

HIPAA TIP: Stop Paying Exorbitant Costs for Medical Records

By Samuel A. Hoagland



Ed. Note: Samuel A. Hoagland is a solo practitioner in Boise. He is also a Registered Pharmacist and serves as an Adjunct Assistant Professor of Pharmacy Law for the ISU College of Pharmacy and served many years as a Panel Chairman for Medical Malpractice panels of the Idaho State Board of Medicine.

The Health Insurance and Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, became effective April 14, 2003, and is a new and effective tool to fight the high cost of obtaining medical records on behalf of our clients.

Some states have laws that require health care providers to provide one free copy of medical records to their patients. Idaho has no such law and some providers have taken advantage by charging as much as \$5.00 per page for copies. We have repeatedly explained to them that our clients are ultimately responsible for these costs, but our pleas for reasonableness cannot drown out the "office policy" based on the manifest fear and loathing of lawyers and the legal system, or pure avarice. Most of us have reluctantly paid these bills, feeling extorted by the fear of alienating providers we may later need for other purposes.

The administrative rule enacted under authority of HIPAA (the Privacy Rule) requires reasonable costs for copies of medical records, which can be enforced through the Office of Civil Rights of the Department of Health and Human Services. The reasonable, cost-based fee for a simple medical records request must be based *solely*

on: (1) the cost of supplies (paper), (2) the cost of labor to make the copies, and (3) the cost of postage.

Specifically, the Privacy Rule provides, at 45 CFR § 164.524(c)(4), as follows:

- (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.

By now, you should have already revised your form medical records release to comply with other provisions of HIPAA and the Privacy Rule, but I have added the following language to the bottom of our releases:

"PLEASE NOTE: To the extent that this release is used to obtain

protected health information, the request for disclosure by my attorneys is made under authority of HIPAA Privacy Rule § 164.524, and especially subsection (c)(4) thereof which provides, in relevant part,"

This language gives due notice, though none is required, that we expect the providers to charge a reasonable, cost-based fee for the records. When we nevertheless receive the outrageous bill for the records, I have used the following letter successfully.

"Dear Sirs:

"I just received your invoice for copies of medical records for my client, a copy of which is enclosed herewith for reference purposes. Since the HIPAA law went into effect not too long ago, April 14, 2003, I felt that you might not be aware of some provisions that apply to your business, even though they were specifically noted on the release form you received.

"As a Health Care Provider or 'Business Associate' of the provider that treated my client and generated the medical records requested, you are subject to the terms and conditions set forth in the HIPAA Privacy Rule, 45 CFR 164.524, regarding the amount you may charge for such records. Violation of this Rule could expose you to enforcement actions by the Office of Civil

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Rights of the Department of Health and Human Services.

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protected health information, if agreed to by the individual as required by paragraph (c)(2)(ii) of this section." (emphasis added)

"On behalf of my client, I am requesting that you provide this office with a full accounting of how you can possibly claim that the amount invoiced can be justified as a reasonable, cost-based fee under HIPAA.

"I believe that 25 cents per page is sufficiently higher than local copy services to be fair to you. Further, I believe that 10 minutes is more than sufficient time to pull a file, copy the 3 pages, put it back, and fax or mail them out. Finally, I believe that \$15.00 per hour is a generous salary for a job that requires little more than minimum experience or minimum wage.

"Based on the above, I cal-

culate a reasonable, cost-based fee, as follows:

"Supplies: 3 pages @ \$.25/page 0.75
"Labor: 10 min @ \$15/hr 2.50
"Postage (per your invoice): \$0.00
"TOTAL \$3.25

"I have herewith enclosed my office check in the sum of \$3.25, which is tendered as my estimate of a reasonable, cost-based fee for the copies provided. Your acceptance and negotiation of this check shall be deemed to constitute a full and final accord and satisfaction (payment in full) of all amounts due under the enclosed invoice. Thus, if you accept the check as full payment, you may avoid the requested accounting.

"Thank you for your kind attention and cooperation while we all adjust to this new law. Please feel free to call if you have any questions or comments."

The time/cost inefficiency of providing the requested accounting, plus the generous reasonableness proposed, motivates the provider or copy service to just deposit the check and thereby accept it as an accord and satisfaction of the amount due. In one case the \$5.00 to fax one page was reduced to \$1.50, and the \$15.00 for three pages was reduced to \$3.25. These are small victories, to be sure, but more will follow.

Please join the campaign to eliminate the exorbitant cost of medical records for our clients. If we all start using this procedure (or something like it), we will soon enough educate most or all of the providers and copy services that they have no right to charge outrageous prices for copies of medical records. The costs will come down for everybody and letters such as the one above will become a rarity. ☺

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