Motion

The Senate Committee on Health, Children, Families, Aging and Long Term Care:

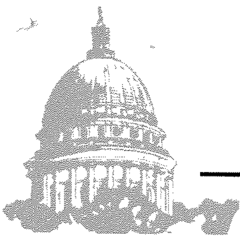
1. **Requests that the Joint Audit Committee direct the Legislative Audit Bureau to determine what factors, including those in s. 146.83(3m)(a), Stats., should be considered in making an approximation of actual costs of providing copies of health care records of health care providers and others who maintain records for health care providers; and request information from health care providers and others who maintain health care records regarding the costs attached to these factors.**

2. **Requests the Department of Health and Family Services to modify Clearinghouse Rule 03-111. The Department shall consider the findings of the Legislative Audit Bureau when modifying the proposed rule. If the Department does not agree, by the end of the Committee's current review period, to consider making modifications, the Committee objects to the proposed rule under s. 227.19(4)(d), Stats.**

AYE ✓ **NO**__________

Senator Tim Carpenter

Please see attached letter.



WISCONSIN STATE SENATE
TIM CARPENTER
SENATOR – 3RD DISTRICT

State Capitol • PO Box 7882 • Madison, WI 53707-7882 • Phone: (608) 266-8535

April 5, 2004

Via Hand Delivery

Senator Carol Roessler
Chair, Committee on Health, Children, Families, Aging and Long-Term Care

Dear Senator Roessler:

Enclosed please find my completed ballot voting "aye" to recommend modifications to Clearinghouse Rule 03-111 relating to HFS 117, Wis. Admin. Code, pertaining to fees for copies of health care records.

At the public hearing on March 30, 2004, the State of Wisconsin Board of Aging and Long Term Care submitted testimony requesting a change in HFS 117 so that Medical Assistance ("MA") patients, especially nursing home residents whose care is paid for by MA, can get access to their personal health care information without charge. The following testimony from the Board of Aging and Long Term Care is particularly troubling:

> "MA clients are allowed to keep only $45 of their income each month as a Personal Needs Allowance. This represents the entire sum of their disposable income. From this allowance, the resident must purchase things such as personal grooming items, haircuts and perms, letter writing supplies, long distance telephone calls, and gifts for the grandchildren, to name but a few. Even with the relatively low maximum per-page fee allowed by HFS 117, the cost of obtaining a record could be a significant drain on resident's meager funds. This cost will, in many cases, puts records entirely out of her reach. The right of access will continue to be an illusion for the poor."

The Board on Aging and Long Term Care's testimony requested the following addition to the Clearinghouse Rule:

> "When records are requested by or on behalf of an individual whose care is being paid for by Medical Assistance, the health care provider may not assess a charge for copying a record."

Toll Free: (800) 249-8173 E-mail: sen.carpenter@legis.state.wi.us Fax: (608) 282-3543
Website: www.legis.state.wi.us/senate/sen03/news

Senator Roessler, I would like serious consideration of the Board on Aging and Long Term Care's request that any modification of HFS 117 include the following language: "When records are requested by or on behalf of an individual whose care is being paid for by Medical Assistance, the health care provider may not assess a charge for copying a record."

I respectfully request that the Committee recommend that the Legislative Audit Bureau and the Department of Health and Family services consider such modification.

Sincerely,

Tim Carpenter
State Senator

Halbur, Jennifer 4-8-04

To: froehlke@execpc.com; swandby@swandby.com; jbloch@wha.org; aliceo@wismed.org; markg@wismed.org

Subject: CR 03-111 relating to fees for copies of health care records

CC'd Karen Asbjornson + Pam Matthews

Hi,

Here is a copy of the letter Senator Roessler sent to the Department of Health and Family Services regarding CR 03-111. Please feel free to call me with any questions.

Thank you,

Jennifer

4-8-04 cr 03-111 fees med rec ...

APR 07 2004

John L. Caviale

Attorney At Law

702 - 57th Street • Kenosha, Wisconsin 53140
Phone (262) 657-7666 • Fax (262) 657-1815

March 26, 2004

Senator Roessler
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Roessler:

My name is John Caviale and I am a lawyer in Kenosha, Wisconsin. I have been practicing law for 24 years doing personal injury work as well as pro bono defense work for indigent criminal defendants, etc.

I urge you to support the proposed rule CR 03-111 which sets uniform fees for obtaining copies of medical records regardless of whether or not an action has been commenced.

Currently, if a lawsuit has been filed, then the fees for obtaining medical records are quite reasonable and approximate what it actually costs the facility to reproduce the copies and mail them. However, if no lawsuit is commenced, the fees are anywhere from five to ten times that amount, which is just profit for the medical records facilities and grossly overcharges the consumer for these records. It is routine to pay $20.00 to $50.00 for one to twenty pages of records. Some of the companies even charge a postage and handling fee and then charge state sales tax on top of that. As you know there is no sales tax on a postage stamp, yet these companies charge my clients who are consumers for the records.

The consumer has no recourse. If he or she requests medical records from a clinic, a doctor or a hospital and that hospital has hired a copy service to do the work for them, there is no other way to get the records but to go through that copy service. These companies have been grossly overcharging for these records for years. If the consumer does not pay the freight he cannot get his medical records, which legally he is entitled to have. I am sending a few examples to show the exorbitant rates that have been charged to clients of mine. The last example shows that we requested nineteen pages of medical records and we were billed $42.52. When we received this bill, we realized that we already had a lawsuit pending, but had neglected to put the case number on the

request. With the case number, the bill was reduced to $9.35. As you can see the fees being charged are exorbitant and unreasonable. The actual postage was $.33, but they charged us a mailing charge of $6.15, almost twenty times the actual cost. And this is on top of the retrieval fee as well as the request, review and processing fees. These are just a few examples, but I could send dozens more.

It is the consumers, your constituents, who pay the price for unreasonably high fees. The current state of the law actually encourages litigation. It would be cheaper to file the lawsuit and then collect the medical records. I have not resorted to this yet. CR 03-111 would promote settlement and be helpful to the consumer and to the insurance industry as a whole.

It is the medical record copying companies who are making these huge profits. I can tell you from experience that they do not provide good service either. Frequently we have to follow up with requests that are months old only to find out that the copying service has lost our request or claims never to have received it.

I urge you to support this important legislation to protect your constituents against the profiteering which has been going on for too long.

Very truly yours,

John L. Caviale

JLC/slw
Enclosures

****

MIDWEST MEDICAL RECORD ASSOCIAT KG3942
999 PLAZA DRIVE
SUITE 690
SCHAUMBURG, IL 60173
8474139660
TAX ID NO. 36-3949551

****

JOHN L CAVIALE
JOHN L CAVIALE
702 57TH STREET
KENOSHA, WI 53140

4146577666

INVOICE FOR MEDICAL RECORDS

Dr. Schulgt

		Reference No.:	NO COURT INFO
Invoice No.:	KG3942	Patient:	LENORA JOHNSON
Invoice Date:	09/23/98	Hospital:	ALL SAINTS MEDICAL GROUP
Hosp Rep:	228	Request No.:	11311 Request Date: 09/10/98

SUMMARY OF CHARGES

SERVICE RENDERED	QUANTITY	AMOUNT
PROCESS FEE	1	25.00
COPY CHARGE PAPER	13	13.00
COPY CHARGE FICHE	0	0.00
COPIES OF BILLS	1	10.00

POSTAGE & HANDLING:	7.20
RETURN RECEIPT:	0.00
TAX:	2.64
LESS: PAID IN ADVANCE:	(0.00)
AMOUNT DUE:	57.84

TERMS: DUE IMMEDIATELY

TO PROPERLY CREDIT YOUR ACCOUNT, PLEASE INCLUDE THIS INVOICE NUMBER KG3942 WITH YOUR REMITTANCE.

PAID 9/29/98 ✓ #6594

PLEASE RETURN A COPY OF THE INVOICE WITH YOUR REMITTANCE

****

MIDWEST MEDICAL RECORD ASSOCIAT
999 PLAZA DRIVE
SUITE 690
SCHAUMBURG, IL 60173
8474139660
TAX ID NO. 36-3949551

****

KH1293

FILE COPY

JOHN L CAVIALE
702 57TH STREET
KENOSHA, WI 53140

4146577666

INVOICE FOR MEDICAL RECORDS

Reference No.:

Invoice No.: KH1293
Invoice Date: 09/19/98
Hosp Rep: 119

Patient: LENORA JOHNSON
Hospital: ST. LUKE'S HOSPITAL
Request No.: 3442 Request Date: 09/14/98

SUMMARY OF CHARGES

SERVICE RENDERED	QUANTITY	AMOUNT
PROCESS FEE	1	25.00
COPY CHARGE PAPER	1	1.00
COPY CHARGE FICHE	0	0.00
COPIES OF BILLS	1	10.00

POSTAGE & HANDLING:	5.40
RETURN RECEIPT:	0.00
TAX:	1.98
LESS: PAID IN ADVANCE:	(0.00)
AMOUNT DUE:	43.38

TERMS: DUE IMMEDIATELY

This is for 1 page of records.

TO PROPERLY CREDIT YOUR ACCOUNT, PLEASE INCLUDE THIS INVOICE NUMBER KH1293 WITH YOUR REMITTANCE.

PLEASE RETURN A COPY OF THE INVOICE WITH YOUR REMITTANCE

ACT

Medical Record Services, Inc.
P.O. Box 8408
Green Bay, WI 54308-8408
(920) 469-5011

TAX I.D. 39-1551554

INVOICE # 915789

DATE MAILED: 07/19/99

CASE/CLAIM #: Court CASE # 98CV 1006

Facility: Kenosha Hospital
Kenosha, WI 53143

PATIENT NAME: SUEHRING, BRENDA

PATIENT #: 12 15 63

DATE OF BIRTH: 12/16/45

SOCIAL SECURITY #:

REQUESTOR:
JOHN L. CAVIALE
702 - 57TH ST
KENOSHA, WI 53140-

☐ PICK UP

COMMENTS: PAID 7-22-99

Requesting Party:

I A O P C W D S A

FOR OFFICE USE ONLY
C.C.ID: 491002 223
HGP 19 Postage: 1.21
SRV COUNTY: KSH
Total Pages: 22

[illegible] - Court Case Charge =
19 pages x .45 = 8.55
Postage .33
$ 8.88
5.5% TAX .47
$ 9.35

Request review and processing	$ 15.50
Retrieval Fee	2.50
Per Page Fee	16.15
Mailing Charge	6.15
Sales Tax	2.22
Total	42.52
Amount Prepaid –	(0.00)
Check #	9.35
Balance Due:	$ ~~42.52~~

*Payable Upon Receipt

** PLEASE RETURN PINK COPY OF THIS INVOICE WITH YOUR PAYMENT, TO **ACT** AT THE ABOVE ADDRESS.*

State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

March 1, 2004

The Honorable Alan J. Lasee, President
Wisconsin State Senate
17 West Main St., Room 401
Madison, WI 53702

The Honorable John Gard, Speaker
Wisconsin State Assembly
17 West Main St., Room 208
Madison, WI 53702

Re: Clearinghouse Rule 03-111, Ch. HFS 117

Gentlemen:

In accordance with the provisions of s. 227.19 (2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19 (3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rules, please contact Larry Hartzke at 267-2943.

Sincerely,

Helene Nelson
Secretary

cc Gary Poulson, Assistant Revisor of Statutes
Senator Joseph Liebham, JCRAR
Representative Glenn Grothman, JCRAR
Linda Huffer, DHFS Secretary's Office

PROPOSED ADMINISTRATIVE RULES – CR03-111; HFS 117
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.

Basis and Purpose of Proposed Rules

Section 146.83 (3m), Stats., as created by 2001 Wisconsin Act 109 and s. 908.03 (6m) (d), Stats., as amended by 2001 Wisconsin Act 109, direct the Department to prescribe by rule fees for reproducing patient health care records that are the maximum amount a health care provider may charge. The fee limits are to be based on an approximation of actual costs. The final proposed rules that the Department is recommending attempt to comply with this legislative directive.

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

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

The Department believes it has done its best to comply with its legislative directive. It has proposed a fee limit rule that:

- has a workable structure that is compatible with federal law and is simple to administer;
- is, or should be, uniformly understood by all affected parties; and
- states a fee limit that reasonably approximates the average actual cost of reproducing a medical record.

Changes to Rulemaking Order Analysis or Fiscal Estimate

- Changes to Rulemaking Order Analysis

The Department significantly revised its analysis section from that in the initial proposed order. The bulk of the changes were due to 2003 Wisconsin Act 118, which mandated changes to the content of several administrative rule-related documents. Specifically, the Department:

- Changed the format of the analysis to conform with newly-required areas required to be addressed;
- Expanded the analysis section from its original two pages to almost seven pages to address the information newly-required under s. 227, Stats.;
- Added a section regarding the effect of the rules on small businesses;
- Added a section regarding the (largely unknown) fiscal effect on the private sector;
- Added a section that describes how the proposed rules relate to pertinent federal regulations; and
- Added a section that describes the relationship of the proposed rules to comparable rules in adjacent states.

- *Changes to Fiscal Estimate*

The final proposed rule contains no changes that require an amended fiscal estimate.

Response to Clearinghouse Recommendations

The Department accepted all of the Clearinghouse comments except for the following:

Comment 5.a. (in part): In the first paragraph of the analysis, the word "requires" should be replaced by the phrase "requiring that."

Response: The Department believes that replacing the "requires" with the phrase "requiring that" would leave the sentence without a verb. Therefore, the Department has replaced the word "requires" with the phrase "requires that."

Final Regulatory Analysis

When an agency, such the Department, proposes a rule that may have an effect on small businesses (defined as entities that are independently owned and operated and not dominant in their field, and employ fewer than 25 full-time employees or have gross annual sales of less than $2.5 million), section 227.114, Stats., requires that agency to consider several methods for reducing the effect of the proposed rule on those small businesses. The revision of ch. HFS 117 will affect many small businesses, principally law firms that request health care records on behalf of clients, and small health provider offices that maintain and supply their patients' health care records to those authorized to request those records. The fee limits specified in ch. HFS 117 also will effect a small number of businesses that reproduce medical records on behalf of health care providers and transmit those records to authorized record requesters.

Chapter HFS 117 does not require compliance with any reporting, bookkeeping or other procedures. Nor does the proposed rule impose new requirements for professional skills that are not currently required to comply with requests for copies of health care records. Given that the proposed rules do not require reporting, bookkeeping or other procedures and skills, the question of exempting particular small businesses from some or all of HFS 117's provisions is moot.

The Department also cannot estimate the effect of the proposed rule on the above small businesses other than to note that the fee limits the Department proposes to specify in HFS 117 are both higher than those specified in the existing HFS 117 rules and applicable to a much greater variety of circumstances. Indeed, ch. HFS 117 will apply to all medical record requests that aren't covered by other applicable law or private contract. The Department believes that exempting certain law firms and health care providers from the rule's applicability would be contrary to the

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

Comments on Proposed Rule

- *Public Hearing Summary*

The Department held one public hearing on the proposed rule in Madison on December 15, 2003. Larry Hartzke and Dan Stier, of the Department's Office of Legal Counsel staffed the hearing. Fifteen people attended the hearing. Three persons provided oral testimony in favor of the proposed rule, two provided oral testimony against the proposed rule as written, and ten persons simply observed the proceedings. The Department's comment period remained open until Tuesday, December 30th. During the public comment period, which lasted from early November to December 30th, the Department received written comments from 35 persons. Generally, most representatives of medical record requesters supported the proposed rules. However, all of the comments the Department received form medical record maintainers reflected opposition to the Department's proposed rule. The specific comments and the Department's responses to the comments are contained on a subsequent table in this report. All written comments may be viewed in their entirety at the Department's website for the rules' promulgation at:
http://apps3.dhfs.state.wi.us/admrules/public/Home
(Enter the search term "HFS 117." Once at the rulemaking page for HFS 117, select the "Comments" tab to view any of the submitted comments.)

- *Public Comments Summary*

There are two opposing groups who are particularly interested and involved in the revision of ch. HFS 117. Indeed, the Department took pains to ensure that the advisory committee it formed to oversee the Department's development of a proposed rule evenly represented both groups. One group is trial attorneys who frequently request the medical records of their clients for the purpose of assessing the potential for legal action and insurers for the purpose of assessing and reimbursing medical care rendered. The Department refers to these groups collectively as "medical record requesters." The opposing interest group is those who are responsible for supplying the pertinent medical records, i.e., health care providers, medical record professionals, and entities that reproduce patient medical records on behalf of health care providers. The Department refers to these groups collectively as "medical record maintainers." The medical record requester side in this contentious promulgation generally supported the Department's initial proposed rules, while the medical record maintainer side strongly objected to the Department's proposed rules.

Medical record maintainers submitted most of the substantive comments the Department received on its initial proposed rule. Those comments were largely unsubstantiated assertions regarding two issues: 1) the deleterious financial effect of the Department's proposed fee limits on hospitals; and 2) the need for the Department to raise the amounts the Department assigned to various elements of its medical record reproduction cost model upon which the Department derived its proposed fee limit.

If the Department fully accepted all medical record maintainer assertions of higher amounts attributable to selected cost components of the act of complying with requests for copies of medical records, the "per request" component of the Department's proposed fee limit would be about 45% higher, while the "per page" component of the fee limit would be about 38% higher. The two cost components which would have the greatest effect on the Department's estimated fee limit are the

prevailing labor rates for complying with requests to reproduce medical records, and the cost of retrieving records from off-site storage. With respect to prevailing labor rates, in both its initial proposed rules and the accompanying final proposed rules, the Department has presumed an average labor rate, including benefits, of $16.00 per hour. Some medical record maintainers contend, but have not substantiated, that the average labor rate for complying with requests for copies of records is $20-21 per hour, instead of $16. Increasing the labor rate by $4-5 would increase the "per request" fee limit by about $4.00 and the "per page" fee limit by about $0.08.

With respect to the cost of retrieving and returning medical records from "off-site" storage, a key representative of medical record maintainers asserts, but has not substantiated, that 20% of medical record requests require retrieval of records from off-site storage at an average cost of $17 per request. If the Department fully incorporated recognition of those asserted costs for retrieval of records from off-site storage, doing so would add $3.40 ($17 times 0.20) to the "per request" component of the fee limit.

While the Department has not accepted either of these assertions due to lack of substantiation/documentation, the Department recognizes their potential impact on increasing the "per request" fee limit and reports those impacts here for the benefit of the legislature.

- List of Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted written comments via letter, fax or e-mail on the proposed revisions to Ch. HFS 117. With each person's name and affiliation is an indication of the individual's position on the proposed rules and whether or not the individual testified or provided written comments. The number preceding a name serves in the summary of hearing comments to indicate the person who made the specific comments.

Name and Address	Position on Revision	Action
1. Bernard T. McCartan State Bar of Wisconsin 6000 American Pkwy Madison, WI 53783	Supports proposed rule as written.	Oral testimony and written comments.
2. Mary Itzin Iron Mountain Health Information Services 5170 S. 6th St. Milwaukee, WI 53221	Opposes proposed rule as written.	Oral testimony and written comments.
3. Michael Wickman SOURCECORP 2519 Huntington Ways Suamico, WI 54173	Opposes proposed rule as written.	Oral testimony and written comments
4. Cheryl Quimby 1030 Ontario Rd. Green Bay, WI 54308	Opposes proposed rules as written.	Oral testimony.
5. Janet Swandby 44 E. Mifflin St. Madison, WI 53703	Opposes proposed rule as written.	Observer at hearing and provided written comments.
6. Chrisann Lemery 2826 Black Bridge Janesville, WI 53545	Opposes proposed rule as written.	Observer at hearing and provided written comments.
7. William Donaldson Wisc. Board on Aging & Long-Term Care 1402 Pankrantz St., Suite 111 Madison, WI 54704	Advocates changes to the proposed rules to ease the financial burden on nursing home residents covered under Medical Assistance.	Provided oral testimony.
8. Bruce Bachhuber Wisc. Academy of Trial Lawyers 44 E. Mifflin St. Madison, WI 53703	Supports proposed rule as written.	Oral testimony.
9. Deb Sybell State Bar of Wisconsin Madison, WI	Supports the proposed rule as written.	Observer at hearing.
10. Scott Froehlke Wisc. Academy of Trial Lawyers 44 E, Mifflin St., Suite 103 Madison, WI 53703	Supports proposed rule as written.	Observer at hearing.

11. Ruth Simpson Wisc. Academy of Trial Lawyers 44 E. Mifflin St. Madison, WI 53703	Supports proposed rule as written.	Observer at hearing.
12. Michael Blumenfeld Blumenfeld & Asso. 16 N. Carroll St., Suite 800 Madison, WI 53703		Observer at hearing.
13. Kelly Rosati Wisc. Assn. Of Health Plans N9476 Pine Valley Lane Wis. Dells, WI 53965		Observer at hearing.
14. Pamela Stampen 6730 Frank Lloyd Wright Ave. Middleton, WI 53562		Observer at hearing.
15. Kathryn A. Ambelang Wisc. Physicians Service (WPS) 1717 W. Broadway Madison, WI 53715		Observer at hearing.
16. Bob Andersen Legal Action of Wisconsin, Inc. 31 S. Mills St. Madison, WI 53725	Requests revisions to proposed rule.	Written comments.
17. Sue Griswold Shawano Medical Center 309 N. Bartlette St. Shawano, WI 54166	Opposes the proposed rule as written.	Written comments.
18. Cathy Hansen St. Croix Regional Medical Center 204 S. Adams St. St. Croix Falls, WI 54024	Opposes the proposed rule as written.	Written comments.
19. Maureen McNally Froedtert Hospital 9200 W. Wisconsin Ave. Milwaukee, WI 53226	Opposes the proposed rule as written.	Written comments.
20. Thomas Kirschbaum Dean Health System 1808 W. Beltline Highway Madison, WI 53713	Opposes the proposed rule as written.	Written comments.
21. Kay Naatz Myrtle Werth Hospital 2321 Stout Road	Opposes the proposed rule as written.	Written comments.

Menomonie, WI 54751		
22. Paul F. Soczynski Community Care Organization 1555 S. Layton Boulevard Milwaukee, WI 53215	Seeks exemption from proposed rules.	Written comments.
23. Beth Malchetske ThedaCare, Inc.	Opposes the proposed rule as written.	Written comments
24. Debbie Buckman St. Vincent Hospital P.O. Box 13508 Green Bay, WI 54307	Opposes the proposed rule as written.	Written comments.
25. Stephen F. Hansen Hansen, Shambeau, Maroney & Anderson, S.C.	Supports the proposed rule as written.	Written comments.
26. Kaye E. Anderson Hansen, Shambeau, Maroney & Anderson, S.C.	Supports the proposed rule as written.	Written comments.
27. Dave Jackson Midwest Medical Record Assn. 999 Plaza Dr., Suite 690 Schaumburg, IL	Opposes the proposed rule as written.	Written comments.
28. Stuart Spaude Appleton, WI	Advocates adoption of fee structure for worker's compensation and personal injury claims into HFS 117.	Written comments.
29. Elizabeth Schumacher Wisc. Medical Society Madison, WI	Opposes the proposed rule as written.	Written comments.
30. Dawn Stoller Paralegal 733 N. Van Buren Street, 6th floor Milwaukee, WI 53202	Advocates revisions to proposed rules as written.	Written comments.
31. Laura Leitch Wisc. Hospital Assn. 5721 Odana Rd. Madison, WI 53744	Opposes the proposed rule as written.	Written comments.
32. Michole Madden Assistant to the Office of General Counsel Wisconsin Medical Society 330 E Lakeside Madison, WI 53715	Suggests clarifications to proposed rule as written.	Written comments.
33. Jeff Zirgibel Karp, Karp & Zirgibel, S.C. 2675 N. Mayfair Road, Suite 300	Advocates revisions to the proposed rule.	Written comments.

Milwaukee, WI 53226		
34.Richard Freiwald Iron Mountain Health Information Services 5170 S. 6th St. Milwaukee, WI 53221	Opposes proposed rule as written.	Written comments.
35. Marianne Baumgarten Reedsburg Are Medical Center Reedsburg, WI 53959	Opposes proposed rule as written.	Written comments.

Public Comments

Comment Sequence Number and Rule Reference (as found in initial proposed rule order)	**Comment** (**numbers** are associated with person listed on the list of hearing attendees and commenters)	**Department Response**
1 General	Those DHFS staff who made the changes to the draft clearly did not take into consideration the comments and data that were presented on behalf of AHIOS after the Advisory Committee meeting, nor does the draft reflect any knowledge of the process of duplicating patient health care records. **5**	The Department has considered all information that has been presented to it and has earnestly attempted to construct a representative cost model of the medical record reproduction process and populate the components of that model with reasonably accurate data in an open forum. The Department has modified its proposed fee limits on several occasions over the past year based on its consideration of a variety of factors, including: - whether a reasonable person would deem the source of the information to be a knowledgeable source of the information; - whether the source of information has supplied documentation that substantiates the information the source presents; and - the extent to which the information presented is validated by other similar or related information known to the Department, such as that provided in the literature or presented by other sources.
2 General	Keep the current statute in place. **2, 34**	The Department does not have the ability to change the Wisconsin statutes; only the Wisconsin legislature has that power. Moreover, the Department did not advocate changing the previous statutory language regarding medical care record copying fees.
3 General	Supports the proposed rule. Commenter #8 stated that his group's support is based on their belief that the proposed rules will stabilize and create uniformity for members when obtaining copies of duplicate medical records, and that, while believing the fee limits proposed by the Department to be too high, also believes that they represent a compromise between the principal affected parties who have been	No response needed.

		involved with the revision of statute and these rules. **1, 8, 25, 26**	
4	General	The Department is inconsistently exercising its prerogative to adopt administrative rules by claiming broad authority under s. 227.11(2)(a), Stats., for the promulgation of chs. HFS 79 and HFS 2, but claiming inadequate statutory authority for ch. HFS 117. The Department has broader authority to adopt rules for ch. HFS 117 than it does for ch. HFS 79 (relating to SSI overpayment recoupment and proposed ch. HFS 2 (relating to foster care overpayment recoupment.) **16**	The Department disagrees. Section 227.11(1) begins by declaring that, "except as expressly provided," ch. 227 does not confer rulemaking authority upon or augment the rulemaking authority of any agency. Section 227.11(2) confers a generic rule creation authority, but only for situations in which the state agency in question is enforcing or administering some other statute. In the case of HFS 117, the Department is not enforcing or administering another statute. The Department is revising HFS 117 solely because sections 146.83(3m) and 908.03(6m)(d) require the Department to create rules declaring a copy fee limit. Neither 146.83(3m) nor 908.03(6m) give the Department ***any*** enforcement power, and neither statute gives the Department ***any*** ongoing program to administer. The Department simply is revising rules that declare fee limits, and, once having done so, the Department's responsibility is done until the time comes for engaging in the next periodic review of those rules. The HFS 117 situation simply does not qualify under section 227.11(2). In contrast, the Department actively operates the state SSI program in Wisconsin. (See sections 49.77 and 49.775, and see the definition of "department" in s. 49.66, which declares that the "department" is DHFS.) The Department's act of recouping benefit amounts that had been incorrectly paid to recipients of benefit programs (the topic of proposed HFS 2) begins with the fact that the Department administers a benefit program that paid out benefits in the first place. Furthermore, the Department of Administration has assigned to state agencies certain accounting and bill collection tasks. Unlike the HFS 117 situation, DHFS has an active enforcement or administrative role for HFS 79 and HFS 2. Mack v. DHFS, 231 Wis.2d 644 (1999), challenged the Department's efforts to recoup SSI state supplemental payments that had been erroneously made. The court acknowledged that a government agency has a

		common law right to recover erroneous payments, but the court stated that if the agency wanted to do so via a recoupment from future benefit payments, the agency needed a rule. Therefore, the Department is promulgating HFS 2. In sum, the Wisconsin Court of Appeals has clearly recognized an agency's legal authority to collect via the means of adopting an administrative rule.
5 General	The Department should have used an independent source to provide a forensic accounting analysis to determine the approximate actual costs. The composition of the Committee itself should have dictated this course of action as there was only one member who could have provided the Department with any data taken from an actual health care setting that could have possibly demonstrated those costs the Department was to determine. The Requestors never offered hard data to support or refute any position, and the even the majority of the Maintainers outsource the release of information function and would have to rely on data supplied by their agents. There is some great irony that the Requestors who drove the process to amend the statutes offered no data to help the Department determine approximate actual costs. **27**	The Department believes that each of the seven medical record maintainer representatives on the advisory committee could have contributed pertinent information toward approximating actual costs, and, as the documents posted by the Department shows, several of them did. The Department solicited, but did not expect, record requester representatives to supply relevant information regarding record reproduction costs. Logic dictates, however, that record requesters, as is the case with customers generally, are not in the position to know the time and costs required to produce the service or product they are receiving. To approximate the "actual costs" specified in the authorizing statutes, the Department had to rely on data from medical record maintainers. The only reasonable alternative would have been for the Department to commission or conduct original time-study research of record reproducers' functions; something the Department had neither the time nor funds to conduct.
6 General	As we feel the proposed rules changes serve only a narrow group interest, we would be interested in the Department demonstrating how the proposed rules changes serve the broad public interest and also demonstrate the benefits derived by all the affected parties. **27**	The Department believes that the legislature presumed the "broad public interest" would be served by the Department's effort to specify fee limits that approximated actual medical record reproduction costs. Achieving consensus on what fee limit best serves the broad public interest is unlikely to be achieved. Consequently, the Department devoted its efforts to attempting to objectively respond to its legislative directive. Ultimately, it is for the legislature, at whose behest the Department has proposed these rules, to

			determine whether these rules are sufficiently in the public interest. The Department admits that without a much more rigorous and verifiable cost analysis across numerous medical record maintainers, the true "actual cost" is very difficult to determine, and will always be contentious.
7	General	The statutes and administrative regulations have not clearly addressed this issue. The current controlling laws, Wis. Stats. sec. 908.03(6m); HFS 117 as it currently reads, and Wis. Stats. sec. 146.83 have been difficult to apply. Health care providers and other entities such as law firms representing patients have not agreed on the interpretation of the language of these provisions as they apply to the fees for copies of medical records. This has caused health care providers to spend time and money trying to interpret and implement the existing fee structure in its daily operations. The law is so confusing that Dean has, been involved in litigation related to medical record fees. Establish a clearly defined fee structure that will not be subject to further interpretation by the entities making the request. If the Department does not consider these issues in its rulemaking process, the final product will be a rule that continues to produce disputes between health care providers and entities requesting records. **20**	The Department agrees that, to the extent possible, it should strive to specify rules that are clear and not subject to varying interpretations. To do less is a disservice to the public. Moreover, the Department certainly agrees that, over the past 10 years, there has been widespread confusion regarding the applicability of HFS 117. That confusion and disagreement among affected groups is likely to have been one of the reasons the legislature modified the applicable statutes. However, the Department believes that, in the course of this rule's development, whenever the Department received comments from interested parties asking for clarification about an ambiguity about the rule's application, or pointing out a source of possible confusion, the Department responded by providing sufficient clarity to the proposed rule. Consequently, the Department believes that the proposed rule's applicability is sufficiently clear.
8	General	The rule should include some authority for HFS to enforce it rule as against any person who violates the rule, health care provider or not. **33**	The Department believes that such authority would need to be conferred to the Department by the legislature through statute. However, the pertinent statutory provisions do not convey such authority to the Department. The Department believes it does not have sufficient statutory authority to enforce HFS 117.
9	HFS 117.02	**"Maximum" fees versus uniform fees:** The draft rule states that the purpose of this chapter is to "establish uniform fees that are the maximum fees that may be charged…" By setting a "maximum" fee, various entities requesting records may continue to argue that a lower fee should be applied to their request for some reason. **Recommendation:** The rule should establish a uniform fee structure that is clearly defined, not a "maximum" fee that could still be subject to interpretation by the persons requesting or providing the information. **20**	The Department disagrees. Section 908.03(6m)(d) directs the Department to prescribe "uniform" fees. However, both sections 146.83(3m)(a) and 908.03(6m)(d) direct the Department to prescribe fees that are the "maximum amount that a health care provider may charge…." Consequently, the Department has no choice but to specify maximum fees in HFS 117.

	Suggests that the Department specify a uniform fee in ch. HFS 117, not a maximum fee. The goal of the law giving the authority to the Department was to set a consistent or uniform fee for providing duplicate copies of patient health care records. The language in the rule stating that a health care provider "*may* charge the requester *no more than* the following fees" is harmful. If the rule is truly based on the actual costs of providing the service, then all providers should be charging a uniform fee which is set specifically in the rule. In every state in which such a vague cap is the law, hospitals and release-of-information companies have been sued over the amount charged because of such "no more than. . ." language. Avoiding such litigation is a primary impetus for passing specific rate-setting legislation. **5** Dean Health Systems is concerned that the draft rule will not lead to clarification and simplification when determining the cost for copies of health care. **20**	The Department cannot eliminate disagreements about the statute language. Indeed, some requesters may represent parties particularly deserving of free or reduced-fee copies, but the Department does not believe it has the requisite authority to specify exceptions or exemptions for particular parties or groups in HFS 117, or to declare that all providers/record maintainers must charge a particular fee even if their own actual costs happen to be lower than that fee. Unless applicable laws (federal regulations, Wisc. statutes) supercede and provide for lower fees, medical record providers/maintainers are under no obligation (outside of contractual arrangements to the contrary) to accede to record requesters' requests for lower fees, regardless of the reason. Providers/record maintainers do have the power to charge less than the HFS 117 fee limits if they wish to do so. If the legislature wishes to prohibit providers/record maintainers from charging less than the HFS 117 fee limits, a statute amendment would be needed.
10 HFS 117.02	Maintains that proposed fee limit for requesters is unaffordable for either the low-income persons applying for eligibility for state and federal public SSI benefits or the entity representing those persons. Therefore, recommends revising s. HFS 117.05 (2) to specify a lower fee limit in cases where a requester is involved in judicial or administrative proceedings regarding the person's receipt of public benefits from a government program. Maintains that nothing in federal or state law prohibits the Department from extending a lower fee to persons requesting information in judicial or administrative proceedings regarding the individual's receipt of public benefits from a governmental source. Claims that, based on the fiscal estimate, such a revision would save the state at least $623,000. **16** Requests that the Program of All-inclusive Care for the Elderly (PACE) and the Wisconsin Partnership programs be exempt from charges for duplicate copies of medical records because providers of medical records occasionally charge them a fee for duplicate copies. **22**	Commenter #16 can be assured that Department is anxious to conserve its monies. However, it believes that its desire to conserve its resources cannot override the legislature's directive to specify fee limits that approximate actual (record reproducer) costs. The Department believes that for it to specify fee limits from the perspective of being a medical record requester instead of that of an entity attempting to approximate actual costs in an unbiased manner would be a wrong approach. As it stated in response to the fourth "general" comment (also put forth by commenter #16), the Department believes that it does not authority to either exempt or favor particular groups of affected persons without explicit legislative authority to do so. If the legislature were to give such favored status to one or more affected groups, the Department would certainly reflect that decision in HFS 117.

	Requests that the proposed rule specify that residents of nursing homes whose care is funded by Medicaid receive their copies of records free of charge. **7**	
11 HFS 117.03	It is not necessary to create another definition for "health care records": Health care records means those records as defined in Wis. Stat: 146.82(2)(d) and qualify as "designated record set" under 45 CFR 164.501(1)(i). **6**	The Department agrees that it is not necessary to create another definition for health care records and has modified HFS 117.03(3) accordingly to cross reference s. 146.81(4) [which, in turn, references 146.82(2)(d).] However, the Department believes that reference to 45 CFR 164.501(1)(i) is not necessary insofar as doing so would not add anything significant to or clarify the definition in HFS 117.
12 HFS 117.03(4)	**Personal Representatives:** We appreciate the Department's provision to allow a retrieval fee for requests made by individuals other than the patient or the patient's personal representative. This is consistent with the requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). If a request for copies is made by someone other than the patient or the patient's personal representative, a retrieval fee can be charged. However, the phrase "personal representative" is defined under 45 CFR 164.502(g), of the HIPAA regulations. Attorneys specializing in HIPAA issues have had protracted debates on the application of the definition of "personal representative" under the HIPAA regulations. We are concerned that the varying definitions for this phrase will open up the door to requests that technically should be calculated at one fee (including the retrieval fee), but the requester (an attorney representing the interests of the patient in some legal matter, for example) may forcefully argue they are entitled to a lower fee. Then health care providers will be asked to administer a fee structure that is still open to interpretation, which will lead to disputes regarding the proper fee to charge. **Recommendation:** The rule will be much stronger if there is a clear definition of "personal representative." If the HIPAA regulations will still be cited for the definition of "personal representative" we would ask that the Department include clarification that attorneys representing the patient in a legal matter or other entities that have a business relationship with the patient are not included in the definition. Clearly define the phrase "patient representative" so that there is no misunderstanding regarding the requests that will not include a retrieval fee versus the requests that should include a retrieval fee. **20**	HFS 117, as proposed, does not use the term "patient representative." The Department has attempted to be as clear as possible in stating that HFS 117.05 specifies one fee limit for two classes of parties. The first is individuals (or their "personal representatives") who request a copy of their own health care records. The second class is everyone else, including attorneys representing patients in a legal matter, regardless of the stage of that legal matter. The Department makes this clear when it states in HFS 117.05(3)(intro): "If a person is requesting copies of another person's health care records and the person making the request is not the personal representative of the patient, a health care provider may charge the requester no more than the following fees:" Further, the Department addresses the question of who is a "personal representative" by specifying in HFS 117.03(4) that a personal representative is a person who has ***both***: 1) the authority under state law to act on behalf of the patient; and 2) qualifies as a "personal representative" under 45 CFR 164.502(g). The federal regulation relies upon the categories of people who have authority under state law to make health care decisions on behalf of the patient, such as a parent or guardian of a minor patient or a guardian of an adult patient, but the federal regulation has certain

	The definitions of "patient representative" and "personal representative" are confusing and need clarification. The definitions of "patient representative" and "personal representative" as included in Wisconsin law and under federal HIPPA have different meanings. Froedtert believes that the rule should be altered so that the definition is consistent with the federally mandated language. **19** Clarify the conflicting definitions of "patient representative" and "personal representative" in the rule. The federally mandated HIPAA definition of "personal representative" differs from the proposed Wisconsin language for "patient representative." The Society suggests that Wisconsin language be consistent with federally mandated language. **29** The Department is confusing the definition of "personal representative" in HIPAA and "patient representative" in Wisconsin law. "Personal representative" is a specific term in federal law meaning someone who is acting on behalf of someone WHO CANNOT ACT FOR THEMSELVES. HIPAA specifically cites (1) parents/guardians of minors, and (2) executors of estates of deceased persons. This is very different from Wisconsin law's "patient representative". This confusion will present significant and unnecessary problems in the implementation of the uniform fee. HIPAA defines who the "individual" is (the person who received treatment), and who else can have access to a record on behalf of a patient and, therefore, has to pay only for the cost of copying the record. All other third parties (including "patient representatives" under Wisconsin law) will be covered by HFS 117 and will pay Wisconsin's fee. There is no need to change, or refer to, the definition in Wisconsin law. **5**	exceptions. The federal concept of a "personal representative" also differs considerably from the usage of the phrase in the Wisconsin statutes. In Wisconsin, the term "personal representative" in statutes means a person who is authorized to administer a decedent's estate (referred to in many other states as an executor or administrator of the estate). See the definition in Wisconsin statute section 990.01(27m), and its use in section 146.81(5). Wisconsin law cannot constrain the parameters of federal regulations. Because of the fact that the person with authority to act on behalf of a patient in Wisconsin varies with the variety of medical setting (some varieties of medical care in Wisconsin have statutes with special requirements concerning consent for that variety of medical care), and because there indeed are exceptions in the federal regulation, the Department has not found a ready way to create a list of which people under which circumstances will qualify for the lower fee under HFS 117 that is required by the federal HIPAA provisions. The preceding response may, however, be based on a misunderstanding of the commenters' intent. If the thrust of the commenters was that they interpret the title and introduction of HFS 117.05(2) as being confusing in stating "patient or personal representative," the Department has amended the language to clarify that HFS 117.05(2) applies only to individual "patients" or "personal representatives" of patients; not to "patient representatives," which "the phrase "patient or personal representative" might imply to a reader.
13 HFS 117.03(4)	It is unreasonable not to include the plaintiff's attorney, irrespective of the matter involved, as in the stead of the plaintiff. The plaintiffs attorney is acting for the plaintiff and the two are indistinguishable for purposes of obtaining records of the plaintiff. I would strongly suggest you reconsider that portion of the rule. **33**	To maintain consistency with the federal HIPAA regulations and federal policy interpretations of HIPAA, the Department has structured HFS 117 so that the lower "individual" fee limit does not apply to an attorney requesting a client's medical records. The Department's position is strongly influenced by federal commentary responding to a comment on page 53254

		of the August 14, 2002 Federal Register. In the response, the federal government clarifies that the limited cost components specified under the HIPAA regulation in 45 CFR 164.524(c)(4) apply ***only*** to individuals' and individuals' personal representatives' requests for copies of individuals' medical records. It also states that "The fee limitations in 164.524(c)(4) do not apply to any other permissible disclosures by the covered entity, including disclosures that are permitted for treatment, payment or health care operations, disclosures that are based on an individual's authorization that is valid under 164.508, or other disclosures permitted without the individual's authorization as specified in 164.512."
14 HFS 117.05	**The draft rule does not establish one fee structure:** There is one retrieval fee for requests up to 5 pages, and a second retrieval fee for requests totaling 5 or more pages. There is one rate for certifying up to 5 pages of records and a second rate for certifying 5 or more pages of records. The cost to retrieve records does not increase significantly if the number of copies is greater. The cost to certify records does not increase significantly if the number of copies being certified is greater. The fact that there are still many variables in calculating the fees charged for medical records will make this rule more difficult to administer. **Recommendation:** Establish a single fee structure based on a per page rate for the records, regardless of the volume of records produced. Establish one retrieval fee regardless of the number of pages being certified. Establish one certification fee regardless of the number of the pages being certified. **20** It is illogical and unclear how or why the Department arrived at a two-tier fee. **24, 6, 35** The Department does not explain the process it used to develop the two-tier fees. The two-tier system is not substantiated by actual costs. The two-tier system is based on number of pages, but the facts presented to the Department did not provide any evidence that the effort required to retrieve and review a patient's record is related to the number of pages, which are ultimately copied and sent to the third party requester. Instead, the Department has added a burden to the maintainers to administer two fee structures for this rule's requests along with administering two other	The Department recognizes that the two tiers of fee limits it has proposed may be based on reasoning that, while intuitive to the Department, may not reflect the reality as stated by the commenters. Furthermore, the Department does not wish to promulgate a rule that is difficult to administer or is a burden to comply with. However, the Department does not agree that the two tiers of fee limits it has proposed are unreasonable, difficult to administer or a burden to comply with. The Department recognizes that all costs cannot neatly and cleanly be classified as either solely "fixed" (regardless of record quantity) or "variable" (dependent on the record quantity.) In particular, the staff time expended for complying with retrieving records, while "mostly fixed," may be expected to be vary somewhat insofar as responding to a very small number of records may be expected to take significantly less than the 15 minutes the Department has estimated for a 25-page record. In addition, one could reasonably assume that copier equipment costs, while designated as "mainly fixed," might also be less to the extent that the copier is used less. Therefore, an argument may be made that requests generating a very small number of record copies, e.g., less than five, should have a lower "per request" cost component. If one assumes that a small number of copies consumes 10 minutes

	fee structures for workers compensation requests, Social Security Disability requests, and mental health requests. Therefore, maintainers potentially will have five fees to administer (or four, according to commenters #21 and 35.) **6, 17, 18, 21, 24, 35** Creating two base fees dependent on the number of pages copied is unprecedented and completely illogical. No other state sets two different base fees. There is absolutely no evidence that the effort required to retrieve and review a patient's record and validate the authorization or interpret and apply the appropriate law are related at all to the number of pages which are ultimately copied and shipped to the third party requestor. **5** Does not support the differential fee structure as currently proposed because there is no real difference between the cost of the copying process for a record requested by a nursing home resident and the cost of coying the same record requested by someone else. **7** The proposed rule includes two tiers for fixed fees with the tiers based on the number of pages copied. Fixed fees that presumably are to cover fixed costs should not vary depending on the number of pages copied if the fee represents a fair approximation of actual fixed costs. WHA asks that the rule not include tiers for fixed costs based on the number of pages copied. **31**	instead of the 15 minutes the Department estimated for 25 pages of records and that the copier equipment cost per request is $0.10 instead of the $0.20 the department estimated for 25 pages of records, the per request cost becomes $12.50. While the Department recognizes that this approach takes the Department away from a single, uniform fee, the Department also is trying to minimize the fee limits for very small record requests while remaining true to the statutory directive to approximate actual costs. The Department recognizes that, ultimately, any fee limit structure is going to be a compromise among the goals of approximating actual costs, recognizing the effect of HIPAA, and specifying a single, uniform fee applicable to all under all circumstances. The Department recognizes that there is a large discrepancy between the fee limits for requests made by individual for their own records and requests made by others. The Department continues to believe that it is reasonable to assume that the process of certifying records is ***somewhat*** dependent on the volume of records insofar as some of the tasks involved may take the same amount of time regardless of the number of records certified. Therefore, while the Department believes a totally variable "per page" cost is not appropriate for certification, the Department continues to propose a lower $5.00 fee for certifying less than five records. In response to those advocating that the Department somehow merge HFS 117.05 (2) and (3) into a single limit for all requesters, the Department believes that it cannot recommend such an approach without ignoring pertinent and controlling federal regulations that specify that charges to individuals for copies of their own medical records be limited to only the costs of copying, not retrieving, the record. Unfortunately, as the Department determined through its cost model, the bulk of the costs of complying with a request for records is attributable to retrieving the records.

15 HFS 117.05	Contrary to the Department's belief, nothing in the legislation being implemented or the official record of the legislation's creation suggests that it was legislature's intent to specify a single fee limit for all parties. 2001 Act 109 says nothing about "uniform fees" or a single fee limit. In fact, HFS 117.05, as proposed, specifies a two-tiered fee limit. **16**	Section 908.03(6m)(d) directs the Department to prescribe uniform fees, but not a single fee limit. The term "uniform" means "always the same; unvarying; consistent." Nothing would prevent the Department from specifying a dozen tiers of fees, as long as, once in effect, the fees in each tier did not change or vary.
16 HFS 117.05	The proposed fee limits are not based on actual costs a record reproducer incurs in reproducing a patient's health care record. It is unclear how the Department arrived at its proposed fee limit. Commenter #24 claims the proposed fee limits will result in an annual loss of at least $236.058.54 to St. Vincent Hospital. Commenter #17 claims that the proposed fee limits would result in an annual loss of $6,000 to Shawano Medical Center. Commenter #18 claims the proposed fee limits will result in an annual loss of at least $111,188 to St. Croix Regional Medical Care Center. Commenter #23 claims the proposed fee limits may result in the commenter's facility performing the task of complying with requests it receives for reproducing medical records, which would require an additional 12-15 FTEs at a cost in excess of $400,000. That amount does not include the cost to another, smaller facility of the commenter in New London. Commenter #21 claims that the proposed fee limits would result in at least a $140,000 annual loss to Red Cedar Medical Center. **24, 17, 18, 6, 23, 21, 31, 35** The total cost of these rules to the health care system throughout Wisconsin will be millions of dollars. **23** We find it problematic that not all cost factors associated with handling a request were included in the fee determination. Despite having figures we were able to supply from actual health care settings, the proposed rules changes ignore or attach only slight import on such factors such as overhead, collection expenses, and bad debt expense. That is simply poor methodology for determining actual costs. The statutory language allowed for these factors as they are operating expenses, so we feel the proposed rules changes don't reflect "approximate actual costs". We see the following groups as the major "affected parties": Health Care Providers, Attorneys, Patients, and Release of Information ("ROI") companies. With the exception of the Attorneys, we see neither direct nor indirect benefit to any of the other affected parties. The Patient group will be the most affected party, as they will pay for the cost benefits	Given the lengths the Department has taken to openly arrive at its proposed fee limits, the Department believes it should be very clear how it arrived at those limits. The Department's approach to the task of approximating actual costs was described in great detail in two documents prepared in the course of the Advisory Committee's work in 2003: 1. *Department HFS 117 Report* and 2. *Comments on Department HFS 117 Preliminary and Interim Reports and Department Responses.* The Department cannot comment on the cost estimates provided by the commenters, as none of the estimates are substantiated by supporting data or methodologies. However, the Department observes for the benefit of the legislature that the implication is that, if these random, sample hospital claims are correct, the initial proposed rules would have resulted in a total "loss" or forced subsidization of $5 to $10 million on the part of all Wisconsin hospitals. The Department sought to include all reasonably legitimate components of the task of reproducing a medical record and the expenses/costs of those components. The Department did not necessarily accept and reflect an individual record maintainer's reported costs if one or more items the maintainer reported was significantly discrepant from the estimate of those items the Department received from other comparable maintainers. The Department attempted to reflect overhead in its proposed fee limits. Specifically, in appendix 2 of the document *Comments on Department HFS 117 Preliminary and Interim Reports and Department Responses*, the Department did

	derived by Attorneys and their clients litigating claims. The Patients will bear those costs in several distinct ways: being charged for duplication that was done previously for free or at a discounted rate, and in the form of higher health care costs. **27** Establish reasonable fees based on the true costs of reproducing the records. **20** The Department's fees are not defendable in a court of law because it's not based on the actual cost as prescribed in the statute. **6** The proposed retrieval fee has been lowered from the originally proposed range of $14-$21 to $12.50-$15. The Society, among other interested groups, has provided documentation to DHFS clarifying that a higher retrieval fee is necessary. We urge you to consider at least a $20/per retrieval fee. **29** The Society is also concerned that the currently proposed per page fee is also dramatically low. We urge the department to increase the per page fee closer to $1 per page. The proposed per page fee does not accurately reflect the cost of staff time, staff overhead, space overhead, copier cost, toner costs, paper costs, among other costs. The Society recognizes that DHFS has used Rose Dunn's 1997 article, documenting copy costs, as a basis for changes. We urge you to use a more updated resource to set these costs. Technology has changed dramatically in the last six years, warranting a higher retrieval and per page fee. **29** The Society would accept a compromise of either a higher retrieval fee and lower per page fee or a lower retrieval fee and higher per page structure. An acceptable compromise would be either a $14 retrieval fee and $1.00 per page fee or a $20 retrieval fee and $.75 per page fee. **29** SOURCECORP opposes HFS 117 because the proposed fees will not adequately cover the costs of providing professional and quality-oriented ROI services. **3**	identify the ***nonlabor*** cost component titled "hard to define costs" and assigned a value of 12% to it. The Department used the 12% amount that was reported in the 1997 article documenting copying costs. As stated in that article, these costs included the largely fixed costs of: telephone charges to communicate with requesters; space expenses such as heat, light and air conditioning; administrative overhead costs such as supervisory expense, payroll administration and human resources involvement; training costs such as specialized seminars and reference books; accounting/bookkeeping expenses; legal counsel guidance; sales taxes; purchasing and receiving department support; and housekeeping. The Department considers these costs to meet the definition of "overhead" costs." While section 146.83(3m)(a), Stats., certainly permitted the Department to include "bad debt" or "collection" expenses in its calculation of a fee limit, that statute did not require the Department to include it in its calculation. (Indeed, 146.83(3m)(a) does not require the Department to reflect ***any*** of the expense types listed in statute.) The Department decided not to reflect bad debt expenses in the calculation of the fee limit because it believes that doing so would promote or legitimize what may not be the optimal practice of some medical record requesters to demand, and receive from medical record maintainers, fulfillment of record requests for reimbursement that is less than the medical record maintainers' cost to comply. As stated elsewhere in these responses, the Department did not consider it appropriate, or within its mission in this endeavor, to base its methodology for specifying fee limits on whether and how one affected group may be disadvantaged relative to another affected group. To do so would have biased the Department's approach to comply with the legislated statutory directive. The Department, with the assistance of representatives of major interested parties in this rule, attempted to specify in an open and logical manner, the cost of