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REEDSBURG AREA
MEDICAL CENTER

REEDSBURG MEMORIAL HOSPITAL
EDWARD SNYDER MEMORIAL HOME

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March 25, 2004

Senator Roessler, Chairperson
Committee on Health, Children, Families, Aging and Long TermCare
State Capitol
P.O. Box 7882
Madison, WI 53707

FROM: Marianne Baumgarten, Director Health Information Services

RE: **HFS 117**

Reedsburg Area Medical Center is in opposition to the proposed HFS 117 rule copy fees. The release of information function is a complicated procedure and costly. We have volumes of requests from attorneys, insurance companies, social security, workman's compensation, Metastar, other healthcare providers and from patients themselves. At our facility, we outsource this function to a release of information company in order for our existing staff to perform duties that support and enhance care for our patients.

To cover the costs of this complex process for our release of information company to continue to provide this service for our hospital, I feel that a reasonable charge is $17.00 retrieval fee and $1.00 per page plus the $7.50. The two tier system administratively is too cumbersome.

Please distribute this letter to your committee members.

Thank you for your attention in this matter.

Sincerely,

Marianne Baumgarten

Marianne Baumgarten, RHIT
Director, Health Information Services
Reedsburg Area Medical Center

Testimony of DHFS on CR03-111

Thank you for the opportunity to testify in support of these proposed changes to ch. HFS 117. My name is Larry Hartzke and I am and have been the Department's principal staff for the development and promulgation of this proposed rule. With me is Dan Stier, our Department's Chief Counsel. My testimony this morning consists of a brief synopsis of the Department's development of these rules during the period from mid-February to late April of last year and my thoughts on a few selected issues.

Legislative Directive

Simply put, the legislature's directive to our Department was to prescribe fees that are the maximum amount a health care provider may charge for duplicate copies of patient health care records. The legislature further instructed the Department to base those fee limits on an approximation of providers' actual costs of reproducing those records. Finally, the legislature also directed the Department to form and work with an advisory committee in its development of revised rules.

Use of Advisory Committee

The bulk of the Department's work on this rule involved the advisory Committee it formed in February 2003. The membership of the committee the Department created was evenly divided between representatives of those who request medical records on behalf of others, which are primarily attorneys, and those who maintain and supply medical records, which are primarily persons representing health care providers, medical record professionals, and entities that health care providers contract with to copy medical records. The Advisory Committee was a valuable aspect of this rule development effort insofar as medical record providers on the committee had the opportunity to contribute much useful information to the Department, and medical record requesters on the Committee had the opportunity to be exposed to the fact that reproducing a medical record is far more complex than reproducing one's income tax forms at the local copy store. From mid-February, 2003 until mid-April, 2003, the Department engaged in a process that entailed the Department:

- developing and refining its proposed cost model and transmitting those iterative proposals to the Advisory Committee;
- requesting data and opinions from Advisory Committee members on a variety of subjects the Department deemed to be pertinent to estimating the cost to reproduce medical records; and
- receiving data and opinions from some Advisory Committee members in response to the Department's proposals and requests.

Examples of the factors and considerations the Department considered as pertinent or possibly significant included:

- the recent federal Health Insurance Portability and Accountability Act (HIPAA) regulations and federal commentary related thereto.
- whether and how the medical record medium affects the length of time to reproduce a record (by medical record medium, I mean paper, x-ray, microfiche, microfilm and electronic);
- how much additional time and effort a records maintainer must spend to certify records;
- whether the medical care provider setting (i.e., hospital, clinic, etc.) or patient group affects the time and effort needed to reproduce records; and

- whether the 12 steps the Department proposed for reproducing medical records were accurate and whether those steps are different for different record mediums and record maintainer settings.

As one might expect, all of the pertinent data and most of the pertinent opinion the Department received during this rule development period came from Committee members representing those who maintain medical records, including health care provider representatives, medical record copying firms, and medical record professionals. Most of the information the Department received from medical record requesters, again principally attorneys, were reports of instances of the attorney being charged what the attorney deemed to be an excessively high charge to receive copies of medical records the attorney requested.

Given the Department's need for pertinent data and opinion for its cost model, from the outset of this effort we anticipated that the Committee could best be used by the electronic exchange of information among Committee members and the Department. Following several iterative exchanges over a couple months, the Department convened the first and only face-to-face meeting of the Advisory Committee on April 25th to discuss some outstanding issues. All but one of the 14 members of the Committee attended the meeting and participated in discussions on several pertinent issues.

As might be expected, consensus was not achieved with respect to any of the issues that the Committee discussed.

Use of Electronic Means for Greater Monitoring and Participation

Given the widespread interest in the outcome of this rule promulgation, at the same time the Department was corresponding with the Advisory Committee on a wide variety of subjects, the Department also established and maintained a webpage devoted specifically to this rule development effort. It enabled any interested person with internet access to monitor the project's progress and enabled anyone with an email address to register their interest in receiving email notifications whenever the Department posted a new document related to this project. Approximately 60 persons registered their interest and were notified every time the Department posted a new document relating to the rule's development and promulgation. In this manner, all interested persons, virtual participants if you will, were able to easily monitor and, if they wished, participate in the Department's rule development and promulgation. [This approach is consistent with recent legislation (specifically Acts 118 and 145) amending ch. 227 of the statutes to reflect the value and power of the internet in administrative rulemaking.]

Development of Fee Limits

As I have said, the legislature directed our Department to base the fee limits on an approximation of providers' actual costs of reproducing those records. Consequently, the Department assumed that the legislature's directive could be satisfied if the Department could derive reasonably accurate estimates of:

1. The significant steps in the process of complying with requests for copies of medical records.
2. The average amount of time expended to comply with an average medical record request.
3. Which of the steps constituted relatively ***fixed*** costs insofar as the time required to complete the steps varied relatively little from one request to another, regardless of the number of records involved.
4. Which of the steps constituted relatively ***variable*** costs insofar as the time required to complete the steps varied directly with the number of medical records needing to be reproduced. (and)

5. The fixed and variable non-labor costs of complying with a record request.

In other words, basically, the Department took the approach of constructing a model of the tasks a health care provider, or a provider's designee must perform in complying with an outside request for medical records. It then determined whether the workload or expended effort for each of the steps was relatively the same regardless of the number of records requested or whether the workload varied depending on the amount of records requested. It then assigned minutes of time to each of those 12 tasks. In so doing, the Department estimated that it took a minimum of about 40-45 minutes to comply with any record request, and another 60 seconds of labor for each record page to perform screening and copying of the record. For example, for an average 25-page medical record, the Department estimated it would take 23 minutes of labor to complete the two variable labor tasks; six minutes to screen the 25 pages of record and 17 minutes to copy it. The Department then ascertained an average hourly labor rate for staff performing the 12 tasks. This it determined to be $16.00 per hour. In addition, the Department identified a variety of non-labor costs associated with complying with requests to copy medical records; things like a PC, printer, software, insurance, copier, maintenance, supplies, physical space, and so forth. For each of these non-labor cost components, the Department, again, determined whether that cost was largely fixed or varied based on the number of records copied. In so doing, costs were logically reflected either in a "cost per request," which was a constant amount for every request, or in a "cost per page," which, obviously, varied depending on the pages copied. In so doing, the Department estimated that each record request had a fixed amount of $1.46 of non-labor costs, and each record page had $0.03 of non-labor costs. By adding together the estimated fixed labor cost and the estimated fixed non-labor cost, the Department derived its estimated "cost per request" fee limit, which is stated in section HFS 117.05(3)(a). The Department has proposed not one, but two "per request" fee limits because the Department deemed that the staff time required to retrieve a small number records might plausibly be less for only a few records. Therefore, the proposed rules specify either a $12.50 or $15.00 "per request" fee limit. By adding together the estimated variable labor cost and the estimated non-labor costs deemed to be variable, the Department derived its estimated "cost per page" fee limit of $0.31 per page.

HIPAA Influence

You will note, however, that the Department has proposed two sets of fee limits in section 117.05; one set of fee limits, the one I just described to you of $12.50 or $15.00 a request plus $0.31 per page, is applicable to every situation other than an individual asking for copies of his or her own record. In that case, and only in that case, the Department has proposed a fee limit of only $0.31 per page, because that is the amount the Department has estimated to be solely the variable costs of making the copy. Other things being equal, the Department would have proposed a single fee limit applicable to requests for copies of records in all circumstances. However, these proposed rules specify not one, but two very different fee limits solely because some recent federal regulations created under the Health Insurance Portability and Access Act (known as "HIPAA") specify that ***individuals*** requesting copies of their own medical records should be charged only the cost of copying those records. As I've alluded to, the task of copying a record is only a small part of a health care provider's task of complying with a request for medical record copies. And, as I've mentioned, most of that copying cost is the labor required to make the copies. The Department believes it is obligated to abide by and reflect the applicability of these constraints imposed by the federal regulations. The Department deems that $0.31 fee limit to approximate the actual cost of copying records. Those federal HIPAA regulations do not, however, similarly limit the amount any others may be charged for record copies. Therefore, the Department has proposed the second, much higher fee limit of $12.50 or $15.00 per request plus $0.31 per page apply to all others making a request for records they are authorized to receive. The $12.50 or $15.00 "per request" amount may be deemed a retrieval fee that approximates the relatively fixed costs of tasks

associated with retrieving and replacing a medical record. The fee limit for copies of x-rays is proposed to be $5.25 per page, regardless of the number of x-ray images on the page or who requests the copy. Finally, the Department is also proposing a fee limit of $7.50 (or $5.00 for requests totaling less than 5 pages) if the requester wishes the health care provider to certify the records supplied.

Comparison With Fee Limits in Other States

Under these proposed fee limits, an individual requesting copies of 25 pages of his or her own medical records could be charged by the record supplier no more than $7.75 (which is 25 times $0.31.) An authorized individual or entity who is requesting copies of 25 pages of someone else's medical record could be charged by the record supplier no more than $22.75 (which is $15 plus 25 times $0.31 per page.)

The Department compared its resultant $22.75 fee limit for copying a 25-page record with those in other states based on data supplied by medical record maintainers and information available online. Based on this, the average fee limit among 26 states is $29.50 (about 30% higher.) At the lower end of the range is Kentucky, where the first copy of records requested is free, and Oklahoma, where the fee limit for a 25-page record is $6.25. At the other end of the continuum is Texas, where the fee limit for a 25-page record is $53.00. The fee limit for copies of a 25-page record in Minnesota is $40.04; in Iowa, for worker's comp cases, it's $25.00; in Michigan, it's $46.00 for attorneys and $50.00 for insurers; and in Illinois, it's $39.73. Obviously, the fee limit the Department is proposing is at the lower end of the wide range among other states.

Changes to the Initial Proposed Rule

The Department held a single public hearing in Madison on the rule on December 15th. Fifteen people attended that hearing and some of them provided oral or written testimony. About another 20 people submitted written comments to the Department. In response, the Department made a few changes to its initial proposed rules, but not to its proposed fee limits.

Conclusion

In conclusion, I'd like to say that the Department has proposed fee limits that it believes are realistic estimates of actual patient record reproduction costs and that are based on an approximation of pertinent costs associated with accomplishing that reproduction. The Department believes that its approach to specifying such fee limits has been methodical, rational, open and responsive to legislative directives.

Having said that, I'd be happy to take any questions you might have regarding the materials the Department has submitted.

Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Senate and Assembly Health Committees

FROM: Alice O'Connor and Mark Grapentine, JD

DATE: March 30, 2004

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

On behalf of the Wisconsin Medical Society's more than 10,000 members statewide, we submit this testimony today in opposition to Clearinghouse Rule 03-111. We respectfully request that members of this committee return this rule to the Department of Health and Family Services (DHFS) with recommendations for significant changes that are likely to result in a final version that more accurately reflects the actual costs of copying medical records.

Last session, DHFS was mandated to develop an administrative rule that prescribes a uniform fee for medical record copies based on an approximation of actual costs. DHFS received information and comments from committee members and at public hearings indicating that the actual costs of copying medical records are significantly higher than the current proposal. **DHFS has either discounted or ignored that information**, resulting in a rule that appears to satisfy trial attorneys (identified by DHFS as medical record requestors) to the detriment of physicians, hospitals and outside vendors that provide medical record copy services.

It is amply documented that the average costs of photocopying a patient's medical record greatly exceed the limits proposed in this draft rule. The information presented to DHFS during the creation of the proposed rule included an overview of the activities involved in processing a request for a copy of a medical record, which is set forth below:

Mailing:	Opening Mail
Process:	Processing Requests - reading the request - verifying patient identification - obtaining medical record identification - verifying authorization (references: Wis. Stat. 146.82, 146.025, 51.30 and 908.03; Federal 42 CFR Part 2, HIPAA) - requesting additional data on problematic requests
Login:	Logging in request - entry of data into computer or manual log
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

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Retrieval:	Retrieving record - locating record (maybe offsite – microfilm company, storage) - confirming correctness of record
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
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)
Logout:	Logging out the request or Accounting for disclosure as required by Wis. Stat. 146.82(2)(d) - checking the completeness of the request - recording the information being sent - recording date and time information sent - stamping each copy with "re-release" statements, etc.
Invoice:	Preparing invoices and/or cover letters - determining any charges for copies - determining actual postage and any handling charges
Mailout:	Mailing the copies - addressing and posting the envelope - prepare certified mailing, if necessary - mailing of the copies
Refile:	Refiling the record - the outguide or enter in computer
Miscellaneous:	Various other duties - answering telephone calls - responding to walk-ins - responding to "stat" requests

There are labor and other costs associated with the various steps taken to process a request for a medical record copy. Those costs include labor costs from all of the steps detailed above.

Health care professionals cannot absorb the un-reimbursed costs, but will be forced to increase the cost of care to all patients. Simply put, the un-reimbursed costs that are likely to result from an unreasonably low cap in fees on subpoenaed medical records should not be paid for by physicians, other health care professionals, health systems or other patients. The cost shifting being proposed by DHFS on this rule will total millions of dollars. **The persons requesting medical record copies, including attorneys and insurance companies should pay market price for the service provided to them.**

Additionally, the rule creates confusion with new definitions and requirements contained in the Health Insurance Portability and Accountability Act (HIPAA). For example, the definition of "personal representative" in HIPAA and "patient representative" in Wisconsin law differs. "Personal representative" in federal law means *someone who is acting on behalf of someone who cannot act for themselves.* HIPAA specifically cites (1) parents/guardians of minors, and (2) executors of estates of deceased persons. This is very different from Wisconsin law's "patient representative." This confusion will present significant and unnecessary problems in the implementation of the uniform fee. There is a cost factor to all these requirements.

This rule is grossly unfair in its current form because fees are capped:

- 50 percent lower than comparable fees in Minnesota and Illinois.
- So low that hospitals and clinics in Wisconsin will be forced to fulfill the services now being supplied by outside vendors and these costs will be handed down to all patients. Costs that need to be paid by the patient requesting the records will be shifted onto everyone in the form of higher patient charges and increased insurance premiums. The total cost to the healthcare industry in Wisconsin will be tens of millions of dollars.
- Financial resources will be diverted from patient care to records production.

The Legislature directed DHFS to develop a rule that reflects actual costs. The Society requested that DHFS include a cost of living adjustment in the rule to ensure that copy fees keep pace with inflation, as DHFS will review the rule once only every three years. There are several examples in Wisconsin law where cost of living adjustments are very effective, including the cap on non-economic damages in medical liability law. At the very least, a similar provision recognizing inflationary effects on costs should be implemented.

We urge you to ask DHFS to revise the rule to reflect the actual costs of reproducing medical records.

Thank you for this opportunity to supply more information. If you have any questions, please contact Alice O'Connor (aliceo@wismed.org), Mark Grapentine (markg@wismed.org), or Jeremy Levin (jeremyl@wismed.org) at 608.442.3800.

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Statement in Support of Proposed CR 03-111

Date:	March 30, 2004
By:	Bernard T. McCartan
To:	Members of the Assembly Committee on Health and Senate Committee on Health, Children, Families Aging & Long Term Care
In Support of:	CR 03-111, Medical Record Copy Fee Rule
On Behalf of:	State Bar of Wisconsin

The State Bar of Wisconsin, composed of 22,000 lawyers, supports CR 03-111 *as proposed* because it represents a reasonable compromise between the competing positions of medical record requesters and providers.

The steadily increasing cost of obtaining medical records pertaining to parties in bodily injury litigation has been of mounting concern in the last decade. The State Bar of Wisconsin is very aware of the new and complex requirements of privacy protections imposed at both the State and Federal level in recent years, which have been a factor underlying the increase in costs. Nevertheless, medical records costs have been increasing at a rate wholly out of proportion to the actual cost of producing copies of the records and complying with the privacy laws.

The State Bar of Wisconsin is concerned about these increasing costs because of the direct effect they have on the ability of clients to prosecute or defend bodily injury claims. The cost of such records must be paid by the lawyers' clients and has become a progressively heavier burden on them. In particular, individual clients must often bear these costs under circumstances in which the client has sustained serious injury and has a limited ability to pay due to financial pressures resulting from their injury. This can seriously restrict the ability of individuals to enforce their legal rights and seek redress for their injuries. For these reasons, the State Bar of Wisconsin joined with others to support the passage of the legislation directing the promulgation of a rule capping the amount medical record providers can charge for reproducing health care records, regardless of whether litigation has commenced. The State Bar of Wisconsin now wishes to voice its support for the proposed rule, CR 03-111.

Based on an analysis I performed of a sample of 49 actual copy service bills selected at random, the average cost under the revised HFS 117 as proposed under CR 03-111 exceeds the cost under the former HFS 117 (which applied only to bodily injury claims in litigation) by 94% and exceeds the former HFS 117 adjusted for inflation by 63%. At the same time, it is about 18% less than the average of actual copy service bills reviewed. Thus, it appears that the proposed CR 03-111 represents a middle ground, taking into account the need of patients to obtain records at reasonable cost and, at the same time, recognizing the increased cost of privacy protections, record maintenance and record reproduction.

CR 03-111 is the product of an effort by DHFS that spanned several months and in which all interested parties had ample opportunity for input. Information submitted to the Department came from parties with significantly opposing views. I can attest to the thoroughness of the DHFS effort from my participation in the process as a member of the advisory committee formed by DHFS for this effort. The divergence of opinion is apparent from the record compiled by the Department. The State Bar of Wisconsin believes that CR 03-111 is a reasonable reconciliation of contested points, which will provide needed stability and uniformity with respect to the fees charged for medical records and will benefit consumers of medical services in Wisconsin. Accordingly, the State Bar of Wisconsin respectfully urges the committees to allow CR 03-111 to go into effect as drafted.

Testimony of DHFS on CR03-111

Thank you for the opportunity to testify in support of these proposed changes to ch. HFS 117. My name is Larry Hartzke and I am and have been the Department's principal staff for the development and promulgation of this proposed rule. With me is Dan Stier, our Department's Chief Counsel. My testimony this morning consists of a brief synopsis of the Department's development of these rules during the period from mid-February to late April of last year and my thoughts on a few selected issues.

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- whether the 12 steps the Department proposed for reproducing medical records were accurate and whether those steps are different for different record mediums and record maintainer settings.

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associated with retrieving and replacing a medical record. The fee limit for copies of x-rays is proposed to be $5.25 per page, regardless of the number of x-ray images on the page or who requests the copy. Finally, the Department is also proposing a fee limit of $7.50 (or $5.00 for requests totaling less than 5 pages) if the requester wishes the health care provider to certify the records supplied.

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The Department held a single public hearing in Madison on the rule on December 15th. Fifteen people attended that hearing and some of them provided oral or written testimony. About another 20 people submitted written comments to the Department. In response, the Department made a few changes to its initial proposed rules, but not to its proposed fee limits.

Conclusion

In conclusion, I'd like to say that the Department has proposed fee limits that it believes are realistic estimates of actual patient record reproduction costs and that are based on an approximation of pertinent costs associated with accomplishing that reproduction. The Department believes that its approach to specifying such fee limits has been methodical, rational, open and responsive to legislative directives.

Having said that, I'd be happy to take any questions you might have regarding the materials the Department has submitted.

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/

This was submitted to Dept.

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

10 yrs ago - Still higher than HFS proposed rate

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

Ohio / Pennsylvania Studies

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

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.

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

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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

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Aurora Sinai Medical Center

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March 30, 2004

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

Members of the Assembly Committee on Health

FROM: Peg Schmidt, RHIA
Regional 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)***