

WISCONSIN HOSPITAL ASSOCIATION, INC.

June 12, 2009



To: Members of the Senate

From: Eric Borgerding, WHA
Paul Merline, WHA

Re: Budget Motion #671 - Access to Patient Medical Records/Copy Fees

Many of you have been contacted by health care providers in your district strongly opposed to JFC Motion #671, a five-page provision that was narrowly adopted (9-7 vote) on the last morning in Joint Finance. This far reaching proposal would set in statute below-cost fees for copies of medical records while also creating new standards for access to health care records that would exist only in Wisconsin and that contradict HIPAA regulations. These provisions had never been debated, studied or even discussed until they appeared in Motion #671 at the very end of the Joint Finance Committee's deliberations.

This overreaching provision:

- Mandates in statute fees that are far below the cost of producing copies.
 - Contrary to perception, providing copies of medical records is far more complex than pushing a button on the Xerox. Even in electronic format, it is a time consuming, HIGHLY REGULATED and costly process (see attached flow sheets).
 - Motion #671 sets fees far below actual costs in Wisconsin and below fees in neighboring states. The average size of a medical record request in WI is 32.5 pages. Using a 35-page copy request as an example, total fees are:
 - IL \$51.95
 - MI \$52.33
 - MN \$58.73
 - WI \$31.25 under Motion #671
 - **WI \$12.25 – for plaintiff attorneys with informed consent under the new definition of “personal representative” included in Motion #671 (see below)**
 - A leading medical record copy firm, IOD Inc. in Green Bay, estimates they alone will have to shift \$10.8 million in higher costs to health care providers or eliminate their Wisconsin division (250 jobs throughout Wisconsin) as a result of Motion #671 (see attached letter).
 - Motion #671 will force providers to shift copying costs to everyone else, resulting in **higher health care costs for Wisconsin.**
- Expands the definition of “Personal Representative” in a manner that conflicts with state privacy laws and federal HIPAA regulations.
 - Under motion #671, anyone possessing informed consent, including plaintiff attorneys and insurance companies, would be able to obtain copies of medical records at fees FAR BELOW the actual cost of producing the copies.
 - This “stealth” provision means anyone would have access to records at the reduced fee reserved for patients because no one can access medical records without informed consent.
 - This provision would be the only one of its kind in the country and is in direct conflict with federal HIPAA laws that preserve access to low-cost copies for patients themselves or those designated to make *health care* (not courtroom) decisions on their behalf.

(more)

- Imposes time restrictions inconsistent with federal law (45 CFR 482.24), state administrative rules (HFS 124) and Joint Commission standards for completion of medical record requests.
 - Motion #671 imposes a 21 day compliance deadline, NINE DAYS SOONER than federal standards, which health care providers across the country now comply with.
 - Motion #671 imposes fines on health care providers if they do not meet the new Wisconsin 21day standard.
 - The new 21 day deadline will result in incomplete records being released, multiple copy requests, higher costs and lost productivity.
 - Veteran medical record administrators who have mobilized against this proposal predict “chaos” in record departments if these provisions are adopted (see attached letter from the Wisconsin Health Information Management Association).
 - Others question whether global vendors such as Epic or GE will comply with the new Wisconsin standards.

- Increases health care costs at a time when Wisconsin’s businesses and their employees are struggling to afford coverage for basic health care services
 - The estimated additional statewide cost for compliance with Motion #671 is \$30 million.

- Circumvents the required and deliberative administrative rule process for setting medical record copy fees.

If copies fees are to be regulated, they must:

- Better reflect the actual cost of making the copies
- Be indexed annually for inflation
- Continue to follow HIPAA regulation with respect to patient medical records
- Avoid adding even more costs to the health care system

The massive copy fees proposal hastily included into the state budget in the early morning hours with no analysis and very little debate accomplishes none of the goals above.

We urge you to support efforts by Sen. Hansen and others to remove or amend these cost increasing provisions.