

MEDICAL RECORD FEES UNDER HIPAA AND ILLINOIS LAW

JANUARY 2010 UPDATE

Under Illinois law the amount a physician can charge for copies of medical records is limited. This maximum amount includes a handling fee plus a per-page charge and postage.

Under HIPAA, the amount a physician can charge for copies of medical records is further limited when those records are being provided to the individual patient (or his or her personal representative for health care i.e. parent, guardian, or estate administrator). If the records are being provided to the patient, the maximum charge allowed under HIPAA is the direct costs of copying the medical record – supplies and labor – plus postage. No handling fee is allowed.

Federal law in this area supersedes state statute. That means when physicians provide records directly to the patient or his or her personal representative for medical care, the HIPAA restrictions apply. However, when providing records to attorneys, health plans or other entities beyond the patient, the Illinois schedule (including the separate handling fee) can be charged.

State and Federal Law

Under Illinois law (Public Act 92-228), the amount a physician or other health care provider may charge for copying medical records is limited. Copies must be provided electronically, if available. For 2010 the maximum amounts a physician can charge for copying medical records is as follows:

Medical Record Fees

Formula for calculating medical record fees: \$24.44 handling fee
(For persons other than patients)
PLUS \$0.92 each for pages 1-25,
\$0.61 each for pages 26-50,
\$0.31 each for pages 51 to end;
PLUS actual postage.

Electronic records retrieved from a scanning, digital imaging, electronic information or other digital format in an electronic document may charge 50% of the per page fee. No fee may be charged for the storage media such as a CD Rom. If the records system does not allow for the creation or transmission of an electronic digital record, then the requester shall be informed in writing of the reason the records cannot be provided electronically. The written explanation may be included with the production of paper copies, if the requester chooses to order paper copies.

+Charges for microfiche or microfilm copies may not exceed \$1.53 per page.

+Reasonable cost for duplication may be charged for copies of record information that cannot be duplicated on a copy machine (other than electronic records).

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+Insurance company contracts or policies may prohibit or limit billing for records. Medicare and Medicaid do not pay for records. Workers compensation only authorizes a subpoena fee of \$20. [[Click here to see the current rates as posted on the Comptroller's Web site.](#)]

Under HIPAA [42 CFR § 164.524 (c) (4)] the amount that can be charged also is limited:

(c) Implementation specifications: Provision of access. If the covered entity provides an individual with access, in whole or in part, to protected health information, the covered entity must comply with the following requirements....

(4) Fees. If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

(i) Copying, including the cost of supplies for and labor of copying, the protected health information requested by the individual;

(ii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and

(iii) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(ii) of this section.

Analysis

A physician must charge no more than the lesser of the amount allowed under Illinois law or the amount allowed under HIPAA.

HIPAA only applies to copies made for and sent to the individual (and his or her personal representative for health care purposes). It does not appear to apply to requests made by other individuals and entities on behalf of the patient. Such other individuals and entities include attorneys, insurance companies, another physician, and anyone else presenting a signed patient authorization for release of records, except under a worker's compensation subpoena.

When copying and sending records to a patient, a physician must comply with both HIPAA and Illinois law. The physician can charge no more than the lesser of the amount allowed under Illinois law and the amount allowed under HIPAA.

- Calculating the amount allowed under Illinois law is straight forward.
- Calculating the amount allowed under HIPAA is not straight forward.
 - The physician can only charge for the direct and indirect costs associated with copying the record. The physician cannot charge for costs associated with pulling the record, reviewing the record, or extracting portions of the

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record which are inappropriate (under HIPAA) to release to the patient. A model form to calculate copying costs under HIPAA is attached. It is expected that the copying costs will generally be less than \$1 per page and that the more pages are copied, the lower the costs per page.

- The physician can charge for actual postage incurred with mailing the copy to the patient.
- If the physician has to prepare a summary or some other report, they can charge an additional amount for preparation of the summary.

For all other requests for copies, HIPAA does not apply and physicians can charge the amounts allowed under Illinois law.

HIPAA COPYING CHARGE CALCULATION SHEET

Duplicating Machine Costs			
	Annual or monthly cost of duplicating machine, including rental or depreciation		
	Annual or monthly costs of supplies, including toner and paper		
	Total Cost		
	Number of copies made annually or monthly		
	Average cost per page (total cost divided by number of copies)	\$0. /page	
<i>Place per page duplicating machine cost on "Patient Copying Charge Notification Sheet"</i>			
Staff Time Costs			
	Annual salary of staff member making copies, including all benefits (FICA, health insurance, disability insurance, etc.)	\$	
	Annual number of hours actually worked by staff member, excluding time off (holidays, vacations, sick days, unpaid leave, etc.)	hours	
	Staff cost per hour (salary divided by hours worked)	\$ /hour	
	Staff cost per minute (staff cost per hour divided by 60)	\$0. /minute	
Time to Make Copies – Allocation of Staff Costs Per Copy			
The practice must determine how much staff time it takes to make copies. This includes only the time to make the copies, not the costs for retrieving the record, verifying the pages to be copied, etc.			
	1 st Page – There is a cost of setting up the machine to make copies, most likely about 1 minute	minutes	
	If copies are feed through a feeder, the cost should be fairly constant for additional copies. Assuming the copier makes 30 copies per minute, it should take about 1 minute to copy each additional 30 pages	Total time for each additional 30 pages	minutes
		Minutes per page	minutes
	If copies are made one at a time, the cost per pages 2 and up are most likely constant at 15-30 seconds per page	Total time for each additional page	minutes
Staff Cost to Make Copies			
	Page 1: Minutes to make copy times staff cost per minute	\$0.	
	Cost per additional page: Minutes to make additional 1 page copy times staff cost per minute	\$0.	
<i>Place staff cost for 1st page and per additional page on "Patient Copying Charge Notification Sheet"</i>			

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PATIENT COPYING CHARGE NOTIFICATION SHEET

USE THIS SHEET WHEN THE COPY OF THE MEDICAL RECORD IS BEING PROVIDED DIRECTLY TO THE PATIENT OR HIS OR HER REPRESENTATIVE FOR HEALTH CARE DECISIONS. YOU MAY CHARGE THE PATIENT NO MORE THAN THE LOWER AMOUNT FROM THESE TWO CALCULATIONS.

Number of pages to be copied: _____ pages

Calculating the amount allowed under Illinois law:

Handling Fee			\$24.44
Per Page Charges			
	Pages 1-25	\$0.92 per page	\$
	Pages 26-50	\$0.61 per page	\$
	Page 51 and over	\$0.31 per page	\$
Mailing Charges			\$
Maximum Charge Under Illinois Law			\$

Calculating the amount allowed under HIPAA:

Duplicating Machine Cost (number pages times cost per page)		\$	per page	\$	
Staff Costs					
	Cost of copying 1 st page			\$	
	Cost of copying additional pages		\$	per page	\$
Mailing Charges				\$	
Maximum Charge Under HIPAA				\$	

Lower of Illinois law and HIPAA Charges: \$ _____