Good morning; My name is Barb Savagian. I am a Registered Health Information Administrator, and am the Manager of Health Information Services at Mercy Medical Center in Oshkosh, WI. Mercy is part of Affinity Health System, which includes 3 acute care hospitals, 17 clinics, an outpatient surgery center, and a long term care facility.

The mission of Affinity Health System is to live out the healing ministry of Christ by providing services that promote the health and well being of the communities we serve, especially the poor. We are a non-profit organization, and nothing in our mission statement even hints that we believe our health care facilities should be making a profit in providing release of information services. The reality of any business is that they at least need to cover their costs and have some money for further advancement.

Last year at Affinity Health System 28,884 record requests were processed, totaling over 640,000 pages of medical information!! Information that is used for continuing patient care is provided to other healthcare providers free of charge. We call these non-billables. It is my experience that this is standard practice in the state of Wisconsin. There is considerable value placed on human life, privacy, and dignity. Very often the decisions your doctor makes on how to treat your current ailment is based on your medical history. In accordance with our mission and patient rights, we believe we are obligated to provide that information for every patient's health and well-being. About 55% of our requests are for non-billable records.

The remaining (approximately 45%) records we release are considered "billable" – these are requested by insurance companies, attorneys, review organizations, and others, from whom we can require payment from in return for the service of providing a copy of the record. "Billable" customers, however, are using the information for a different purpose. It is not to better the patient's health status, but often to evaluate the outcome of services previously rendered for legal matters, litigation, entitlement or reimbursement.

There are volumes of laws surrounding the release of records, often dependent on the type of care provided. Those who staff release of information functions are specially trained and constantly updated on changes that affect their jobs. The majority of the time it takes to provide the service is in the "up front" work – making sure everything is correct on the consent, logging it, locating the charts, and reviewing the documentation to assure the chart can be released according to the type of consent that was sent in.

Logically, the time it takes to complete "up front" processing increases when invalid information is rent on the authorization to release records by the requestor. During the first 6 months of 2003 at Mercy Medical Center, 11% (Average= 29 of 262/month) of the billable requests for information had to be returned after review; they were invalid. This pushes the responsibility from the

requestor to the healthcare facility to follow up to make sure the request is fulfilled in a legally acceptable manner. We have to return the request with documentation as to why the request is invalid, and require that it be corrected so we can release the information in a legally acceptable manner. There are often phone calls during this process, also. Rather than fulfilling one request, it is like filling two; sometime three if the request is invalid the second time. In comparison, only .6% (2 of 345/month) of our non-billable requests had to be re-processed due to invalid authorizations during this same period of time.

In our case, even though number of non-billable requests slightly outweighs the billable requests, the number of documents produced for billable requests outweighs the number for non-billable by almost 4:1. The average number of pages in a non-billable request is 6.7; the average number of pages in a billable request is 25.8.

We have found that with non-billables, most of the requested information is contained within a limited number of documents that have been dictated by the physician, all of which are maintained electronically in our I.S. system, and can be printed from there. This does help create efficiencies, but it is offset with the cost of the investment into the software, upgrades, additional hardware technologies, and staff training required to keep us on that cutting edge. This supports reviewing the rates periodically, as things do evolve.

In addition to those documents discussed above, billable requests often include progress notes, orders, nursing, & ancillary documentation that are not in our I.S. system. This necessitates retrieval of the paper record, whether it is on-site or in off-site storage. Retrieval of off site records increases the turnaround and cost of processing the request, whether it is facility or vendor owned.

As evidenced here, the re-processing to gain a valid consent for billable requests is almost 15 times higher (2 compared to 29) than with non-billables, and the amount of paper and resources used to recreate the record for a billable request is 4 times higher (6.7 pages compared to 25.8 pages) than non-billable records. I would suspect these rates may be similar at other facilities, but encourage the Committee to take the draft back and study the environment carefully with medical record retainers around the state.

The reality is that probably 75% of our time and resources used for release of information is attributable to billable requests at MMC. We should be allowed to charge accordingly, and would be privileged to work with the Department of Health and Family Services to redraft this rule to reasonably cover costs of reproducing confidential patient medical records. It is an opportunity for this Committee to make an equity statement that whoever requests billable records is obligated to pay a just fee for reproducing them. As they are not being used for patient care, it is not a cost that should be passed to patients/payors by the

healthcare organizations. Thank you for your consideration in this important matter.

LEGAL ACTION OF WISCONSIN, INC.

MADISON OFFICE

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TO: Senate Committee on Health, Children, Families, Aging and Long-Term Care
Assembly Committee on Health

FROM: Bob Andersen

RE: Proposed HFS 117, proposing to amend sections HFS 117.01 to 117.04 and repeal and recreate section HFS 117.05, relating to fees for copies of health care records.

DATE: March 30, 2004

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west

Attached is a copy of our proposal to DHFS to amend the proposed rules in a way which will enable our organization to maintain its level of representation of low income people in their applications for SSI and in a way which will save the state most of an estimated $623,300 that the proposed rules will cost the state, according to the fiscal note that accompanies these rules. Attached is a copy of the fiscal note.

Essentially, our amendment would save our clients and the state the additional charge of $12.50 per request for requests of 5 copies or less and of $15.00 per request for requests in excess of 5 copies. The amendment simply provides that the same charge that applies to patients will also apply to requesters of records in judicial or administrative proceedings involving public benefits from a government program. That charge will simply be 31 cents per page, without any additional charge for each request that is made. We chose the expression "public benefits from a government program" because that expression is used by the federal HIPPA regulations, ***although our principal concern really focuses on social security disability cases.***

If the rule were to be amended just to make the same charge per patient apply as well to social security disability cases, it would satisfy our concerns and save the Disability Determination Bureau of DHFS most of an estimated $465,000 GPR, according to the fiscal note.

The fiscal note estimates that the Disability Determination Bureau (DDB) within DHFS would

require an additional annual cost of $465,000 for social security claims and $109,300 in MA costs for medicaid disability claims. Under these programs, the Bureau expects 180,000 requests at an average of 26 pages per request. The fiscal note goes on to estimate an additional cost of $49,000 annually for the DWD Division of Vocational Rehabilitation (DVR). The total of these additional costs is $623,300. While our proposal would still leave the Bureau and DVR with a cost of 31 cents per page, the deletion of the extra charge of $12.50 per request of under 5 pages and of $15.00 per request over 5 pages would greatly reduce this cost.

DHFS maintains that the law does not allow it to adopt the amendment that I suggest, because it does not have the authority under the statute. My attached memo addresses that concern. In summary, the law allows an agency to adopt rules to implement any statute it is charged with administering, as long as the rules do not conflict with a statute or the rules do not go beyond the scope of the statute they are administering. The amendment we are suggesting is well within the scope of the statute that is being administered by DHFS and does not conflict with any provision in the statute or any other statute.

The adoption of the kind of amendment that we are suggesting here would ensure that we can continue to represent people in SSI cases at the level we have been doing. Our representation of clients in these cases provides an additional benefit to the state in that it guarantees disabled people the assistance they need and it relieves the state of the difficult burden it has under W-2 for these clients.

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TO: Larry Hartzke
Office of Legal Counsel
DHFS

FROM: Bob Andersen

RE: Comments for Department of Health and Family Services Hearing on Proposed HFS 117

DATE: December 19, 2003

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Public benefits law is one of the three major priority areas of law for our delivery of legal services. As a result, our organization has been extensively involved in representing applicants for state and federal public benefits over the years. The use of medical records is especially important in our representation of low income clients in their applications for SSI, although we request records in worker's compensation and Medicaid cases as well. In the course of a year, we average about 900- 1000 cases where we request medical records.

In the past, we have paid for medical providers at the rate set in current HFS 117, which is the greater of $8.40 per request or 45 cents per page for the first 50 pages and 25 cents per page for more than 50 pages. This is because our cases were treated as being covered by section 908.03(6m) of the statutes as actions which were subject to the rate set by HFS 117. Unfortunately, when the new medical record producing industry took over from the hospitals, clinics and doctors, these new corporations reinterpreted section 908.03(6m) as not to apply to almost all of our cases because most of our cases are federal claims and not state claims involving subpoenas. Our costs for copies of these records skyrocketed. In many cases, where we paid $8.40 in the past, we have been billed as much as $36 at a rate of $3 per page. The proposed rule would require us to pay .31 per page plus an additional charge of $12.50 per request for 5 copies or $15.00 per request for more than 5 copies. In the example that we use, for

12 copies we would have to pay $18.72, compared to the $8.40 charge we had in the past. When one multiplies that by the number of cases we handle per year, this becomes an exorbitant cost which we are not able to meet. Our clients are too poor to pay these costs and the shrinking budget that Legal Services Corporation programs have suffered over the past many years does not allow us to cover those costs.

SSI recipients and applicants depend upon receiving copies of medical records for their eligibility for SSI. It is critically important for our clients who are unable to work to receive SSI and MA for their very subsistence. In addition, the state benefits from our successful provision of services to SSI applicants, because these applicant are removed from W-2 rolls and other forms of state public assistance.

I. We Recommend a Revision of the Proposed Rule to Require the Lower Fee Limit for a Requester Involved in Judicial or Administrative Proceedings Regarding the Patient's Receipt of Public Benefits from a Government Program -- the Revision Would Also Save the State at Least $623,000 .

We would like to recommend an amendment to proposed HFS 117, which would place our clients on the same level as are individuals or personal representatives of the individuals. Our suggested amendment would then require our clients to pay $.31 per page, without the additional charge of $12.50 per request for 5 copies or $15.00 per request for more than 5 copies. Our amendment would also benefit the state agencies who would also only be required to pay the same rate available for individuals, without being charged the extra $12.50 or $15.00 per request. According to the costs projected by your fiscal note for the state, the adoption of our suggested amendment would save the state at least $623,000. Your fiscal note estimates that your proposed rule may cost the Disability Determination Bureau of DHFS an additional $465,000 GPR, in seeking medical records for Social Security claims and an additional $109,300 GPR for medical records for Medicaid disability claims. In addition, the fiscal note indicates that costs for the Department of Workforce Development's Division of Vocational Rehabilitation could rise by $49,000 GPR. As your fiscal note also reveals, other state agencies rely on copies of medical records and their costs would most likely rise also.

We recommend that HFS 117.05 (2) be amended as follows:

HFS 117.05 Fees for duplicate records.

(2) Requests for Records from Patient, ~~or~~ Personal Representative, <u>or Requester Involved in Judicial or Administrative Proceedings Regarding the Patient's Receipt of Public Benefits from a Government Program.</u> If a patient, ~~or~~ personal representative, <u>or requester involved in judicial or administrative proceedings regarding the patient's receipt of public benefits from a government program</u> requests duplicate copies of the patient's health care records, the health care provider may charge no more than the

following fee:

(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.

II. The Legislative Intent of 2001 Act 109 Does Not Require a Single Fee Limit, as Contended by DHFS.

DHFS contends, in its fiscal note, that it cannot "exempt certain law firms and health care providers from the rule's applicability" because that would be "contrary to the legislature's intent that the rule, to the extent possible, specify a single fee limit for all parties." The fiscal note goes on to say 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."

There is no basis for these contentions on the part of the department for the following reasons:

1. There is nothing in the express provision of the legislation being implemented that reveals that it was the legislature's intent to "specify a single limit for all parties."
2. The express provision of legislation governs what is its legislative intent, unless the legislation is ambiguous, and there is nothing ambiguous on the face of this legislation.
3. Even if one were to conclude that the legislation is ambiguous, there is nothing in the official record that indicates that it was the legislature's intent to "specify a single limit for all parties."
4. The proposed rule violates this proposition itself because it does not propose a "single limit for all parties," since there are two levels of charges imposed: one for individuals and their personal representatives and a second one for others who request records on their behalf.

Oral communications made by legislators or individuals involved in the legislative process are not recognized by law in determining what was the intent of the legislature.

The legislation being implemented is in sections 146.83 and 908.03 of the statutes, as amended by 2001 Wisconsin Act 109 (the budget repair bill). Those provisions of Act 109 are as follows:

Section 336h. 146.83(3m) of the statutes is created to read:

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

1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies.
2. The varying cost of retrieval of records, based on the different media on which the records are maintained.
3. The cost of separating requested patient health care records from those that are not requested.
4. The cost of duplicating requested patient health care records.
5. The impact on costs of advances in technology.

Section 523 p. 908.03(6m)(d) of the statutes is amended to read:

908.03(6m)(d) *Fees.* Before January 1, 2003, the department of health and family services shall, by rule, prescribe uniform fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge ~~under par. (c)3.~~ for certified duplicate patient health care records. The rule shall also allow the health care provider to charge for actual postage or actual delivery costs. The commencement of an action is not a prerequisite for the application of this paragraph

Section 523q.b 908.03(6m)(d) of the statutes, as affected by 2001 Wisconsin Act ... (this act), is amended to read:

908.03(6m)(d) *Fees.* After December 31, 2002, the department of health and family services shall, by rule, prescribe uniform fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge for certified duplicate patient health care records. The rule shall also allow the health care provider to charge for actual postage or actual delivery costs. ~~The commencement of an action is not a prerequisite for the application of this paragraph~~ For duplicate patient health care records and duplicate X-ray reports or the referral of X-rays to another health

care provider that are requested before the commencement of an action, s. 146.83 (1)(b) and (c) and (3m) applies.

Nothing in the express words of the legislation that was created by 2001 Act 109 refers to specifying a single fee limit for all parties. The legislation does not even imply anything about single fee limits. ***The language in the statute, section 908.03(6m)(d), referring to "uniform fees," is statutory language that existed long before the adoption of 2001 Act 109, and this is language that supported different fee levels for different people for many years before the enactment of 2001 Act 109. It supported a lower fee level that we benefitted by for many years before the new record producing corporations took over and reinterpreted section 908.03 (6m)(d) as not to apply to us.*** This statute was the basis for the current administrative rule adopted by DHFS to set a lower charge for fees for certain litigants.

In any event, the reference to "uniform" fees in section 908.03 (6m)(d) is not part of the legislation that was adopted by 2001 Act 109. Furthermore, that pre-existing statutory language refers only to fees under section 908.03 (6m)(d) and not to fees under section 146.83 (3m). The legislation created by 2001 Act 109 says nothing about "uniform fees" or a "single fee limit."

The well established rule of statutory construction is that the express terms of the legislation govern what is legislative intent, unless the language is ambiguous. Bruno v. Milwaukee County, 260 Wis. 2d 633, 660 NW 2d 656 (2003). If the language is ambiguous, the legislative history behind the proposal may be consulted to ascertain what was the legislative intent. There is nothing ambiguous about the legislation that was drafted. There is nothing in the provisions of 2001 Act 109 that says anything about single fee levels. As a result, the law does not permit an inquiry into what was the legislative history behind this proposal.

Even if the legislation were to have been written in an ambiguous way, however, there is nothing in the official record of the legislative history of this proposal that supports the idea that the legislature intended this language to require "single fee limits." Attached are copies of memos from the State Bar of Wisconsin and the Wisconsin Academy of Trial Lawyers, addressed to 2001 SB 71, which culminated in the provisions of Act 109. While it is probable that these are not a part of the official legislative history of 2001 Act 109, even these memos do not state that the legislation is intended to result in a "single fee limit." They state that the goal of the legislation is ***to eliminate exorbitant costs and to eliminate the distinction between costs charged where an action has been commenced and costs charged where no action is involved.*** The uniform fee levels they refer to are uniform levels achieved by eliminating the distinction between situations where actions have been filed and situations where they have not. As an aside, it is ironic that the intent revealed in these communications is to reduce the exorbitant costs of getting records, in view of the increases in costs that are authorized by HFS 117.

In any event, the legislation is clear on its face that there is nothing in 2001 Act 109

that even addresses single fee limits, much less requires it. Consequently, rules of statutory construction preclude any interpretation that the legislature intended to "specify a single limit for all parties" and that specifying a lower or higher limit for some parties would be "contrary to legislative intent."

Moreover, the reality is that the department does not even adhere to its own contention that it must specify a single fee limit, because it establishes a two tier fee limit, with a lower fee for individuals or their personal representatives. While the lower limit is said to be required by federal law [Health Insurance Portability and Accountability Act (HIPPA)], still it results in different levels for different people and not a "single fee limit for all parties."

III. DHFS Has Broad Authority to Adopt this Rule Revision

It is clear that the department has the authority to adopt our proposed rule revision in order to implement the provisions of two statutes it is administering, sections 146.83 (3m) and 908.03 (6m)(d). DHFS has the authority to adopt this rule revision pursuant to s. 227.11 (2)(a) of the statutes and pursuant to the specific provisions of 146.83 (3m) and 908.03 (6m)(d), which direct the department to adopt administrative rules prescribing fees.

With respect to the department's broad authority under section 227.11 (2)(a), DHFS in its recent Statement of Scope of Proposed Rules, relating to the proposed creation of HFS 2 for the recoupment of overpayments of public assistance, states that it has broad authority to promulgate administrative rules:

> The Department's authority to promulgate these rules is under 227.11 (2)(a), Stats., which authorizes the Department to promulgate rules interpreting the provisions of any statute administered by it, if the Department considers it necessary to bring about the purpose of the statute.

This is consistent with the department's statement with respect to the recent enactment of administrative rules allowing the recoupment of SSI payments in the recently enacted Ch. HFS 79, Wis. Adm. Code. In the creation of this administrative rule, DHFS similarly maintained that s. 227.11 (2)(a) gives it the general power to adopt administrative rules to interpret and implement any statute that the department administers. In the case of HFS 79, the department maintained that the statutes being administered are s. 49.77 and 49.775, the statutes that generally prescribe the eligibility requirements of the SSI program. The department maintained that it had the general authority to adopt HFS 79, allowing the recoupment of SSI overpayments, notwithstanding the absence of any express provision for recoupment in s. 49.77 and s. 49.775; notwithstanding the express entitlement to benefit levels under those statutes; and notwithstanding a February 28, 2001 letter from the Joint Committee for Review of Administrative Rules that said as follows:

First, a majority of the members of the committee believe that the rule is without statutory authority. Department representatives testified that they believe that chapter 227 of the statutes gives the department authority to write administrative rules for programs administered by the department. While this is generally true, other statutes need to be examined to answer this question.

The benefit level for state supplemental payments to SSI recipients is established by statute. (Sections 49.77 and 49.775, *stats.*) Therefore, the benefit level can only be reduced when authorized by a statute. An administrative rule reducing benefit payments to recoup a previous overpayment would be illegal because an administrative rule cannot trump a statute. What is needed is a statute authorizing recoupment in certain situations.

The department maintained its position about the general authority given to it by s. 227.11 (2)(a), even faced with the reality that the legislature expressly provided for the recoupment of W-2 benefits in the statutes (s. 49.161) and expressly provided for the recovery of Food Stamp overpayments in the statutes (s. 49.793), but was silent regarding overpayments of SSI. Under usual rules of statutory construction, this would lead to the conclusion that the legislature did not authorize the department to recoup overpayments for SSI. Nonetheless, the department promulgated HFS 79, notwithstanding the existence of these statutes and notwithstanding the opinion of JCRAR.

Accordingly, the department contends that it has broad authority to adopt administrative rules under s. 227.11 (2)(a), as long as there is a statute it is administering.

In the case of DHFS 117, there are two such statutes: sections 146.83 (3m) and 908.03 (6m)(d). Both of these statutes provide that an individual is entitled to receive copies of health care records in exchange for the payment of fees, to be established by DHFS by administrative rule. These statutes provide an even greater basis for the department's statutory authority to adopt administrative rules than the SSI statute, because they specifically grant DHFS the authority to adopt rules.

IV. The Same Equities Exist for Allowing the Lower Fee to Be Paid by a Requester of Records in Judicial or Administrative Proceedings Regarding the Individual's Receipt of Public Benefits.

The department has proposed HFS 117.05 (2), which sets lower fees for duplicate records for patients or personal representatives of the patient. The lower fee for patients and personal representatives reflects the requirements of federal regulations adopted pursuant to the Health Insurance Portability and Accountability Act (HIPPA).

The lower fee to be charged to individuals or personal representatives is required by 45 CFR 164.524(c)(4), which provides that an individual has the right to access to records, provided that the provider "may impose a reasonable cost based fee, provided that the fee includes only the cost of :

(i) Copying, including the cost of supplies for and labor of copying, the protected health information requested by the individual
(ii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and
(iii) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(ii)"

45 CFR 164.502(g) provides that the same applies to a personal representative of the individual, but that an attorney is not a personal representative. The amendment which we suggest does not provide that an attorney is a personal representative. It allows an individual to benefit from the reduced fee where the requester is requesting the information in judicial or administrative proceedings regarding the individual's receipt of public benefits from a governmental source. ***Nothing in federal or state law prohibits DHFS from extending this lower fee to this class of people.***

We think that the same equities that apply to individuals and their personal representatives should also apply to an individual where records are being requested in a proceeding involving the individual's receipt of public benefits from a government program. Copies of medical records are especially indispensable for petitioners for SSI benefits. Their claims are ones of physical and mental disabilities, which depend upon the availability of medical records. The same is true for people who have claims for general relief based on physical or mental incapacity. Medical records can also be relevant to determinations of eligibility for W-2.

The language "public benefits from a government program" is actually used by the federal HIPPA regulations, s. 164.501 (definition of "required by law") and s. 164.512 (a), in authorizing the release of patient records, although nothing is said there about the fees that may be charged. Section 164.512 (e) refers to the authorization for releasing records in judicial and administrative proceedings, although, again, nothing is said there about the fees that may be charged.

Thank you for your consideration of this proposed revision of HFS 117.

If there is any further information you would like, please feel free to contact me.

DEPARTMENT OF HEALTH AND FAMILY SERVICES
Office of Legal Counsel
EXS-261 (05/01)

STATE OF WISCONSIN
s.227.135, Wis. Stats.

STATEMENT OF SCOPE OF PROPOSED RULES

SUBJECT

The Department proposes to create a new chapter of administrative rules, HFS 2, that addresses the Department's ability to recoup overpayments the Department inadvertently and inappropriately made to recipients of Department program benefits.

POLICY ANALYSIS

Under s. 16.51 (4), Stats., the Department of Administration is responsible for the collection of all monies due the state. In the State Accounting Manual, the Department of Administration has, in turn, assigned to each State agency the responsibility to establish and document internal procedures to assure that all accounts are recorded, billed and collected or written-off in an efficient and timely manner. This includes the return of benefits that were overpaid to recipients.

To date, the Department of Health and Family Services has relied on its written overpayment policy for its collection procedures. Although the Department may recover overpayments due the state, a court found with respect to one of the Department's benefit programs that the Department could not administratively recoup overpayments by offsetting a future benefit check without promulgating its procedure for doing so as an administrative rule if the statute did not specifically authorize the recoupment. Therefore, the Department is proposing to promulgate its procedure for recouping overpayments as ch. HFS 2.

STATUTORY AUTHORITY

The Department's authority to promulgate these rules is under section 227.11 (2) (a), Stats., which authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by it, if the Department considers it necessary to bring about the purpose of the statute.

STAFF TIME REQUIRED

The Department estimates it will take about 20 hours of staff time to draft the proposed rule.

Originating Division	Preparer- First Initial and Last Name	Date Prepared
Management and Technology	L. Hartzke	11/07/02
APPROVAL SIGNATURES		
Administrator		Date Signed
Susan Reinardy		11/12/02
Secretary		Date Signed
Phyllis J. Dube		11/12/02

Requested Changes to HFS 117

Submitted by Janet Swandby, Lobbyist
Association of Health Information Outsourcing Services
March 30, 2004

1. **Fee is too low.**
   a. Should be comparable to Minnesota, Illinois, or Michigan rates

2. **One base fee.**
   a. There is no relationship between the work done to retrieve and review a record and the number of pages that are released to the requestor.
   b. Two fees adds to the administrative burden to the record maintainer.
   c. The only item in the Technical Advisory Committee where there was agreement was that there should be a single fee structure.

3. **One certification fee.**
   a. Two fees adds to the administrative burden to the record maintainer.
   b. The DHFS proposed rule called for a certification fee of $7.50. There was one challenge to the proposal and the Department revised the draft to respond to that one complaint.

4. **An annual cost of living adjustment should be added to the rule.**
   a. Eight of the 26 states which have state uniform fees have included annual cost of living adjustments
   b. Illinois, Minnesota, and Michigan all have annual adjustments.

5. **Remove uniform fee for patients**
   a. No need for uniform fee for individuals/personal representatives. HIPAA already defines what can be charged by a health care provider and allows the fee to vary based on the cost of copying the record at that facility.

Summary of Independent Research on the Cost of Copying Medical Records

Year of Research	Per Page Cost	Cost for 25 Pages	Cost for 31 Pages	Source
1997	$1.50	$37.50	$46.50	Rose Dunn, "Copying Records: The Saga Continues," For the Record, April 7, 1997
1994	$.65 -$1.70	$16.25-$42.50	$20.15-$52.70	Ohio Health Information Management Association, January 16, 1994
1994	$1.34-$1.38	$33.50-$34.50	$41.54-$42.78	Phil Appenzeller for the Kansas City Area Hospital Association, May, 1994
1991	$.52-$1.52	$13.00-$38.00	$16.12-$47.12	KPMG Peat Marwick for Pennsylvania, July, 1991

Current Wisconsin Proposal

Year of Proposal	Per Page Cost	Cost for 25 Pages	Cost for 31 Pages	Source
2004	$15.00 + $.31/page	$22.75	$24.61	DHFS Proposed Rule- CR03-111

Other State Laws

Year of Law	Per Page Cost	Cost for 25 Pages	Cost for 31 Pages	Source
2004	$20.86 +$.78 or $.52/page	$40.36	$43.48	Illinois State Rate
2004	$14.02 +$1.07/page	$40.77	$47.13	Minnesota State Rate
2004	$20.00 +$1.00 or $.50/page	$42.50	$45.50	Michigan State Rate

Compiled by Janet Swandby
Coenen/Swandby Associates, Inc.
March, 2004 ♦ 608.286.9599

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March 30, 2004

3-30-04
Testimony

TO: ...ate Committee on Health, Children, Families, Aging

...bly Committee on Health

FROM: ...RHIA
...nal Operations Manager, Health Information Services
Aurora Health Care

RE: **HFS 117**

On behalf of Aurora Health Care, I am writing to oppose the proposed HFS 117.

My argument for opposition is simple; the proposed fee structure ($15.00 per request/$12.50 < 5 pages plus $0.31 per page), does not cover the actual cost to copy medical records. If adopted as proposed, this fee structure will result in a financial loss to my facilities.

An analysis of the actual costs to copy medical records at four Aurora hospitals illustrates the impact of these fees:

- These four hospitals process 59,750 requests annually
- Totaling 1,524,700 pages
- Total annual expenses to support just this function are $956,116.26
- When the proposed fee of $15.00 per request and $0.31 per page is applied, the result is an annual loss of $551,159.01.

We have heard the argument that billable requestors should not be required to subsidize the nonbillable requests, that the fees should reflect the actual costs to copy records and that the cost of free copies for continuing care should not be covered by the billable requestors. Based on my actual costs this is not the case.

- My actual cost to copy one request of any kind is $16.00 per request and $0.63 per page
- The rule proposes less than these costs.
- These proposed fees are not subsidizing any continuing care or free copies, these fees are not even meeting the actual costs to respond to requests of any kind.
- If this rule were to be adopted, my facilities would lose money on every single request, because the fee does not cover the actual costs.

In summary, the adoption of this fee structure will result in a financial loss to my facilities of $551,159 annually. Keep in mind that this analysis only covered four of the fourteen Aurora hospitals. If applied across all sites, the impact to Aurora Health Care would be considerably more. The Aurora hospitals in the Milwaukee metro area already carry a disparate percent of the uncompensated care in the region. In a time when providers are trying hard to fight the rising costs of health care please do not ask us to absorb even more of a financial burden.

Again, for these reasons I stand in opposition to the proposed HFS 117 and ask that you send this proposal back to the Department for further analysis.

Thank you.

Release of Information Estimated Profit/Loss Analysis

Aurora Health Care-Metro Milwaukee Region

*all figures are estimated based on past performance (+/-2%)

Facility-Specific Information

Total Number Requests Completed:	59750		
Total Number Pages Copied:	1524700		
Average Annual Clerical Salary Including Benefits:	$34,257.00		
Average Annual Management Salary Including Benefits:	$43,264.00		

Expenses

Clerical FTE Compliment Required	13.50	(represents actual staffing)	
Clerical Salary	$462,469.50		
Management FTE Compliment Required	3.00	(represents actual staffing)	
Management Salary	$129,792.00		
Equipment, Supplies, and Postage	$178,800.00		
Estimated Overhead-24%	$185,054.76	**Cost per request:**	**Cost per page:**
Total Annual Expenses	***$956,116.26***	***$16.00***	***$0.63***

Revenue

Billing based on price class	$539,943.00		
Bad Debt-25%	$134,985.75		
Total Annual Revenue	**$404,957.25**	***Loss per request:***	***Loss per page:***
Annual Profit/Loss	**($551,159.01)**	***($9.22)***	***($0.36)***

Medical Group Management Association
MGMA
Wisconsin
A State Affiliate

TO: Members of the Senate and Assembly Health Committees

FROM: Dan Laux
Chair – Legislative Committee
Wisconsin Medical Group Management Association

DATE: March 30, 2004

RE: Oppose CR 03-111
(HFS 117 – Fee for Copying Medical Records as proposed by DHFS)

The Wisconsin Medical Group Management Association (WMGMA) appreciates the opportunity to express its opposition to CR03-111, Department of Health and Family Services Rule 117. We respectfully request that members of this committee return this rule to DHFS with recommendations to review and collect additional information on the actual cost of copying records, and accord it sufficient weight in order to make significant changes that more accurately reflect the costs of making copies.

On the surface, the process of duplicating a medical record may seem like a relatively simple task. However, the reality of the situation is that reproducing a medical record is a complex and time consuming process that requires much more than a trip to the photocopier. Those involved in medical record duplication are highly trained professionals who must protect the patient's privacy while complying with requests for health care information. In addition, these individuals must be experts on the extensive state and federal laws and regulations regarding the release of confidential patient information.

CR 03-111 proposes that the Department of Health and Family Services approximate actual costs of reproducing medical records in the administrative rule and specifies that health care providers charge that amount for any health care record duplication. WMGMA has the following concerns about the proposed legislation:

- The Legislature directed DHFS to develop a rule that reflects actual costs. The proposed rule as written does not allow health care providers to recover the actual costs of reproducing a medical record. These go beyond paper and toner. There are labor and other costs associated with the various steps taken to process a request for a medical record copy as outlined below.

HEADQUARTERS
330 E. Lakeside Street
P.O. Box 1109
Madison, WI 53701
phone: 608.283.5410
800.762.8968
fax: 608.283.5424

- Medical record duplication is a professional service and the complexities of the law and stress of the job require a higher salary than is paid to a receptionist or data entry person. In addition, the costs associated with continuing education for this position are higher than average due to the ever-changing state and federal laws and HIPAA requirements.

- The steps and procedures involved with reproducing a medical record are time consuming and may take staff time away from direct patient care. Some WMGMA members have estimated the time to complete a request at one hour, ***if the record is readily available***. Some steps included in this process:

    - Reading the request
    - Verifying authorization and patient information
    - Requesting additional information on incomplete requests
    - Compliance with HIPAA regulations (i.e. logging request)
    - Retrieving the record – records may be off-site in secured storage, on microfilm or in another part of the clinic or facility
    - Screening the record to comply with Wisconsin Statutes and Federal Regulations such as checking record for alcohol, drug abuse, mental illness, HIV treatment
    - Identifying desired reports
    - Disassembling record to prepare for copying
    - Copying the records from paper and other media such as microfilm
    - Reassembly of records
    - Checking completeness of request
    - Recording of information being sent
    - Addressing "re-release" issue
    - Determining charges and preparing invoice
    - Preparing records for mailing such as addressing envelope, preparing certified mail documents, etc.
    - Refiling of medical record

- The rule does not take into account the limited resources of the state's smaller clinics. Without someone specifically dedicated to handle medical records, and because the critical privacy issues at stake preclude delegation to untrained clerical staff, the task falls to those few people responsible for managing the clinic. Their time is now spent going through medical records, instead of monitoring the operations of the clinic. The fee that they charge should certainly reflect the time away from the clinic that they dedicate to the request.

- CR 03-111 does not provide for regular review and updating of the rate schedule set by DHFS. The WMGMA requests that the DHFS include a cost of living adjustment in the rule to ensure that copy fees keep

pace with inflation. In addition, there should be penalties for those who refuse or decline payment for the records they have received.

- The rule does not take into account the uncompensated cost of releasing patient records when a patient requests a review of their record. This requires the assignment of a dedicated staff person to sit with the patient and answer questions as they go through their medical charts.

- Additionally, the rule creates confusion with new definitions and requirements contained in the Health Insurance Portability and Accountability Act (HIPAA). This confusion will present significant and unnecessary problems in the implementation of the uniform fee. There is a cost factor to all these requirements.

For these reasons, the Wisconsin Medical Group Management Association urges you to ask DHFS to revise the rule to reflect the actual costs of reproducing medical records.

Hello. My name is Sue Griswold and I am the Health Information Manager and Privacy Officer for Shawano Medical Center in Shawano. I am a Registered Health Information Technologist with more than 13 years of supervisory and management experience.

I have submitted a copy of this document with details of our release of information function to the committee.

Shawano Medical Center is a 46-bed, acute care, rural hospital in Northern Wisconsin. We are the only hospital in Shawano County and in a 30-mile radius. Shawano Medical Center is not only the main hospital for residents of Shawano County but also for the Menominee Indian Reservation. The majority of patients seen at Shawano Medical Center are Medicare and Medicaid patients.

Our non-billable requests are mainly for continued care. In the best interest of our patients, Shawano Medical Center has chosen not to charge for these copies, though regulations allow us to. This is consistent with the other hospitals and physicians with whom we share patients. Charging for continued care copies could be a detriment to some patients receiving appropriate follow-up care.

Our billable requestors include insurance companies, government agencies such as Social Security, workers compensation companies, legal requests, etc. These billable requests take approximately 15 hours a week to complete. That cost plus the cost of doing non-billable requests would add $18,226 to my annual bottom line. This may not sound like a lot of money, but to a small facility such as Shawano Medical Center it is.

The proposed fee structure will not cover the costs of copying the records. I do not understand why the system should be two tiered. We must complete all of the steps to fulfill the request no matter how many pages we copy.

Shawano
MEDICAL CENTER

309 N. Bartlette Street Shawano, Wisconsin 54166-3145 Phone 715-526-2111 or 1-800-743-2924

Wisconsin is a state with many service fees. If I choose to own a vehicle, I must pay to license it. If I need to request a copy of my birth certificate I must pay for it. I do not expect others in the community to pay for something I personally want or need. Why should Shawano Medical Center increase charges for everyone to cover the cost of copying records for those requestors who do not need the record to provide continued care.

Shawano Medical Center's mission states that we coordinate and provide a variety of health services, while balancing needs and available resources. Standardizing copy fees at the proposed low rates will take money from Shawano Medical Center that is better used to meet our patients' medical needs.

We are ready to work with the Department of Health and Family Services to re-draft this rule to meet everyone's needs without putting the burden onto all patients.

Thank you for your time.

Shawano
MEDICAL CENTER

309 N. Bartlette Street Shawano, Wisconsin 54166-3145 Phone 715-526-2111 or 1-800-743-2924

Shawano Medical Center Release of Information Cost Analysis

Facility-Specific Information	
Number of Annual Requests	1,968
Annual Pages	35,748
Percentage billable	50
Percentage non-billable (Continuity of Care,Court Orders, etc.)	50
Average Number of Requests **PER MONTH**	164
Average Number of Pages per Request:	18
Average Annual Clerical Salary Including Benefits: (using $16 rate)	$33,280
Average Annual Management Salary Including Benefits:	$60,278
Billable Expenses	
Clerical FTE Compliment Required	0.3
Clerical Salary	$9,984
Management FTE Compliment Required	0.03
Management Salary	$1,808
Equipment, Software, and Office Supplies	$2,558
Total Annual Expenses	**$14,350**
Billables Revenue	
Billing	$20,251
Bad Debt-10%	$2,025
Total Annual Revenue	**$18,226**
Less non-billable expense	
Using same costs as from billables: per page, base	**$14,350**
Annual Impact to Shawano Medical Center	***$18,226***

Shawano
MEDICAL CENTER

309 N. Bartlette Street Shawano, Wisconsin 54166-3145 Phone 715-526-2111 or 1-800-743-2924

Affinity HEALTH SYSTEM

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

March 29, 2004

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

Dear Members:

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

Good morning; My name is Barb Savagian. I am a Registered Health Information Administrator, and am the Manager of Health Information Services at Mercy Medical Center in Oshkosh, WI. Mercy is part of Affinity Health System, which includes 3 acute care hospitals, 17 clinics, an outpatient surgery center, and a long term care facility.

The mission of Affinity Health System is to live out the healing ministry of Christ by providing services that promote the health and well being of the communities we serve, especially the poor. We are a non-profit organization, and nothing in our mission statement even hints that we believe our health care facilities should be making a profit in providing release of information services. The reality of any business is that they at least need to cover their costs and have some money for further advancement.

Last year at Affinity Health System 28,884 record requests were processed, totaling over 640,000 pages of medical information!! Information that is used for continuing patient care is provided to other healthcare providers free of charge. We call these non-billables. It is my experience that this is standard practice in the state of Wisconsin. There is considerable value placed on human life, privacy, and dignity. Very often the decisions your doctor makes on how to treat your current ailment is based on your medical history. In accordance with our mission and patient rights, we believe we are obligated to provide that information for every patient's health and well-being. About 55% of our requests are for non-billable records.

The remaining (approximately 45%) records we release are considered "billable" – these are requested by insurance companies, attorneys, review organizations, and others, from whom we can require payment from in return for the service of providing a copy of the record. "Billable" customers, however, are using the information for a different purpose. It is not to better the patient's health status, but often to evaluate the outcome of services previously rendered for legal matters, litigation, entitlement or reimbursement.

There are volumes of laws surrounding the release of records, often dependent on the type of care provided. Those who staff release of information functions are specially trained and constantly updated on changes that affect their jobs. The majority of the time it takes to provide the service is in the "up front" work – making sure everything is correct on the consent, logging it, locating the charts, and reviewing the documentation to assure the chart can be released according to the type of consent that was sent in.

Logically, the time it takes to complete "up front" processing increases when invalid information is rent on the authorization to release records by the requestor. During the first 6 months of 2003 at Mercy Medical Center, 11% (Average= 29 of 262/month) of the billable requests for information had to be returned after review; they were invalid. This pushes the responsibility from the

requestor to the healthcare facility to follow up to make sure the request is fulfilled in a legally acceptable manner. We have to return the request with documentation as to why the request is invalid, and require that it be corrected so we can release the information in a legally acceptable manner. There are often phone calls during this process, also. Rather than fulfilling one request, it is like filling two; sometime three if the request is invalid the second time. In comparison, only .6% (2 of 345/month) of our non-billable requests had to be re-processed due to invalid authorizations during this same period of time.

In our case, even though number of non-billable requests slightly outweighs the billable requests, the number of documents produced for billable requests outweighs the number for non-billable by almost 4:1. The average number of pages in a non-billable request is 6.7; the average number of pages in a billable request is 25.8.

We have found that with non-billables, most of the requested information is contained within a limited number of documents that have been dictated by the physician, all of which are maintained electronically in our I.S. system, and can be printed from there. This does help create efficiencies, but it is offset with the cost of the investment into the software, upgrades, additional hardware technologies, and staff training required to keep us on that cutting edge. This supports reviewing the rates periodically, as things do evolve.

In addition to those documents discussed above, billable requests often include progress notes, orders, nursing, & ancillary documentation that are not in our I.S. system. This necessitates retrieval of the paper record, whether it is on-site or in off-site storage. Retrieval of off site records increases the turnaround and cost of processing the request, whether it is facility or vendor owned.

As evidenced here, the re-processing to gain a valid consent for billable requests is almost 15 times higher (2 compared to 29) than with non-billables, and the amount of paper and resources used to recreate the record for a billable request is 4 times higher (6.7 pages compared to 25.8 pages) than non-billable records. I would suspect these rates may be similar at other facilities, but encourage the Committee to take the draft back and study the environment carefully with medical record retainers around the state.

The reality is that probably 75% of our time and resources used for release of information is attributable to billable requests at MMC. We should be allowed to charge accordingly, and would be privileged to work with the Department of Health and Family Services to redraft this rule to reasonably cover costs of reproducing confidential patient medical records. It is an opportunity for this Committee to make an equity statement that whoever requests billable records is obligated to pay a just fee for reproducing them. As they are not being used for patient care, it is not a cost that should be passed to patients/payors by the

healthcare organizations. Thank you for your consideration in this important matter.