

Bulletin



Massachusetts Hospital
Association

For hospitals and systems only

September 5, 2008

B-14

**Subject: Medical Record Copying Fee
2008 Update**

**Sent to: Chief Executive Officers
Chief Operating Officers
CFO/V.P. Finance
Corporate Compliance Officers
V.P./General Counsel
Directors, Health Information
Management**

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Enc: None

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 consumer price index in effect on October 1, 2008. This Advisory outlines the specific rates that may be charged.**

Under the law (using the change in the consumer price index for medical care services as of October 1, 2008, which is 4.93%), the maximum rate that providers may charge for medical records starting October 1, 2008 is as follows:

- a. \$18.04 base charge for the clerical and other administrative expenses related to complying with the request for making a copy of the record;
- b. \$0.61 per-page charge for the first 100 pages copied; and
- c. \$0.32 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 related to the cost of postage (regular or priority/next day mailing) and the administrative cost of developing a summary of the medical information (if so requested).

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.). For any request made by a patient, the 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 or the patient's personal representative may be charged the base fee for administrative expenses. While the federal Department of Health and Human Services has not indicated whether the

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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, 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.

Finally, MHA encourages providers to consider waiving or discounting rates applicable to requests for medical records from indigent patients. 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.

If you have any questions, please contact me at the e-mail/phone number above.