

MASSACHUSETTS HOSPITAL ASSOCIATION

ADVISORIES: A-50

MEDICAL RECORD COPYING FEE: 2009 UPDATE

Sent to:

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MEDICAL RECORD COPYING FEES

Chapter 135 of the Acts of 2003 amended the state's medical record copying fee requirements for hospitals and individual health care providers. (Please see Advisory A-1, dated January 9, 2004, which outlines the provisions of the law.) **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, 2009; that CPI is 3.1%. This Advisory outlines the specific rates that may be charged.**

Under the law, the maximum rate that providers may charge for medical records starting October 1, 2009 is as follows:

1. \$18.60 base charge for the clerical and other administrative expenses related to complying with the request for making a copy of the record;
2. \$0.63 per-page charge for the first 100 pages copied; and
3. \$0.33 per-page charge for each page in excess of 100 pages.

Please note that under the law 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 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 an administrative, claims, or eligibility review with Medicare, MassHealth, or other public assistance programs (e.g., Health Safety Net, Children's Medical Security Plan, Healthy Start, Food Stamps, etc.). The Federal HIPAA guidance provides that a covered entity may not charge a base fee for making copies of the medical record for a patient. Requests from any other party -- that is, not the patient or the patient's personal representative -- 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.

SUGGESTIONS AND AN EXPLANATION OF OUR CALCULATION

The law essentially sets forth the level at which 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. 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.

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 other factors to determine their rates. The Massachusetts law related to medical record copying fees only looks at the medical services component of the CPI.

Please contact me at the e-mail/phone number above if you have any questions or if you are getting any pushback on the percentage calculated.