



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1310/2  
FFK:nwn&jld:md

DOA:.....Silver, BB0311 – Authorize DHS to set medical record copy fees by rule

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**HEALTH**

Under current law, the fees that a health care provider may charge for copies of patient health care records are set by statute. This bill eliminates statutory fees for copies of patient health care records and requires that DHS promulgate rules to establish maximum fees that a health care provider may charge for copies of patient health care records under certain circumstances.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 146.83 (1c) (a) of the statutes is created to read:

146.83 (1c) (a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

**SECTION 2**

**SECTION 2.** 146.83 (1c) (b) of the statutes is created to read:

146.83 (1c) (b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub. (3f).

**SECTION 3.** 146.83 (1c) (c) of the statutes is created to read:

146.83 (1c) (c) Receive a copy of the health care provider's X-ray reports or have the X-rays referred to another health care provider of the patient's choice upon payment of fees, as established by rule under sub. (3f).

**SECTION 4.** 146.83 (1d) of the statutes is renumbered 146.83 (1c) (intro.) and amended to read:

146.83 (1c) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or person authorized by the patient may, upon submitting a statement of informed consent, inspect the health care records of a health care provider pertaining to that patient. Except as provided in sub. (1g), the health care provider shall make the records available for inspection by the patient or person authorized by the patient during regular business hours, after the health care provider receives notice from the patient or person authorized by the patient. A health care provider may not charge a fee for inspection under this subsection.;

**SECTION 5.** 146.83 (1f) (a) of the statutes is repealed.

**SECTION 6.** 146.83 (1f) (b) of the statutes is repealed.

**SECTION 7.** 146.83 (1f) (c) of the statutes is repealed.

**SECTION 8.** 146.83 (1f) (d) 1. of the statutes is renumbered 146.83 (1f) (am) and amended to read:

146.83 (1f) (am) If a patient or person authorized by the patient requests copies of the patient's health care records under this subsection section for use in appealing a denial of social security disability insurance, under 42 USC 401 to 433, or

supplemental security income, under 42 USC 1381 to 1385, the health care provider may charge the patient or person authorized by the patient no more than the amount that the federal social security administration reimburses the department for copies of patient health care records.

**SECTION 9.** 146.83 (1f) (d) 2. of the statutes is renumbered 146.83 (1f) (bm) and amended to read:

146.83 (1f) (bm) Except as provided in sub. (1g), a health care provider may not charge a fee for providing one set of copies of a patient's health care records under this ~~subsection~~ section if the patient is eligible for medical assistance, as defined in s. 49.43 (8). A health care provider may require that a patient or person authorized by the patient provide proof that the patient is eligible for medical assistance before providing copies under this subdivision without charge. A health care provider may charge the fees ~~under par. (e) established by rule under sub. (1c)~~ for providing a 2nd or additional set of copies of patient health care records for a patient who is eligible for medical assistance.

**SECTION 10.** 146.83 (1g) of the statutes is amended to read:

146.83 (1g) The time limit for making records available for inspection and for providing copies of records under sub. (1d), ~~the time limits for providing copies of records under sub. (1f) (a) and (b), (1c) and the requirement under sub. (1f) (d) 2. (bm)~~ to provide one set of copies of records without charge if the patient is eligible for medical assistance do not apply if the health care provider is the department or the department of corrections.

**SECTION 11.** 146.83 (1h) of the statutes is repealed.

**SECTION 12.** 146.83 (1k) of the statutes is repealed.

**SECTION 13.** 146.83 (1m) of the statutes is renumbered 146.83 (1m) (a).

**SECTION 14.** 146.83 (1m) (b) of the statutes is created to read:

146.83 **(1m)** (b) The health care provider under par. (a) may be charged reasonable costs for the provision of the patient's health care records.

**SECTION 15.** 146.83 (3f) of the statutes is created to read:

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

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

(b) By July 1, 2014, and every 3 years thereafter, the department shall revise the rules under par. (a) to account for increases or decreases in actual costs.

**SECTION 16.** 146.84 (2) (a) 1. of the statutes is amended to read:

146.84 **(2)** (a) 1. Requests or obtains confidential information under s. 146.82 or 146.83 ~~(1d), (1f), or (1h)~~ (1c) under false pretenses.

**SECTION 17.** 908.03 (6m) (c) 3. of the statutes is amended to read:

908.03 **(6m)** (c) 3. If upon a properly authorized request of an attorney, the health care provider refuses, fails, or neglects to supply within 2 business days a legible certified duplicate of its records for the fees established under s. ~~146.83 (1f) (e) or (d) or (1h) (b) or (c), whichever are applicable~~ par. (e).

**SECTION 18.** 908.03 (6m) (e) of the statutes is created to read:

908.03 **(6m)** (e) *Fees.* The department of health services shall, by rule, prescribe uniform fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge for certified duplicate patient health care records. The rule shall also allow the health care provider to charge for actual postage or other actual delivery costs. For duplicate patient health care records and duplicate X-ray reports or the referral of X-rays to another health care provider that are requested before commencement of an action, s. 146.83 (1c) (b) and (c) and (3f) applies.

**SECTION 9121. Nonstatutory provisions; Health Services.**

(1) PATIENT HEALTH CARE RECORDS FEES; RULES. Using the procedure under section 227.24 of the statutes, the department of health services shall promulgate rules required under sections 146.83 (3f) and 908.03 (6m) (e) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under sections 146.83 (3f) and 908.03 (6m) (e) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c), subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety,

or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**SECTION 9321. Initial applicability; Health Services.**

(1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83 (1c) (a), (b), and (c), (1d), (1f) (a), (b), (c), and (d) 1. and 2., (1g), (1h), (1k), and (3f), 146.84 (2) (a) 1., and 908.03 (6m) (c) 3. and (e) of the statutes, the renumbering of section 146.83 (1m) of the statutes, and the creation of section 146.83 (1m) (b) of the statutes first apply to requests to inspect patient health care records and requests for copies of patient health care records that are made on the effective date of this subsection.

**SECTION 9421. Effective dates; Health Services.**

(1) PATIENT HEALTH CARE RECORDS FEES; RULES. The treatment of sections 146.83 (1c) (a), (b), and (c), (1d), (1f) (a), (b), (c), and (d) 1. and 2., (1g), (1h), (1k), and (3f), 146.84 (2) (a) 1., and 908.03 (6m) (c) 3. and (e) of the statutes, the renumbering of section 146.83 (1m) of the statutes, the creation of section 146.83 (1m) (b) of the statutes, and SECTION 9321 (1) of this act take effect on the first day of the 4th month beginning after publication.

(END)