, to the Legislative Council Staff no later than the first day of the fifth month beginning after the effective date of the act (the day after publication).

If you would like any further information on this subject, please feel free to contact me at the Legislative Council Staff offices.

LR:rv:ksm;wu

Senate Bill 195

You are a cosponsor. This is a reintroduction of legislation our committee worked on last session which requires DHFS to establish uniform fees based on actual costs that providers may charge for copies of medical records. Under current law, there is a fee schedule established by rule for medical records under subpoena, but this schedule does not apply to medical records that patients or their agents may request for other reasons. This bill would apply the same rules to all certified duplicate patient health care records.

Senate Bill 195 is supported by the State Bar and WATL who claim that patients and their agents are continually being charged an exorbitant amount for photocopies of medical records. They have provided a number of convincing examples. The bill is opposed by medical records companies and providers, namely the hospitals and SMS, who claim that copying medical records is a complex process performed by highly trained professionals.

Last session, we attempted to forge a compromise on this bill which would require DHFS to establish a new rule for these records, because the medical records people said the low amounts contained in the old rule would put them out of business. Unfortunately, it appears Decker reintroduced the bill without this amendment, so we may have to start all over again. I have asked Laura Rose to clarify this for us.

Last session's SB 250 was approved by the committee on a vote of 3 to 2 (Roessler voted yes along with you and Roger; Moore was absent; Rosenzwieg and Fitzgerald voted no) and by the Senate on a vote of 23 to 8. It failed to even get a hearing in the Assembly.

Senate Bill 225

This is your bill that extends the effective date of the background check law with respect to current employees to February 1, 2000. The bill is necessary because it does not appear that the compromise budget language which fixes problems with the background checks law will be passed before the provisions affecting currently employees goes into effect on October 1, 1999.

This bill should not be controversial and has huge support from labor. Unfortunately, Chuck says we aren't going to approve any legislation until the budget is done, so I don't know what that means for this bill.

~~CONFIDENTIAL~~

F.Y.I. INCORPORATED

—————ACT—————
Medical Record Services, Inc.



INFORMATION MANAGEMENT CORPORATION

PRESIDENT
Randall E. Reinhardt, Milwaukee

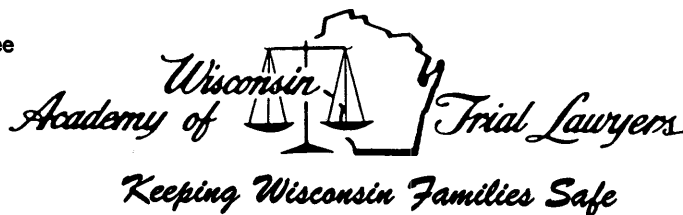
PRESIDENT-ELECT
Kevin Lonergan, Appleton

VICE-PRESIDENT
M. Angela Dentice, Brookfield

SECRETARY
Keith R. Clifford, Madison

TREASURER
Susan Rosenberg, Milwaukee

IMMEDIATE PAST PRESIDENT
Don C. Prachthauser, Milwaukee



EXECUTIVE DIRECTOR
Jane E. Garrott
44 E. Mifflin Street, Suite 103
Madison, Wisconsin 53703-2897
Telephone: 608/257-5741
Fax: 608/255-9285

WISCONSIN STATE SENATE

Committee on Health, Utilities, Veterans and Military Affairs

Rod Moen, Chairperson

Public Hearing on

Senate Bill 195

September 15, 1999 at 1:30 P.M.

Senator Moen and members of the committee, my name is Randall E. Reinhardt, the president of the Wisconsin Academy of Trial Lawyers. I am an attorney in private practice in Milwaukee with the firm of Warshafsky, Rotter, Tarnoff, Reinhardt & Bloch, S.C. Thank you for the opportunity to present this testimony in support of Senate Bill 195.

The Wisconsin Academy of Trial Lawyers (WATL) is a voluntary, statewide bar association whose 1,000+ members represent the majority of attorneys involved with personal injury litigation, both plaintiff and defense. In nearly all types of personal injury litigation, access to health care provider records is crucial. This bill will significantly affect the practice of nearly all trial lawyers in the state.

WATL strongly supports Senate Bill 195 because we believe health care providers very often charge excessive rates for photocopying patients' records. These exorbitant charges for health care records add to the cost of litigation and, for the most part, are paid for by injured consumers. Attorneys pass these costs on to the clients they represent; there is not a direct financial effect on the attorney. It is an outrage, however,

that we pass on costs of \$15.00, \$20.00 or even \$25.00 for as little as one page of medical records.

The reality is there is no upper limit to what can be charged — the person requesting the copy is at the complete mercy of the health care provider. It is difficult to believe the exorbitant charges we often see represent actual costs, given photocopying costs have become more reasonable as technology continues to become more cost-efficient.

It is important to remember the roots of this legislative discussion. The rules of evidence have always allowed parties to subpoena records they need to prove their cases (either civil or criminal). Record custodians must respond and produce records for court proceedings and testify to their authenticity. For this testimony, the record custodian receives a witness fee (typically \$16.00) plus travel costs. Only the health care records industry has been treated specially by statute, in this case s. 908.03 (6m), Stats: It is allowed to substitute certified photocopies of records instead of having record custodians verify the authenticity of medical records. Besides being relieved of personal appearances for testimony, the health care records industry also was paid for the photocopies of the records. No other industry receives payment for providing photocopies of records for court proceedings. For many years, the industry was paid ten cents per page for these photocopies.

In 1991, the Legislature changed s. 908.03(6m), Stats. to require the Department of Health and Family Services to establish, by administrative rule, a uniform fee for health care provider records, based on *an approximation of actual provider costs*. After extensive public testimony and a survey of member costs by the Wisconsin Medical Records Association, the current administrative rule was established. The current fees are the greater of \$8.40 per request or 45 cents per page for the first 50 pages and 25 cents per page for records over 50 pages, plus the actual cost of postage or other means of delivery.

WATL suggested to the department, at the time it adopted the administrative rule, a maximum charge of \$.25 per page for health care records. That was a fee in line with what most professional offices and government offices charge for records. There does

not appear to be anything inherently more difficult in finding, disassembling, photocopying and reassembling health care records than there is in performing the same steps on a legal file, an accounting file, or a governmental file. The rule adopted allowed higher fees, but seemed to us a reasonable approach.

The problem lies now primarily in those records which are obtained outside of the context of the rules of evidence. Even though the statute that governs these records, s. 146.83, Stats. says there must be a "reasonable charge," there are wild fluctuations in what various health care providers charge for copying records not subject to the administrative rule. Senate Bill 195 would change that to apply to *all* requests for records, whether or not a lawsuit has been filed.

What are some of the typical charges? The WATL office has correspondence from attorneys throughout the state, reporting charges such as the following: ACT Medical Record Services, Inc. charged a Beloit attorney \$39.09 for 15 pages; HIMS charged a Madison attorney \$22.42 for one page of records; another Madison attorney reported a bill from Star Copy Services for \$13.19 for one page; a Milwaukee attorney reported a bill from PMS, Inc. for \$31.78 for two pages. Review and processing fees are usually \$15.00 - \$18.50. Some firms add a \$5.00 retrieval fee to that charge. Most of the firms charge \$5.00 for certifying a record. Many charge a shipping and handling charge much higher than postage costs. Then, of course, the actual photocopying costs are added – these vary from about \$.75 per page to \$2.00 per page. There are many other examples and, if the committee is interested, we can supply more actual examples. This is not just a problem in Milwaukee; it is statewide.

Most of these invoices are from outside companies which many health care providers, mostly hospitals, now hire to handle medical records. They often bring their own copying equipment into the hospital, copy the patient records, and typically charge much higher rates for their services. With no limits on what they can charge and no incentives for the hospitals to hold down the costs, the sky has been the limit. A whole new industry has sprung up to service the provider's needs, but this industry needlessly pushes up the cost of health care. This industry adds nothing to the nation's health, only to the nation's health care costs.

Last session, some of these companies told the Legislature these charges were necessary to meet their costs. But their own numbers belie their statements. You be the judge based on what they said. One of the largest Wisconsin companies told the Legislature:

“During the first three quarters of 1997 (January - September), IMC has evaluated and honored 99,921 requests for patient information, produced 2,021,868 copies of medical documentation for attorneys, government, insurance companies, hospitals, clinics, and other various agencies from those requests, and supported 48,194 direct employee labor hours to perform this release process.”

Accepting those figures as true shows an average request of 20 pages which requires 29 minutes of employee labor. Using several of this company's past invoices as a guide, here is what they would typically charge for this average request:

Processing fee	\$17.50
Copy charge (\$.75/page)	15.00
Shipping & handling	<u>3.00</u>
TOTAL DUE (w/o sales tax)	\$35.50

You decide whether these charges are warranted by 29 minutes of work by a record custodian, using equipment which typically costs 3 or 4 cents per page to operate.

The underlying problem here is there are **no incentives for health care providers to reduce these costs**. In most cases, the provider is just passing on the costs to another entity — the patient, the insurance company, the patient through his or her attorney, etc. We hope you will change that by passing Senate Bill 195.

Thank you.

