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September 17, 2010

ADVISORY

Essential Policy & Regulation Updates

M H A

MASSACHUSETTS HOSPITAL ASSOCIATION



Information Only

To: Member CEOs (CC's Below):

QUICK SUMMARY

- Guidance on setting medical record copying fees
- MHA has calculated U.S. CPI for medical services to be 3.45%
- Guidance on who may be charged, requests from indigent patients, insurer contracts going forward
- Discussion of calculation methods ■

MEDICAL RECORD COPYING FEE 2010 UPDATE

Chapter 135 of the Acts of 2003 amended the state's medical record copying fee requirements for hospitals and individual healthcare providers.

Under the law, providers may increase the applicable fees based on the U.S. consumer price index (CPI) for medical care services in effect as of October 1, 2010. This Advisory outlines the calculations and process MHA uses to derive this number for members to determine the specific rates that may be charged.

Under the law (using the change in the consumer price index for medical care services as of September 1, 2010) MHA has calculated the U.S. CPI for medical care services to be 3.45%. So effective October 1, 2010, the maximum rate that providers may charge for medical records is as follows:

- a. \$19.24 base charge for the clerical and other administrative expenses related to complying with the request for making a copy of the record;
- b. \$0.65 per-page charge for the first 100 pages copied; and
- c. \$0.34 per-page charge for each page in excess of 100 pages. ■

POSTAGE, WAIVERS, OTHER CONSIDERATIONS

Please note that under the specific state law provisions, a provider is also allowed to charge an additional fee to cover the actual cost of postage (regular or priority/next day mailing) and preparation of an

explanation or summary of the hospital or clinic medical record if so requested. However, a separate/additional handling charge is prohibited if the entity is charging the base fee as well.

Providers should also be aware that fees must be waived for any request from a patient for a record that will be used for claims, eligibility reviews, or other administrative reviews being conducted by Medicare, MassHealth, or other public assistance programs (e.g., Health Safety Net, Children's Medical Security Plan, Healthy Start, Food Stamps, etc.). For any request made by a patient, Federal HIPAA guidance provides that a covered entity may not charge a base fee for making copies of the medical record for the patient. Requests from any other party that is not the patient may be charged the base fee for administrative expenses. While the U.S. Department of Health and Human Services has not indicated whether the Massachusetts copying fee law related to the administrative base fee is specifically preempted by the HIPAA provisions, we believe that HIPAA preempts the state law regarding the base charge in the specific situation listed above, and that providers should only charge the per-page fee.

While the law essentially sets forth the level at which the fees may be set, fees may be lower than the base charges but cannot be higher. Providers should also ensure that their negotiated contracts with health insurers, vendors, and other third party entities regarding the rates for copies of medical records are reflective of this law.

MHA also encourages providers to consider waiving or discounting rates applicable to requests for medical records from indigent patients, as indigence is determined using the hospital's credit and collection policy. Given that the law only establishes a maximum charge for copying, we encourage providers to develop waiver and discounting policies based on the financial condition of patients requesting copies, or the financial hardship caused by paying the fee based on the amount of copies requested.■

A NOTE ON THE CALCULATION

Finally, MHA has heard in the past that a few insurers complained that the percentage calculated by MHA is too high and not reflective of the correct consumer price index for medical care services. MHA uses the 12-month average of the current year compared to the same 12-month average of the previous year to determine the CPI increase. This is the same method that the federal Centers for Medicare and Medicaid Services, Blue Cross Blue Shield of Massachusetts, and the Commonwealth of Massachusetts uses in calculating their annual inflationary updates.

The difference is that the other entities look at several state or local specific factors to determine their rates. The Massachusetts law related to medical record copying fees only looks at the national medical services component of the CPI. The data we use for the Inflation Factor under the state law is the U.S. All Urban CPI for Medical Care Services produced monthly by the U.S. Bureau of Labor Statistics (BLS). We use the total of the BLS Indices for the 12 months of the FYE 9/30/2010 divided by the same for the 12 months of the FYE 9/30/2009. For 2010, we used the 11 months of the FYE 9/30/2010 (October 2009 through August 2010) as compared to the same 11 month period (October 2008 through August 2009). We also include in this calculation the BLS estimated September markup over August to provide the full 12 month calculation.

Should you have any questions about this advisory, please e-mail me. ■

CC: CHIEF OPERATING OFFICERS; CFO/V.P. FINANCE; CORPORATE COMPLIANCE OFFICERS; V.P./GENERAL COUNSEL; DIRECTORS, HEALTH INFORMATION MANAGEMENT
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