

March 30, 2004

MEMORANDUM

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

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

RE: HFS 117

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

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

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

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

- A fee reflective of the actual costs in Wisconsin to perform the service is a fee comparable to surrounding states such as Illinois, Minnesota, or Michigan.
- Underpayment for copies of patient health care records will result in the proposed rule. The additional costs not covered by the low fees will be shifted to all patients in the form of higher health care costs in general, meaning all patients will subsidize the requests. WHIMA believes it is unjust and not in the best interest to expect non-requesting patients to incur the costs.

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

Wisconsin Health Information Management Association

Dept. received this.

Tasks required to perform the release of medical information.

Time to Complete Task	TASK	DETAILS of TASK
.2 minute	MAILING:	Opening Mail
7 minutes	PROCESS:	<p>Processing Requests</p> <ul style="list-style-type: none"> - reading the request - verifying patient identification - obtaining medical record identification - verifying authorization validity for the statutory elements as outlined in grid (refer to Wis. Stat. 146.82, 146.025, 51.30 and 908.03; Federal 42 CFR Part 2, HIPAA) - requesting additional data on problematic requests
1.6 minutes	LOGIN:	<p>Logging in request</p> <ul style="list-style-type: none"> - entry of data into computer or manual log
2 minutes	REQUISITION:	<p>Preparing requisition via computer and/or outguides</p> <ul style="list-style-type: none"> - completing chart requisition slips and/or pull lists - sorting into alphanumeric order - placing requisition slips into outguides or computer entry
15-20 minutes	RETRIEVAL:	<p>Retrieving record</p> <ul style="list-style-type: none"> - locating record (maybe offsite—microfilm company, storage) - confirming correctness of record
10 minutes	SCREEN:	<p>Screening record (refer to Wisconsin Statutes and Federal regulations for requirements and penalty provisions)</p> <ul style="list-style-type: none"> - checking record for alcohol, drug abuse, mental illness, HIV treatment - identifying and tagging desired reports
12-15 minutes	COPY:	<p>Copying record</p> <ul style="list-style-type: none"> - disassembling record - copying of desired pages - checking quality of copies - handling of misfiled pages - reassembling record - producing copies from other media (microfilm, imaging)
7-10 minutes	LOGOUT:	<p>Logging out the request or Accounting for disclosure as required by Wis. Stat. 146.82(2)(d) & 51.30(4)(e) and HIPAA</p> <ul style="list-style-type: none"> - checking the completeness of the request - recording name and address of recipient - recording information being sent and purpose - recording date and time information sent - stamping each copy with "re-release" statements, etc. - review for certified copies (20 minutes)
1-3 minutes	INVOICE:	<p>Preparing invoices and/or cover letters</p> <ul style="list-style-type: none"> - determining any charges for copies - determining actual postage and any handling charges

Time to Complete Task	TASK	DETAILS of TASK
.8-5 minutes	MAILOUT:	Mailing the copies <ul style="list-style-type: none"> - addressing and posting the envelope - prepare certified mailing, if necessary - mailing of the copies
1 minute	REFILE:	Refiling the record <ul style="list-style-type: none"> - pulling the outguide or enter in computer
	MISCELLANEOUS:	Various other duties <ul style="list-style-type: none"> - answering telephone calls - responding to walk-ins - responding to "stat" requests

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

Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
<ul style="list-style-type: none"> • ---- 	<p>HFS 92.03(3)(b)</p> <ul style="list-style-type: none"> • Each informed consent document shall include a statement that the patient has a right to inspect and receive a copy of the material to be disclosed: HFS 92.03(3)(d) 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ----
<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • any patient or patient representative may withdraw authorization for disclosure of any information at any time: HFS 92.03(3)(e); 2.31(a)(8) • If this occurs, an agency not included under s. 51.30(4)(b) Stats., that requests release of information requiring informed consent shall be told only that s. 51.30, Stats., prohibit release of the information requested. 	<ul style="list-style-type: none"> • A statement of explanation that test results may be released without consent and whether a listing of those circumstances or that a list is available upon request: 252.15(2)(b)2. 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • A statement placing the individual on notice of the individual's right to revoke the authorization in writing, and either <ul style="list-style-type: none"> • The exceptions to the right to revoke and how to revoke [164.508(b)(5)], or • If the right to revoke is in the notice, a reference to the notice. 164.508(c)(2)(i) <p>Note: An individual may revoke an authorization by providing a revocation in writing to the CE, except to the extent: 1) the CE has taken action in reliance on the authorization or 2) if the</p>

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

Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
<ul style="list-style-type: none"> • ----- 	<ul style="list-style-type: none"> • ----- 	<ul style="list-style-type: none"> • ----- 	<ul style="list-style-type: none"> • ----- 	<p>authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.</p> <ul style="list-style-type: none"> • A statement placing the individual on notice of the ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization by stating either <ul style="list-style-type: none"> • CE may not condition above based on whether individual signs authorization when the prohibition on conditioning of authorizations applies, or • The consequences of refusal to sign. <p>Note: A consequence of refusal to sign an authorization for disclosure of WI law 252.15 or 51.30 records may be non-payment; therefore, a CE may want to include this consequence in the authorization.</p> <ul style="list-style-type: none"> • A statement placing the individual on notice of the

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

Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
• ----	• ----	• ----	• ----	potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by the federal privacy rule: 164.508(c)(2)(iii)
• ----	• ----	• ----	• ----	<ul style="list-style-type: none"> Marketing authorization—a statement notifying individual that remuneration is involved if CE receives direct or indirect remuneration from a third party. 164.508(a)(3)(ii)
• ----	• ----	• ----	• ----	<ul style="list-style-type: none"> Miscellaneous A valid authorization may contain elements in addition to the required elements, which are not inconsistent with this section. May have additional requirements based on reason for obtaining authorization. 164.508(b)(1)(ii)
Maintenance of Authorization	Maintenance of Authorization	Maintenance of Authorization	Maintenance of Authorization	Maintenance of Authorization
• ----	<ul style="list-style-type: none"> A copy of the informed consent document shall be maintained in the treatment record. HFS 92.03 (3)(c) 	<ul style="list-style-type: none"> HCP must maintain consent for testing or disclosure: 252.15(4)(b) 	• ----	<ul style="list-style-type: none"> CE must document and retain any signed authorization. 164.508(b)(6)
Providing Copy of Authorization	Providing Copy of Authorization	Providing Copy of Authorization	Providing Copy of Authorization	Providing Copy of Authorization
• A copy of each informed consent shall be offered to	• A copy of each informed consent shall be offered to	• ----	<ul style="list-style-type: none"> Advises that the individual, or an authorized 	<ul style="list-style-type: none"> If a CE seeks an authorization from an

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

Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
<p>Fees</p> <p>Any patient or other person may, upon submitting a statement of informed consent, receive a copy of the patient's health care records upon payment of fees as established by rule by the department which shall be based on an approximation of actual costs: 146.83(1)(b)</p>	<p>the patient or guardian and a copy shall be maintained in the treatment record: HFS 92.03(3)(c)</p> <p>Fees</p> <ul style="list-style-type: none"> A reasonable and uniform charge for reproduction may be assessed to the subject individual requesting individual access: 51.30(4)(d)3. 	<p>Fees</p> <ul style="list-style-type: none"> ---- 	<p>representative of the individual, is entitled to receive a copy of the completed authorization form: 610.70(a)(2)8</p> <p>Fees</p> <ul style="list-style-type: none"> An insurer may charge the individual a reasonable fee to cover the costs incurred in providing a copy of recorded personal medical information: 610.70(3)(f) 	<p>individual for a used/disclosed of PHI, the CE must provide the individual with a copy of the signed authorization. 164.508(c)(4)</p> <p>Fees</p> <ul style="list-style-type: none"> If an individual requests a copy of their PHI the CE may impose a reasonable, cost-based fee... 164.524(c)(4)

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

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



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

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

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

It is an unfortunate reality that there have been instances where a provider, left to interpret what is "reasonable," has effectively denied an indigent consumer the ability to obtain a copy of the information collected and maintained about her. The uncertainty created by the lack of a specific limit can be used as a barrier to access. This practice may still be possible, even with the adoption of revised HFS 117, especially in nursing homes where residents whose care is paid for by Medical Assistance live. MA clients are allowed to keep only \$45 of their income each month as a Personal Needs Allowance. This represents the entire sum of their disposable income. From this allowance, the resident must purchase things such as personal grooming items, hair cuts and perms, letter writing supplies, long distance telephone calls, and gifts for the grandchildren, to name but a few. Even with the relatively low maximum per-page fee allowed by HFS 117, the cost of obtaining a record could be a significant drain on a resident's meager funds. This cost will, in many cases, put the records entirely out of her reach. The right of access will continue to be an illusion for the poor.

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

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

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

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

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

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

(a) For other than X-rays, all of the following:

1. Thirty-one cents per record page.
2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

(b) For X-rays, all of the following:

1. \$5.25 per X-ray copy.
2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

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

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

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

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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 |
| | <ul style="list-style-type: none"> - 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) |
| | <ul style="list-style-type: none"> - requesting additional data on problematic requests |
| Login: | Logging in request |
| | <ul style="list-style-type: none"> - entry of data into computer or manual log |
| Requisition: | Preparing requisition via computer and/or outguides |
| | <ul style="list-style-type: none"> - completing chart requisition slips and/or pull lists - sorting into alphanumeric order - placing requisition slips into outguides or computer entry |

- 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.

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 sent 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.

THE DA CARE™

March 24, 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:

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

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Beth Malchetske".

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

ThedaCare Release of Information Cost Analysis

Facility-Specific Information

	State	Thedacare	Volume by %age Billable/non-billable
Number of Annual Requests	27,390	27390	12325 / 13065
Annual Pages	634,674	634674	331934 / 302740
Percentage billable	52.3	52.3	
Percentage non-billable (Continuity of Care, Court Orders, etc.)	47.7	47.7	
Average Number of Requests PER DAY	115	115	

Average Number of Pages per Request: 23
 Average Annual Clerical Salary Including Benefits: (using \$16.00 State rate) \$511,808.00
 Average Annual Management Salary Including Benefits: \$41,704.00

Expenses

Clerical FTE Compliment Required (Using State proposed rule of 70minutes) 15.36
 Clerical Salary \$511,808
 Management FTE Compliment Required 1.10
 Management Salary \$45,874.40
 Equipment, Software, and Office Supplies \$145,530.00

Total Annual Expenses

\$703,212.40

Billables Revenue

Billing \$334,969.00
 Bad Debt-10% \$33,496.90
Total Annual Revenue \$301,472.10

Less non-billable expense

Using same costs as from billables: per page, base \$272,630.00

Impact to ThedaCare

Loss if I remove non-billable from the equation: however staff still need to perform this task so remain in the annual expense above \$674,370.30

\$401,740.30

\$ 306,265.10

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