THEDACARE™

March 24, 2004

Senator Roessler
Chairperson, Committee on Health, Children, Families, Aging and Long Term Care
State Capitol
PO Box 7882
Madison, WI 53707

Dear Senator Roessler:

The purpose of this letter is to submit to you in addition to the oral testimony provided March 30, 2004 concerns and information from ThedaCare, Inc. about the proposed rules for HFS 117 dealing with copy fees. In December of 2003 we submitted a letter to Mr. Hartzke, Office of Legal Counsel, our concerns for consideration.

While we do not question the good intentions of the department in drafting these changes, the unintended consequence will be to shift millions of dollars of the cost of producing these records from the requester to the healthcare provider – unnecessarily fueling the rising cost of care.

As the largest local community health system in Northeast Wisconsin with 3 hospitals, 5,200 employees, twenty-one primary care locations and other ancillary services such as behavioral health, home care and senior care, we serve more than 250,000 people each year – many in multiple episodes of care. As you can imagine, this leads to more than 100 requests each day for a variety of medical records.

For us, the most accurate, cost-efficient, expeditious and customer-friendly method of meeting these requests is to use an outside vendor. It is a unique relationship in which ThedaCare provides the overhead such as work space, copiers, and information technology which the vendor uses to fulfill the requests directly with the customer. All fees for these services are charged by and paid directly to the vendor. To have to bring these services back in house if vendors can't exist to perform this function, will be quite costly to the ThedaCare organization, and require that cost shifting back to all our patients through increased rates or other means to absorb the cost.

Even with ThedaCare providing overhead as it currently does, the fee structure prescribed by HFS 117 does not begin to cover the actual costs our vendor incurs in fulfilling record requests. If ThedaCare is then forced to hire additional staff to fulfill the services now being supplied by an outside vendor, our conservative estimate would be an additional 12-15 FTE's at a cost in excess of $400,000. And this does not include the additional burden on our rural hospital in New London. A high level review of our calculations is included with this letter.

Now consider that there are more than 150 acute-care hospitals in Wisconsin, not to mention tens of thousands of individual health care providers of all types, from independent physicians to nursing homes, sub-acute facilities, surgery centers and other facilities. The total cost to the healthcare industry in Wisconsin will be many millions of dollars.

In the end, the fee schedule in HFS 117 will either divert financial resources from patient care to records production or, more likely, shift the cost of records production from those requesting the records to every healthcare consumer in the state in the form of higher patient services charges. This means higher insurance premiums for every healthcare consumer in the state.

We cannot imagine that this was the intent of HFS 117. The fee structure of HFS 117 is inadequate to meet our costs, and the resulting shift in costs will hurt every single purchaser of healthcare including the very people it seeks to protect – those requesting records.

We at ThedaCare strongly urge that the fee structure in HFS 117 be reviewed and altered to reflect the true cost of records production as outlined by the rule. ThedaCare stands willing to work with and support HFS in adopting a fee schedule that more accurately reflects the cost. We are asking that this go back to Committee and a more reasonable rate process be determined. We stand willing to assist in that process.

Please feel free to call or contact me at any time if we may be of assistance in addressing this important concern.

Sincerely,

Beth Malchetske

Beth Malchetske, MBA, RHIA
Manager, Health Information Security
ThedaCare, Inc.

ThedaCare Release of Information Cost Analysis

Facility-Specific Information

	State	**Thedacare**	**Volume by %age Billable/non-billable**
Number of Annual Requests	27,390	27390	14325 / 13065
Annual Pages	634,674	634674	331934 / 302740
Percentage billable	52.3	52.3	
Percentage non-billable (Continuity of Care,Court Orders, etc.)	47.7	47.7	
Average Number of Requests **PER DAY**	115	115	
Average Number of Pages per Request:	23	23	
Average Annual Clerical Salary Including Benefits: (using$16.00 State rate)	$511,808.00	$416,332.80	
Average Annual Management Salary Including Benefits:	$41,704.00	$ 41,704.00	
Expenses			
Clerical FTE Compliment Required (Using State proposed rule of 70minutes)	15.36	12.51	Using 57 minutes
Clerical Salary	$511,808	$416,332.80	
Management FTE Compliment Required	1.10	1.10	
Management Salary	$45,874.40	$45,874.40	
Equipment, Software, and Office Supplies	$145,530.00	$145,530.00	
Total Annual Expenses	***$703,212.40***	**$607,737.20**	
Billables Revenue			
Billing	$334,969.00	$334,969.00	
Bad Debt-10%	$33,496.90	$33,496.90	
Total Annual Revenue	**$301,472.10**	**$301,472.10**	
Less non-billable expense			
Using same costs as from billables: per page, base	$272,630.00	$272,630.00	
Impact to ThedaCare	***$674,370.30***	**$578,895.10**	
Loss if I remove non-billable from the equation: however staff still need to perform this task so remain in the annual expense above	**$401,740.30**	**$ 306,265.10**	

Billables include - DDB, Attorney, Worker's Comp, Insurance except PRO, etc.
Non-Billables include - continuation of care, specific gov't, court orders, etc.

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WHIMA
Wisconsin Health Information Management Association

II Process fee < less than 5 pg on summaries

Base fee — lower costs.

March 30, 2004

MEMORANDUM (not cover actual costs AHRA)

TO: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care
Members of the Assembly Committee on Health

FROM: Catherine Hansen, WHIMA President
Chrisann Lemery, WHIMA Past-President

RE: **HFS 117**

Reflective of actual costs + equitable all parties

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.

Many make sense to consider < rate fee < 5 pgs

We are writing on behalf of over 1,200 Wisconsin members in **opposition** to the proposed HFS 117.

- The proposed fee structure does not cover the costs for health care facilities.
  - HFS, using information from the maintainers on the Advisory Committee, performed an analysis of the costs incurred to respond to a request for copies of medical records. At the only meeting of the Advisory Committee, HFS proposed a retrieval fee in the range of $14 to $21 using the results of the analysis. The Department in the proposed rule lowered the base fee to $12.50 and $15.00. The committee's analysis also determined that the average medical record request results is 31 pages of documents. The Department in the proposed rule based the fees on an average of 25 pages. Since the Department bases its proposed fee on lower than the average number of pages, the result is the fee is lower than costs.
  - The two-tier fee structures proposed will add an administrative burden to the maintainers. Maintainers currently administer up to five fee structures. Therefore, maintainers potentially will have nine fee structures to administer which adds to the costs of performing the process.
  - Whether it's a health care facility or a copy company responding to numerous requests daily, personnel, direct, and indirect expenditures are incurred. The costs used by the Department do not reflect the costs in 2004. This service entails a number of steps as outlined in the document attached. Each request received must be scrutinized in conjunction with laws that govern the information so as to ensure the validity of the

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request. Only staff with the expertise to apply these laws is trusted to perform the release function because patient privacy is our number one concern. It is fair and reasonable for the health care facility to cover their costs in providing this service just as any other business or firm expects to cover their costs. Whether it's the health care facility or a copy company providing the service, the costs exist.

- A fee reflective of the actual costs in Wisconsin to perform the service is a fee comparable to surrounding states such as Illinois, Minnesota, or Michigan.

- Underpayment for copies of patient health care records will result in the proposed rule. The additional costs not covered by the low fees will be shifted to all patients in the form of higher health care costs in general, meaning all patients will subsidize the requests. WHIMA believes it is unjust and not in the best interest to expect non-requesting patients to incur the costs.

We urge the committees to send the rule back to the Department for revision. Please contact Chrisann Lemery at (608) 661-6742 if more information is needed.

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Wisconsin Health Information Management Association

Tasks required to perform the release of medical information.

Time to Complete Task	TASK	DETAILS of TASK
.2 minute	MAILING:	Opening Mail
7 minutes	PROCESS:	Processing Requests - reading the request - verifying patient identification - obtaining medical record identification - verifying authorization validity for the statutory elements as outlined in grid (refer to Wis. Stat. 146.82, 146.025, 51.30 and 908.03; Federal 42 CFR Part 2, HIPAA) - requesting additional data on problematic requests
1.6 minutes	LOGIN:	Logging in request - entry of data into computer or manual log
2 minutes	REQUISITION:	Preparing requisition via computer and/or outguides - completing chart requisition slips and/or pull lists - sorting into alphanumeric order - placing requisition slips into outguides or computer entry
15-20 minutes	RETRIEVAL:	Retrieving record - locating record (maybe offsite—microfilm company, storage) - confirming correctness of record
10 minutes	SCREEN:	Screening record (refer to Wisconsin Statutes and Federal regulations for requirements and penalty provisions) - checking record for alcohol, drug abuse, mental illness, HIV treatment - identifying and tagging desired reports
12-15 minutes	COPY:	Copying record - disassembling record - copying of desired pages - checking quality of copies - handling of misfiled pages - reassembling record - producing copies from other media (microfilm, imaging)
7-10 minutes	LOGOUT:	Logging out the request or Accounting for disclosure as required by Wis. Stat. 146.82(2)(d) & 51.30(4)(e) and HIPAA - checking the completeness of the request - recording name and address of recipient - recording information being sent and purpose - recording date and time information sent - stamping each copy with "re-release" statements, etc. - review for certified copies (20 minutes)
1-3 minutes	INVOICE:	Preparing invoices and/or cover letters - determining any charges for copies - determining actual postage and any handling charges

Time to Complete Task	TASK	DETAILS of TASK
.8-5 minutes	MAILOUT:	Mailing the copies - addressing and posting the envelope - prepare certified mailing, if necessary - mailing of the copies
1 minute	REFILE:	Refiling the record - pulling the outguide or enter in computer
	MISCELLANEOUS:	Various other duties - answering telephone calls - responding to walk-ins - responding to "stat" requests

Authorization/Informed Consent for Use and Disclosure of Health Care Information Grid
Wisconsin Statutes and the Federal Privacy Law

Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
All patient health care records shall remain confidential. Patient health care records may be released with patient consent or to the persons designated in the statutory exceptions 146.82(2)	...all treatment records shall remain confidential...records may be released with the written consent of the subject individual or without written informed consent under specific statutory exceptions. 51.30(4)(b)	An individual who is the subject of a test for the presence of HIV,...may disclose the results of the test to anyone. Disclosure is otherwise prohibited except under specific statutory exceptions. 252.15(4)		Except as otherwise permitted or required by this subch., a CE may not use or disclose PHI without an authorization that is valid under this section.
Required Elements	**Required Elements**	**Required Elements**	**Required Elements**	**Required Elements**
• In writing: 146.81(2)	• In writing: 51.30(2)	• In writing: 252.15(1)(d)	• ----	• Written in plain language: 164.508(c)(3)
• Name of the patient whose record is being disclosed: 146.81(2)(a)	• Name of the individual whose treatment record is being disclosed: 51.30(2) 2.31(a)(3)	• Name of potential test subject giving consent and whose test results may be disclosed: 252.15(2)(b)1	• ----	• (Signature, see below)
• Type of information to be disclosed: 146.81(2)(b)	• ***Specific*** type of information to be disclosed: 51.30(2) • How much and what kind of information to be disclosed: 2.31(a)(5)	• Authorizing disclosure of HIV test results: 252.15(1)(e)	• Specifies the nature of the information that is authorized to be disclosed: 610.70(2)4	• A description of the information to be used/disclosed that identifies the information in a specific and meaningful fashion: 164.508(c)(1)(i)
• The types of health care providers making the disclosure: 146.81(2)(c)	• Specific name or designation of program or person permitted to make disclosure: 2.31(a)(1)	• ---	• Specifies the types of persons that are authorized to disclose information about the individual: 610.70(2)3	• The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure: 164.508(c)(1)(ii)
• The individual, agency, or organization to which disclosure may be made: 146.81(2)(e)	• The name of the individual, agency or organization to which disclosure is to be made: 51.30(2); 2.31(a)(2)	• The name of the person to whom the test subject authorizes that disclosure of test results be made: 252.15(2)(b)3.b.	• The name of insurer and identifies by generic reference representatives of the insurer, to whom the information is authorized to be disclosed: 610.70(2)5	• The name or other specific identification of the person(s), or class of persons, to whom the CE may make the requested use or disclosure:

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Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
				164.508(c)(1)(iii)
Elements (continued)	**Elements (continued)**	**Elements (continued)**	**Elements (continued)**	**Elements (continued)**
• The purpose of the disclosure: 146.81(2)(d)	• The purpose or need for the disclosure: 51.30(2); 2.31(a)(4)	• ----	• The purposes for which the information is being obtained/disclosed: 610.70(2)6	• A description of each purpose of the requested use or disclosure. The statement "at the request of the individual is sufficient...": 164.508(c)(1)(iv)
• The signature of the patient or the person authorized by the patient, and relationship to patient or legal authority: 146.81(2)(f)	• The signature of the individual or person legally authorized to give consent for the individual: 51.30(2); 2.31(a)(6)	• Signature of potential test subject or...of the health care agent...: 252.15(2)(b)3.a.	• Signed/Authorized by individual, or by a person who is authorized to consent on behalf of an individual .....: 610.70(5)(a)	• Signature of the individual and date. If the authorization is signed by a personal representative of the individual... : 164.508(c)(1)(vi)
• If the authorization is signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person: 146.81(2)(f)	• ----	• ----	• ----	• If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided: 164.508(c)(1)(vi)
• The date on which the consent is signed: 146.81(2)(g)	• The date on which the consent is signed: 51.30(2); 2.31(a)(7)	• The date on which the consent to disclosure is signed: 252.15(2)(b)3.b.	• The form is dated: 610.70(2)1	• Signature of the individual and date: 164.508(c)(1)(vi)
• The time period during which the consent is effective: 146.81(2)(h)	• The time period during which the consent is effective: 51.30(2); 2.31(a)(9) • Informed consent is effective only for the period of time specified by the patient in the informed consent document :	• The time period during which the consent to disclosure is effective: 252.15(2)(b)3.b.	• Specifies the length of time for which the authorization remains valid: 610.70(2)7	• An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure: 164.508(c)(1)(v)

Authorization/Informed Consent for Use and Disclosure of Health Care Information Grid
Wisconsin Statutes and the Federal Privacy Law

Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
	HFS 92.03(3)(b)			
• ----	• Each informed consent document shall include a statement that the patient has a right to inspect and receive a copy of the material to be disclosed: HFS 92.03(3)(d)	• ----	• ----	• ----
• ----	• ----	• A statement of explanation that test results may be released without consent and whether a listing of those circumstances or that a list is available upon request: 252.15(2)(b)2.	• ----	• ----
• ----	• any patient or patient representative may withdraw authorization for disclosure of any information at any time: HFS 92.03(3)(e); 2.31(a)(8) • If this occurs, an agency not included under s. 51.30(4)(b) Stats., that requests release of information requiring informed consent shall be told only that s. 51.30, Stats., prohibit release of the information requested.	• ----	• ----	• A statement placing the individual on notice of the individual's right to revoke the authorization in writing, and either • The exceptions to the right to revoke and how to revoke [164.508(b)(5)], or • If the right to revoke is in the notice, a reference to the notice. 164.508(c)(2)(i) Note: An individual may revoke an authorization by providing a revocation in writing to the CE, except to the extent: 1) the CE has taken action in reliance on the authorization or 2) if the

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				authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.
• ----	• ----	• ----	• ----	• A statement placing the individual on notice of the ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization by stating either • CE may not condition above based on whether individual signs authorization when the prohibition on conditioning of authorizations applies, or • The consequences of refusal to sign. 164.508(c)(2)(ii) Note: A consequence of refusal to sign an authorization for disclosure of WI law 252.15 or 51.30 records may be non-payment; therefore, a CE may want to include this consequence in the authorization.
• ----	• ----	• ----	• ----	• A statement placing the individual on notice of the

Authorization/Informed Consent for Use and Disclosure of Health Care Information Grid
Wisconsin Statutes and the Federal Privacy Law

Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
				potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by the federal privacy rule: 164.508(c)(2)(iii)
•	•	•	•	• Marketing authorization—a statement noticing individual that remuneration is involved if CE receives direct or indirect remuneration from a third party. 164.508(a)(3)(ii)
• ----	• ----	• ----	• ----	• Miscellaneous A valid authorization may contain elements in addition to the required elements, which are not inconsistent with this section. May have additional requirements based on reason for obtaining authorization. 164.508(b)(1)(ii)
Maintenance of Authorization	**Maintenance of Authorization**	**Maintenance of Authorization**	**Maintenance of Authorization**	**Maintenance of Authorization**
• ----	• A copy of the informed consent document shall be maintained in the treatment record. HFS 92.03 (3)(c)	• HCP must maintain consent for testing or disclosure: 252.15(4)(b)	• ----	• CE must document and retain any signed authorization. 164.508(b)(6)
Providing Copy of Authorization	**Providing Copy of Authorization**	**Providing Copy of Authorization**	**Providing Copy of Authorization**	**Providing Copy of Authorization**
	• A copy of each informed consent shall be offered to	• ----	• Advises that the individual, or an authorized	• If a CE seeks an authorization from an

Authorization/Informed Consent for Use and Disclosure of Health Care Information Grid
Wisconsin Statutes and the Federal Privacy Law

Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
	the patient or guardian and a copy shall be maintained in the treatment record: HFS 92.03(3)(c)		representative of the individual, is entitled to receive a copy of the completed authorization form: 610.70(a)(2)8	individual for a used/disclosed of PHI, the CE must provide the individual with a copy of the signed authorization. 164.508(c)(4)
Fees	**Fees**	**Fees**	**Fees**	**Fees**
Any patient or other person may, upon submitting a statement of informed consent, receive a copy of the patient's health care records upon payment of fees as established by rule by the department which shall be based on an approximation of actual costs: 146.83(1)(b)	• A reasonable and uniform charge for reproduction may be assessed to the subject individual requesting individual access: 51.30(4)(d)3.	• ----	• An insurer may charge the individual a reasonable fee to cover the costs incurred in providing a copy of recorded personal medical information:610.70(3)(f)	• If an individual requests a copy of their PHI the CE may impose a reasonable, cost-based fee... 164.524(c)(4)

The Wisconsin statutes regulate release or disclosure of patient information. HIPAA regulates uses and disclosures of patient information. Understanding that the law "most protective" of patient rights will control, an authorization may now be required for a use and/or disclosure. Therefore, the HIPAA-COW interface authorization form is titled "Authorization for Use and Disclosure of Health Information."

Prepared by: Susan C. Manning, JD
Chrisann Lemery, RHIA

Keeping Wisconsin Families Safe

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Testimony of Daniel A. Rottier
on behalf of the
Wisconsin Academy of Trial Lawyers
before the
Senate Health, Children, Families, Aging and
Long-Term Care Committee
and
Assembly Health Committee
March 30, 2004
Proposed Rule CR 03-111

Good morning, my name is Daniel A. Rottier. I am a partner in the law firm of Habush, Habush and Rottier and my office is located in Madison, Wisconsin. I am currently the Vice President of the Wisconsin Academy of Trial Lawyers (WATL) and appear on its behalf in favor of the proposed rule—CR-03-111. Thank you for this opportunity to speak in support of CR-03-111.

WATL, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of WATL are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

If there is one area of our members' practice that generates the most complaints and headaches it is the costs associated with obtaining duplicate copies of medical records. That is why WATL worked to pass the underlying legislation, 2001 Wisconsin Act 109, which directed the development of the current rule under consideration today, CR 03-111.

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 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, Wis. Stats. §908.03 (6m). It is allowed to substitute certified photocopies of records instead of having record custodians testify in person to the authenticity of medical records. Besides being relieved of personal appearances for testimony, the health care 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 § 908.03(6m) to require the Department of Health and Family Services (DHFS) 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, an administrative rule was established, which permitted a charge of 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.

The problem developed with records requested prior to litigation under Wis. Stats. § 146.83, which allows for a "reasonable charge." The medical

record providers argued that they were under no obligation to follow the rule developed under Wis. Stats. §908.03 (6m) and the sky became the limit for fees charged for records reproduced outside of a court proceeding.

With the passage of 2001 Wisconsin Act 109, the Legislature directed DHFS to develop CR 03-111 in response to concerns that health care providers were charging excessive fees for photocopying patient records. The legislation was to accomplish two things: eliminate the disparity between pre and post litigation charges by medical record providers and have DHFS determine the new fee limits based once again on "an approximation of actual costs."

Our members believe health care providers 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. It is an outrage that we pass on costs of $25.00 or even $35.00 for as little as 1 page of medical records. On the other end of the spectrum are costs of $594 for 500 pages of records.

It is difficult to believe the exorbitant charges we often see represent "actual costs." Photocopying costs in our office, and in most other types of offices I am aware of, have become more reasonable with advances in technology. Yet, the medical records industry has argued for the last several years that these exorbitant charges are justified by their high costs.

Some of our members are also cognizant of the cost of obtaining records, particularly under the Open Records law. Under § 19.35(3), Wis. Stats., fees can be charged based on the "actual, necessary and direct costs of reproduction and transcription of the record...." For example,

- The Senate Clerk charges 5 cents a copy and 15 cents a minute for labor costs, which equals $9.00 an hour.

- The Assembly Clerk charges 10 cents a copy and if the request takes longer than one hour, the person pays the labor costs of the person actually doing the copying.
- DHFS charges 15 cents a copy and won't impose a labor cost unless the records are not readily available.

Why is it the "actual costs" for open records requests are so different from what medical record providers charge?

Why would anyone continue to do business with companies who have these outrageous charges and outrageous practices? The answer is one of the reasons we are here today: ***There is no other choice!!***

The person requesting the copies of medical records is at the complete mercy of the health care provider and any company the health care provider chooses to supply the record copying service. This is not a traditional business where principles of the free market apply. There are no other "suppliers." The person requesting the copies has no other option but to pay the price charged for the photocopies. The health care providers and the companies they have chosen to provide photocopies are quite straightforward: ***No money, no copies!!***

Health care consumers are at the mercy of the medical record company and in an unequal bargaining position. Fairness dictates that consumers of health care should be protected from monopolistic companies. In fact, HIPAA recognizes the right of patients to receive copies of their medical records at a reasonable rate, without paying for a search or retrieval fee, which DHFS has incorporated into this new rule. (HFS 117.05 (2)).

The underlying problem is there are **no incentives for health care providers to reduce these costs.** In most cases, providers are just passing on the costs to another entity — the patient, the insurance company, the

patient through his or her attorney, etc. We think it is time to stop passing on these exorbitant charges.

While, some of our members will certainly object to the significant fee increases proposed, WATL supports the proposed rule because it will stabilize and create uniformity for members when obtaining copies of duplicate medical records. (See table below). This stability is very important because right now, costs can vary dramatically. There are wild fluctuations in what various health care providers charge. CR 03-111 would apply to *all* requests for records, whether or not a lawsuit has been filed.

Therefore, the proposed rule CR 03-111 is a compromise WATL can support and we urge the Legislature not to modify the rule as drafted by DHFS.

FEES UNDER PROPOSED RULE COMPARED TO CURRENT RULE

# of Pages	Current Fees Greater of $8.40 or 45¢ a page for first 50 pages and 25¢ over 50 pages (litigation fee)	DHFS Proposal for patients and personal representatives, 31 cents a page (HIPAA requirement)	DHFS Proposal for Individuals other than patients Up to 5 pages $12.50 + 31¢ a page.	DHFS Proposal for Individuals other than patients Up to 5 pages, **certified.** $12.50 + 31¢ a page plus $5.00 certification fee	DHFS Proposal for Individuals other than patients 5 or more pages $15.00 + 31¢ a page.	DHFS Proposal for Individuals other than patients 5 or more pages, **certified** $15.00 + 31¢ a page plus $7.50 certification fee
1	$8.40	.31	$12.81	$17.81		
2	$8.40	.62	$13.12	$18.12		
3	$8.40	.93	$13.43	$18.43		
4	$8.40	$1.24	$13.74	$18.74		
5	$8.40	$1.55			$16.55	$24.05
10	$8.40	$3.10			$18.10	$25.60
20	$9.00	$6.20			$21.20	$28.70
50	$22.50	$15.50			$30.50	$38.00
100	$35.00	$31.10			$46.10	$53.60
200	$60.00	$62.20			$77.20	$84.70

DHFS's proposal recommends an increase in costs of between 41 and 186 percent. If the current fee structure were increased according to CPI (national average), current fees would now be approximately $10.71.

HFS 117 Current Rate Plus CPI Increases

Year	Cost	CPI	Increase	Total
1993	$8.40	3.00%	$0.25	$8.65
1994	$8.65	2.60%	$0.22	$8.87
1995	$8.87	2.80%	$0.25	$9.12
1996	$9.12	3.00%	$0.27	$9.39
1997	$9.39	2.30%	$0.22	$9.61
1998	$9.61	1.60%	$0.15	$9.76
1999	$9.76	2.20%	$0.21	$9.97
2000	$9.97	3.40%	$0.34	$10.31
2001	$10.31	2.20%	$0.23	$10.54
2002	$10.54	1.60%	$0.17	$10.71

COENEN / SWANDBY ASSOCIATES, INC.
GOVERNMENT RELATIONS & ASSOCIATION MANAGEMENT

March 30, 2004

MEMORANDUM

TO: Assembly and Senate Health Committees

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

RE: **Testimony on Draft Rule HFS 117**

AHIOS, the Association of Health Information Outsourcing Services, represents the 20 largest health information outsourcing companies in the country. AHIOS companies operate in 46 states, and four of its members operate within Wisconsin. AHIOS members handle the release-of-information function for most of the hospitals and many of the physician practices throughout the state. AHIOS members employ nearly 500 people in Wisconsin.

AHIOS has had the opportunity to review the proposed rule and is alarmed by the changes that have been made since the formal work of the Technical Advisory Committee was completed. This draft is a huge step backwards from the version which had been shared with the public prior to the one meeting of the Technical Advisory Committee in April, 2003. The 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.

AHIOS would like to go on record as objecting to the proposed rule. Specifically, AHIOS objects to:

Lowering the fees from the earlier draft.

Considerable documentation has been presented to the Department demonstrating the actual costs of providing this service. After the first rule draft was unveiled and the Advisory Committee met, AHIOS and others provided additional evidence outlining why the fees in the first draft were too low.

On May 8, 2003, AHIOS noted that the Department addressed the fixed costs associated with providing duplicate copies of medical records. At that time, the proposed range of $14 to $21 as a retrieval fee was proposed and AHIOS supported the proposal. Since that time, with introduction of absolutely no data to support the change, the Department lowered the base fee to $12.50 and $15.00.

On May 8, 2003, AHIOS established for the Department that there were a number of areas where the information or approach used to determine the "per page" cost of 31 cents/page in the proposed fee were flawed. The areas of concern are as follows:

- **The average request results in 31 pages (not 25).**

According to the extensive review completed to implement HIPAA, the average medical request results in 31 pages of documents. DHFS bases its proposed fee on 25 pages of documents. The additional six pages should be included in the Department's calculations, and the fee should be increased accordingly.

- **Steps in the process were not included in the calculations.**

The emphasis on the "five most-time-consuming" tasks means that at least 10 minutes for an average request has not been included in the calculations. The proposed fee should be revised to include these 10 minutes of staff time.

- **The hourly rate used to calculate the uniform fee is unrealistically low.**

Department staff based the hourly salary on Rose Dunn's 1997 article siting an average wage of $12.40/hour and adjusted for inflation. Unfortunately, the salaries of staff in this very specialized field have increased at a rate higher than inflation. All medical record maintainers responded to the Department with hourly salary figures higher than $15.00/hour. The cost per hour in staff time is at least 37% too low. The per page costs should be increased to reflect the actual salary rate.

- **Too many of the calculations were based on Rose Dunn's 1997 article.**

Many of the steps required to fulfill a request for copies of a medical record have become much more complicated since 1997. In the last six years, in addition to inflation, the introduction of new technologies has resulted in equipment and software costs well beyond what Ms. Dunn imagined. The costs to the records maintainers are not just the cost of photocopiers, toner, and drum replacement, but are for computers, customized software, internet access, and the staff training that goes along with each upgrade in technology. It is important to note that substantially all of the upgrades in technology have been implemented to better protect the confidentiality of patient medical records. Compliance with HIPAA has added significant staff time to fulfilling each request. None of this was reflected in the DHFS calculations.

- **The estimates of the costs of personal computers, printers, and software are based on poor assumptions.**

The Department staff used personal experience with the cost of computers, printers, and software to reduce the cost of this overhead from what had been estimated by Rose Dunn in 1997. While it is true that the average consumer has seen the cost of this equipment go down in the past six years, that is not true for the specialized equipment used in this industry. The cost of customized software has increased significantly and these items have to be updated regularly. Far more money is spent on computers, software, scanners, digital printers, and related equipment today than was spent in 1997.

- **The estimates of the cost of insurance are unrealistic**.

The Department staff used Dunn's article as the basis for the cost of insurance. This number supposedly was adjusted for inflation to determine the cost of insurance in 2003.

Unfortunately, the cost of liability insurance, errors and omissions insurance, and workers compensation insurance has increased at a far more rapid pace than inflation, especially since September 11, 2001. The cost of insurance coverage for those who are engaged in the release of patient information has tripled in recent years and is a much more significant part of the cost of providing the service. Inclusion of the true cost of insurance should be addressed in the per page portion of the fee.

- **The "hard to define costs" were significantly underestimated.**
The Department estimated the cost of these overhead items at 12% while the Midwest Medical Record Association estimated it at 36%. The per page cost of the fee should be increased accordingly.

- **The cost of records retrieved from off-site storage must be included.**
AHIOS estimates that off-site storage is involved in 20% of all requests. The average charge for each chart retrieved from an off-site storage facility is $17.00. The per page charge should be adjusted to include the cost of retrieval from off-site storage facilities.

The sum of all of the additional staff time and overhead costs of each of these items equates to a per page charge of at least $1.37. This compares to the 31 cents/page proposed in the propose rule.

Not only has the Department ignored these data, but it appears that the Department has responded to emotion, rather than facts, in creating this draft. The attorneys and insurance companies represented on the Advisory Committee have presented absolutely no factual rationale for lower fees. These groups want a service provided to them, but they are not willing to pay market price for the service.

AHIOS members and the medical facilities are being asked to subsidize these other businesses. If a patient requests his or her own medical records (for continuing care or otherwise), then under HIPAA, the patient is only charged for the actual copying costs, and not a retrieval fee, certification fee, or any of the other costs associated with actually producing the records. The requests which would be covered by the proposed rule are not requests by patients, but rather requests by plaintiffs' attorneys and insurance companies which are seeking the documents for purposes of their own businesses and economic transactions. For example, plaintiffs' lawyers frequently request such documents to evaluate whether or not they should take a particular case (which they will take only if they believe they can make a profit). An insurance company frequently seeks the records to determine whether it will issue an insurance policy (at a profit) to a particular insured, or in defense of an action filed by a plaintiff. In the above cases, the requestor has its own economic motive for seeking the documents and its own economic interest in the documents. There is no reason that such a requestor should not pay the full cost of locating, retrieving, handling, copying, and forwarding the medical records.

If health care providers are required to provide copies to attorneys and insurance companies at less than the actual cost of retrieving and copying the documents, then passing the proposed rule would economically force outsourcing companies to drastically cut service levels or pass the costs on to the healthcare providers, who in turn, will pass the costs on to their patients.

The need for this service will not go away. However, the companies currently performing the service might. In 1994, in Kentucky, a law passed that forced AHIOS members and other such providers out

of the state. The adoption of the fees in this proposed rule could have the same result. Wisconsin based companies will be irreparably harmed. Wisconsin citizens will lose their jobs, but hospitals and clinics will still have to provide duplicate patient health care records.

The eventual losers would be individual Wisconsin residents who stand to lose some of the protections afforded, and gains made, by medical record management services that have improved the overall levels of confidentiality afforded to patient records.

Ultimately, of course, the effect of this effort to adopt a lower base fee and per page fee is to shift the cost of providing duplicate copies of medical records to those patients who never have a reason to request copies of records for litigation or an insurance claim. The cost of providing the service of duplicating records will have to be covered by the health care provider and if the third party requestors do no have to cover the actual costs of the service, the fees charged to all patients of the hospital or clinic will have to be increased so that the costs of copying medical records are covered.

Creating two base fees dependent on the number of pages copied.

This proposal 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.

Creating two certification fees.

In the first draft of the rule, DHFS staff used the data to create a certification fee which recognized the extra effort involved in certifying a record for use in court. The fee was proposed to be $7.50 per record which was based on the review of an average record. It should be noted that this is the same fee for certification that is codified in at least one state's statute (Georgia – O.C.G.A 31-33-3, which is subject to a CPI increase each July and is currently at $8.54).

Without any logical rationale, the second draft creates two tiers and the language is completely illogical. To administer two sets of base fees and two sets of certification fees is an unnecessary added burden to the health care provider. The rule, in this latest version, will mean more work and increased costs for health care providers.

An Annual Cost of Living Adjustment Must be Included.

The Department has interpreted the directive in the law to mean that the uniform fee must be revised every three years, and not more often.

In the negotiations which resulted in this law, there was agreement by all parties (AHIOS, Wisconsin Health Information Management Association, the Insurance Alliance, and the State Bar of Wisconsin) that the language would not preclude the inclusion of annual cost of living adjustments. All parties agreed that the Department would make the determination about the inclusion of an annual adjustment.

On the other hand, the State Bar and Insurance Alliance were very interested in specific language directing the Department to completely review the uniform fee and its relationship to actual costs of providing the service because they were convinced that, as more and more records are maintained electronically, there would be a significant reduction in the costs associated with the service. However, they fail to recognize the enormous capital outlays required to invest in the equipment and software development necessary to implement electronic medical records and make electronic delivery of those records a reality. AHIOS was not opposed to a full review in three years because we recognized that the implementation of new technologies within hospitals and clinics was not happening as quickly as believed and because the implementation of new technologies does not immediately, and may never, result in a reduction in the cost of a service, mostly due to tremendous capital investments in equipment.

Throughout its rule-making effort, the Department has used adjustments based on inflation to justify its proposed fees. Similarly, the uniform fee which is set should be adjusted using a standard cost of living mechanism. Many other states implement an annual adjustment.

Conclusion

Thank you for your consideration of these comments. We hope that the Health Committees will carefully review all comments that have been made by those who provide this service and ask the Department to make revisions to more accurately reflect the cost of providing duplicate copies of medical records.

JRS/

March 30, 2004

TESTIMONY

To: Members of the Senate and Assembly

From: Michael Wickman
Executive Vice President
SOURCECORP
1030 Ontario Road
Green Bay, WI 54311

RE: OPPOSITION TO DRAFT RULE HFS 117

SOURCECORP is a Business Process Services company that specializes in the outsourcing of Release of Information (ROI) services. The company's Wisconsin operation was founded in 1982, and is headquartered in Green Bay. SOURCECORP currently employee in excess of 400 employees in the State that provide specialized ROI services to over 300 healthcare facilities in Wisconsin. Our WI operations ended year 2003 with annual revenue slightly over $22 million, with 54% of that revenue coming from our ROI services division.

SOURCECORP opposes HFS 117 because the proposed fees will not adequately cover the costs of providing professional and quality ROI Services. This opposition is based on statistical data reflected in our 2003 year-end financial results. In 2003, our company responded to in excess of 738,000 requests from various parties seeking copies of Protected Health Information (PHI). The average number of copies per request was 29 pages. Under proposed HFS 117, the fee that can be charged based on a 29 page request would be as follows:

PROPOSED HFS 117

$15.00 Retrieval Fee
$8.99 ($.31 x 29 pages)
$23.99

This proposed rate compared to current mandated rates in our neighboring states of MN, IL, and MI, based on the same 29 page average reflect the following charges:

MN	IL	MI
$14.02 Retrieval Fee	$20.96 Retrieval Fee	$20.00 Retrieval Fee
$31.03 ($1.07 x 29 pages)	$19.50 ($.78 x 25 pages)	$20.00 ($1.00 x 20pg)
$45.05	$ 2.08 ($.52 x 4 pages)	$ 4.50 (.50 x 9 pgs)
	$42.44	$44.50

In addition to these mandated rates, all three of these states have included **annual** CPI price adjustments.

In reviewing the equality of the rate structures of our neighboring states, I must question the information gathering process that the WI Department of Health and Family Services used to come up with their compromised fee structure. There was nothing in their report that reflected a calculation or formula based on any due diligence process involving the survey of a health care provider or copy service in determining their proposed HFS 117 fee structure.

The Health Care Provider business exemplifies cost shifting practices. We are all aware of the shifting costs from shortfalls in Medicare and Medicaid reimbursement to private payers. Our company's billing rate for a 29 page request last year was $60.18. That rate was off set by current mandated rates within the State of Wisconsin for Workers Compensation and Certified Legal Requests that averaged $13.05 per request; and Social Security Disability requests that averaged a flat fee of $20.00 per request. Based on our 2003 financial statement, our average COST per billable request was $37.55, which is 36% higher than the proposed HFS 117 fee structure would allow, and our financial statement reflected a loss of $255,000 last year. How are we expected to remain in business when the proposed fee is 36% less than the direct cost of providing a service...with no profit considered. In addition, copy services are approximately 39% more efficient in providing ROI services than a health care provider. This means that the health care provider costs would be $61.56.

Who is complaining about the current fee structure? Only the attorneys who are "for profit" organizations. The patient, who is the single largest requester has absolutely no objection to existing fees and/or processes.

It is my belief that the Department of Health and Family Services considers the ROI Business to be a straight forward photocopying process. I ask the Senate and Assembly members to oppose the Draft Rule HFS 117, and urge the DFHS to work with Health Care Providers and their Business Associates to fully understand and acknowledge the complexity involved in providing ROI services, and establish a fee structure that is fair and equitable.

Thank you for your consideration.

Michael P. Wickman

WISCONSIN HOSPITAL ASSOCIATION, INC.

March 30, 2004

To: Members of the Senate & Assembly Health Committees

From: Jodi Bloch
Vice President, Government Affairs

Re: Testimony in Opposition to HFS 117

Thank you for the opportunity to come before you and testify today. My name is Jodi Bloch and I am the Vice President of Government Affairs for the Wisconsin Hospital Association (WHA). WHA represents virtually all of the hospitals in the state.

I am here to testify in opposition to HFS 117, which sets the fee structure that health care providers must charge for furnishing copies of medical records.

At first glance, one might ask the question, how hard or expensive can it be to copy a medical record? However, copying medical records is much more process-oriented and in-depth than making copies at the photocopier. The numerous steps add costs to the record copying process. According to the American Health Information Management Association and WHA, some of these steps, which add cost to the process of copying a medical record, include the following.

- Labor costs involved in verifying that the authorization obtained is appropriate
- Labor costs involved in logging the request in a database
- Labor costs involved in the physical retrieval of the information where many times the document is stored off-site
- Labor costs involved in locating the specific information that is requested in the record (attorneys' requests in particular have asked for very specific information that must be located in the records and this can be very time-consuming to retrieve especially in a voluminous record)
- Labor costs involved in re-filing the record
- Labor costs involved in the physical act of copying the information
- Expenses for cost of paper, supplies, toner and equipment maintenance in addition to capital investment costs associated with copying equipment
- Compliance costs involved in reviewing the process to make sure appropriate steps are taken to protect the integrity of the information throughout every step of the process
- Liability costs involved if inadvertent mistakes are made because of the nature of the material

5721 Odana Rd P.O. Box 44992 Madison, WI 53744-4992 **P** (608.274.1820) **F** (608.274.8554) **wha.org**

If one were not at all concerned about the integrity of the document, anybody could provide a copy of the medical record, but because this record contains such personal, sensitive information, there is a series of steps that each adds cost to the overall process that must be followed to ensure that the integrity of this information is not compromised. This is why hospitals choose to either outsource this function to third party record copying businesses that have the expertise to do this job; or they choose to do it themselves in order to be assured that the record requests are handled properly. So copying medical records does not go through the same simple process that Kinkos uses to make copies.

Through contacts with some member hospitals and others, I have learned that the many of them contract with third party entities to fulfill medical record copying requests. They tell WHA they choose to outsource this service because the cost, complexity and number of requests have increased over the years. They have determined that it simply makes good customer service and better business sense to outsource this function. In these cases, the third party copying business performs this function for these hospitals because they do not have the expertise, nor do they want the additional burden on their staff, as well as the increased liability that goes along with performing this function in-house. All of these reasons add cost, which would siphon away critical resources that could be better spent directed into the business of caring for patients.

At first glance, one might not think these proposed rate changes would have much of an impact, but upon further examination, you will find that hospitals budgets are increasingly stretched. When the government continues to add regulatory burden as this will do if the third party providers cease to exist, coupled with the dramatic chipping away at Medicaid reimbursement payments to hospitals (currently the government pays only 62 cents for every dollar hospitals spent in caring for Medicaid patients costs) meaning additional cost shifting will be born once again by private sector insured patients.

The copying service companies have provided written commentary to DHFS that indicates the rates are inadequate for them to do business in Wisconsin. If these entities were to close their doors in Wisconsin, the option for hospitals to outsource this service to third party copying services would be eliminated. The result would be that all hospitals would have to perform this service in-house. Wisconsin hospitals would again be put in a difficult position of having to shift the cost of providing this service to other payers, while at the same time struggling to provide the service in a reliable and efficient manner to record requestors.

Other health care facilities whose operational models enable the facility to perform the copying function more efficiently in-house have also indicated to WHA that the fee structure set up by DHFS does not cover the costs of providing this service. One of these facilities has estimated that they would have to recoup a loss of $50,000 on an annual basis through cost shifting measures to subsidize their medical records copying function. Again, it is important to point out that these costs would have to be subsidized by private

sector payers who are ultimately becoming the payer of last resort bearing the disproportionate burden of under funded government mandates and regulations.

WHA believes that DHFS rates in HFS 117 do not truly reflect costs. In reviewing our neighboring states' established rates, all of them are higher, but for arguments sake, let's review Minnesota where current charges are $14.02 per request plus a $1.07 per page charge compared to Wisconsin's $12.50 and $15.00 per request charge plus 31 cents per page. Even going back as far as 1992, Minnesota had established higher per copy charges twelve years ago at 75 cents per page than Wisconsin's current proposed rate of 31 cents per page. WHA does not believe that the costs of performing this function in Wisconsin are lower than the costs of copying records in our neighboring states.

It is WHA's position that the cost shifting needs to stop and the only way to do this is to send the rule back to DHFS for more extensive review and analysis of all of the cost components of medical record copying. Specifically, WHA believes the following changes should be made to the current proposed rule.

- The fees should be adjusted to reflect a better estimate of actual costs.
- The fees should be based on a single rate and per page fee for every request rather than a two-tiered rate structure. The cost to retrieve the record is not dependent on the size of the record and thus a two-tiered rate structure cannot reflect the actual costs as required by the Legislature.
- The fees should be indexed annually for inflation, as is also the case in other states.

On behalf of WHA, I would like to thank the committee members for reviewing this proposed rule and again respectfully ask that they recommend that DHFS make further modifications to the rule in order to more accurately reflect actual costs to providers.

Froedtert Memorial
Lutheran Hospital

9200 West Wisconsin Avenue
Milwaukee, WI 53226-3596

Froedtert Hospital

414-805-3000
www.froedtert.com

Froedtert Hospital Opposes DHFS Rule 117

Froedtert Hospital is opposed to Proposed DHFS Rule 117, related to medical records fees. Froedtert Hospital is an acute-care, academic medical center in Milwaukee.

During 2002, Froedtert provided care to patients on 112,662 days of inpatient hospital care and during 487,952 outpatient visits. Froedtert completed 1,666,407 laboratory tests and administered 3,313,076 pharmacy doses. Every one of these interactions resulted in the creation or expansion of a patient medical record. Storing and maintaining these records is a significant effort, as is responding to requests for copies of medical records. Froedtert processes approximately 30,000 requests for medical records annually.

Given the significant volume of medical records requests, underpayment for copies of medical records will likely result in cost-shifting, meaning that all patients will subsidize the requests of patients receiving records at a cost substantially below the cost of compiling them. **The rule should be revised so that the cost of record requests are born by individuals making the request.**

The proposed fees are too low and do not reflect the cost of copying medical records. We believe that several factors used to calculate the proposed fee schedule are not reflective of actual costs and have resulted in estimated costs and a fee schedule that fails to adequately cover costs. Specifically:

- ✓ The average record request is 31 pages, but DHFS used an average record request size of 25 pages when constructing the schedule; and
- ✓ Medical record maintenance has become significantly more complex since 1997, requiring additional training and resulting in higher salaries. Records are located in multiple storage mediums, including electronic systems which require staff to be computer literate. Also, due to the state and federal privacy regulations, staff needs to understand the laws pertaining to release of information.

The proposed rule fails to include cost of living increases for medical record fees. The rule requires revision no more often than every 3 years. Coupled with the absence of a required cost of living increase, this will result is a growing gap between the cost of providing records and the fees paid for the records.

The fee structure suggested by DHFS is considerably lower than the records fees charged in surrounding states. According to the DHFS analysis, a 25-page records request would be subject to the following fee limitations in Wisconsin and surrounding states:

Wisconsin:	$7.75 (individuals); $22.75 (all others)
Minnesota:	$40.04
Iowa:	$25.00
Michigan:	$46.00 (attorneys); $50 (insurers)
Illinois:	$39.73

Based on the current cost of wages, supplies and dedicated equipment, the cost of filling a 25-page request at Froedtert Hospital is $39.11.

Froedtert Hospital opposes the proposed rule as the proposed fees are inadequate to cover costs, and requests that the committee to send the rule back to the department for additional revisions.

Affinity HEALTH SYSTEM

Mercy Medical Center
500 S. Oakwood Rd. • Oshkosh, Wisconsin 54904 • (920) 223-2000

March 29, 2004

Senator Carol Roessler
Chairperson, Committee on Health, Children, Families, Aging, and Long Term Care
State Capitol
P.O. Box 8953
Madison, WI 53708

Dear Senator Roessler:

In addition to comments included in oral testimony presented on March 30, 2004, I am submitting to you information regarding concerns specific to Mercy Medical Center and Affinity Health System regarding the proposed rule HFS117.

I realize there have been many sides of the story presented and this is a complex issue. The bottom line is that there are high costs associated with reproducing medical records in accordance with protecting the patient's right to privacy, whether it is done by a service or by the facility itself.

Using the guidelines defined in HFS117, it takes 70 minutes to fully process one record request. The average wage (including benefits) is estimated at $16.$\underline{00}$ /hour. Mercy Medical Center averages 607 requests per month. According to these guidelines, it requires 710 hours/month to fulfill these requests, with staff wages totaling $11,360.00/month. Over a 1 year period of time, this would be $136,320 before any management compliment, supply, equipment, software, overhead, or bad debt recoupment fees were included. These pieces could easily add $15,000/year.

If we looked at this throughout Affinity Health System, which totals 28,884/year it would total an additional 33,698 staff hours for a total of $539,168. Again, costs associated to the process in addition to the staff hours paid could surpass $15,000/year for each of the 2 hospitals included in this review (Mercy Medical Center – Oshkosh, and St. Elizabeth Hospital , Appleton), and the AMG clinics. The figure is near $600,000. That cost, coming back into the hospital, would somehow need to be passed back to all patients/payors.

If we only included the billable requests, it would total 13,320 requests/year, and 145,584 staff hours totaling $249,350. Add to that an estimated $45,000 in additional costs (above), and we near $300,000 that would somehow need to be passed back to all patients/payors , rather than to the people requesting the records for purposes that are not medically necessary. Far too many people are without healthcare coverage because they, or their employer, cannot afford the cost of the premiums. Having to push back the cost of reproducing records to all patients/payors has the impetus to increase the cost of premiums, potentially leaving even more people without coverage.

The proposed rates clearly would not cover these costs of reproducing records, whether done by the facility or an outside service. Please reconsider the rule, and adopt a fee schedule that more accurately reflects the cost of reproducing confidential patient medical records. We are willing to assist in that evaluation.

Sincerely,

Barb Savagian, RHIA

Barb Savagian, RHIA
Manager, Health Information Services
Mercy Medical Center

STATE OF WISCONSIN
BOARD ON AGING AND LONG TERM CARE
1402 Pankratz Street, Suite 111
Madison, WI 53704-4001
(608) 246-7013
Ombudsman Program (800) 815-0015
Medigap Helpline (800) 242-1060
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http://longtermcare.state.wi.us

Testimony of the Board on Aging and Long Term Care before the Assembly Committee on Health 30 arch 2004

Chairman Underheim, members of the Committee, good morning. I am Bill Donaldson, Counsel to the Board on Aging and Long Term Care. I am here this morning to tell you of our concerns about HFS 117.

The Board very much appreciates the work done by the department to define the concept of a reasonable fee for copying health care records. In both state and federal law, it is seen as a basic right of a consumer to have access to her or his health care records, and this rule will reduce the potential for wide variations in what is charged for records by establishing a dollars-and-cents ceiling on the cost to the consumer to obtain this personal health care information.

It is an unfortunate reality that there have been instances where a provider, left to interpret what is "reasonable," has effectively denied an indigent consumer the ability to obtain a copy of the information collected and maintained about her. The uncertainty created by the lack of a specific limit can be used as a barrier to access. This practice may still be possible, even with the adoption of revised HFS 117, especially in nursing homes where residents whose care is paid for by Medical Assistance live. 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, hair cuts 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 a resident's meager funds. This cost will, in many cases, put the records entirely out of her reach. The right of access will continue to be an illusion for the poor.

The department has included a statement of encouragement to providers, in the form of a note, asking them to consider the impact of assessing the full allowable charge on "indigents" and to voluntarily charge a lesser amount. We believe that it would be a much more effective and humane rule if HFS 117 required the provider to give the health care record to MA clients free of charge. I have attached suggested language for inclusion into HFS 117 that would achieve this goal.

The Board on Aging and Long Term Care believes that it is critically important to assure that the right of access to these records which is guaranteed in state and federal law is not rendered useless because the actual cost to low-income individuals remains more than they are able to afford.

Thank you for your kind attention. I will be happy to answer any questions that you may have.

The Board on Aging and Long Term Care suggests the inclusion of the following underlined language at the indicated position in proposed HFS 117 and striking the currently drafted NOTE.

HFS 117.05 Fees for duplicate records. (1) DEFINITION. In this section, "x-ray copy" means a page containing one or more radiographic images.

(2) REQUESTS FOR RECORDS FROM THE PATIENT OR REQUESTS FROM THE PERSONAL REPRESENTATIVE OF THE PATIENT. If a patient or if the personal representative of the patient requests copies of the patient's health care records, the health care provider may charge no more than the following fees:

(a) For other than X-rays, all of the following:
1. Thirty-one cents per record page.
2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

(b) For X-rays, all of the following:
1. $5.25 per X-ray copy.
2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

Note: Sales taxes, if applicable, also may be added to the fees charged under this subsection.

(c) 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.

~~**Note:** When records are needed by or on behalf of indigents, the Department encourages health care providers to provide those records at as low a cost as possible.~~

. . .