

**Summary of Medical Record Access Statute Changes Made in Act 28**

The 2009-2011 Wisconsin State Budget, 2009 WI Act 28 (“Act 28”), makes changes to Wisconsin’s medical record access statute, § 146.83, Wis. Stats. The Governor signed Act 28 into law on June 29, 2009. The effective date for the changes is July 1, 2009.

The most significant changes to the health care access statutes include:

- A new requirement to provide copies of patient health care records in an electronic format upon request.
- A new statutory fee schedule for copies of medical records.

This memo summarizes the current requirements given the changes made in Act 28.

**Fee Schedule.**

Prior to July 1 (and Act 28), the administrative code (DHS 117) established the maximum fees health care providers could charge for copies of health care records. Act 28 removes the authority of the Department of Health Services to establish the maximum fees. Instead, the maximum fees for copies of health care records now are set in statute.

A health care provider must provide the patient or “person authorized by the patient” with copies of a “patient’s health care records” after receiving (1.) a request for copies from a patient or person authorized by the patient, (2.) informed consent, and (3.) payment of the applicable fees. *See* § 146.83(1f)(a), Wis. Stats.

A health care provider may charge no more than the total of all of the following for providing the copies requested by the patient or “person authorized by the patient”:

- For paper copies, 35 cents per page.
- For microfiche or microfilm copies, \$1.25 per page.
- For a print of an X-ray, \$10 per image.
- For providing copies in digital or electronic format, a charge for all copies requested.<sup>1</sup>
- Actual shipping costs.
- A fee equal to 10 percent of the total fees charged above, if the person requesting the copies requests delivery within 7 or fewer days and the provider delivers the copies in that time. *See* § 146.83(1f)(c), Wis. Stats.

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<sup>1</sup> The wording of this provision is the result of a line item veto. Governor Doyle in his veto message indicated his intent that providers charge a reasonable fee for providing copies in an electronic or digital format that is no more than the paper copy rate. Providers are encouraged to follow the spirit of the Governor’s intent. The Governor also indicated in his veto message that he would be directing the Department of Health Services, in collaboration with the Wisconsin eHealth Care Quality and Patient Safety Board, to evaluate alternatives and to make recommendations on appropriate fees that could be adopted in future legislation.

If the request is from a person other than a patient or “person authorized by the patient,” in addition to the above, the provider may charge the following:

- For certification of copies, \$5.
- For processing and handling, a single \$15 charge for all copies requested. *See* § 146.83(1h)(b), Wis. Stats.

It is important to note that “person authorized by the patient” is a very limited list of people specified in statute that generally refers to those persons who have the authority to make health care decisions for the patient or who is the survivor of a deceased patient.<sup>2</sup> Also remember that HIPAA limits the fees that can be charged to patients and the patient’s “personal representative” as defined under 45 CFR 164.502(g). *See* 45 CFR 164.524(c)(4). In other words, in general, a health care provider cannot charge a “personal representative” (HIPAA) or “a person authorized by the patient” (Wis. Stats.) the processing and handling fee.

Further, Act 28 also revised “patient health care records” to include “all records made by an ambulance service provider, as defined in s. 256.01(3), an emergency medical technician, as defined in s. 256.01(5), or a first responder, as defined in s. 256.01(9), in administering emergency care procedures to and handling and transporting sick, disabled, or injured individuals”, and to include “billing statements and invoices for treatment or services provided by a health care provider.” *See* §146.81(4), Wis. Stats.

*Exceptions to the above maximum fees.*

Inspection. After the patient (or person authorized by the patient) submits a statement of informed consent, a health care provider must make a patient’s health care records available for inspection to the patient or person authorized by the patient without fee, during regular business hours after the health care provider receives notice. *See* § 146.83(1d), Wis. Stats.

Patient Eligible for Medical Assistance. A health care provider may not charge a fee for providing one set of copies of a patient’s health care records if the patient is eligible for Medical Assistance. A health care provider may charge the statutory fees for providing a 2<sup>nd</sup> or additional set of copies of the patient’s health care records. *See* § 146.83(1f)(d)2., Wis. Stats.

Social Security Disability Appeals. A health care provider may charge no more than the amount the federal Social Security Administration reimburses the Department of Health Services for copies of patient health care records, if:

- A patient or person authorized by the patient requests copies of the patient’s health care records for use in appealing a denial of social security disability insurance or supplementary security income, or
- The Department of Health Services requests copies of the patient’s health care records for use in determining eligibility for social security disability insurance or supplementary security income *See* §§ 146.83(1h)(c) and (1f)(d)1., Wis. Stats.

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<sup>2</sup> “Person authorized by the patient” mean any of the following:

A parent, guardian or legal custodian of a minor patient, as defined in s. 48.02(8) and (11), the person vested with supervision of the child under s. 938.183 or 938.34(4d), (4h), (4m), or (4n), the guardian of a patient adjudicated incompetent in Wisconsin, the personal representative, spouse, or *domestic partner under ch. 770* of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principle under ch.155 if the patient has been found to be incapacitated under s. 155.05(2), except as limited by the power of attorney for health care instrument. [Note that Act 28 adds a “domestic partner under ch. 770 of a deceased patient,” to the definition of a “person authorized by the patient.”] *See* § 146.81(5), Wis. Stats.

Copies requested under s. 51.30, Wis. Stats., or the disclosure provisions in § 146.82(2), Wis. Stats. None of the above copy provisions apply to s. 51.30, Wis. Stats., or copies requested pursuant to the exceptions to confidentiality under § 146.82(2), Wis. Stats.

### **Copies in electronic format.**

The Budget Bill provides that, upon request, “a health care provider shall provide copies of patient health care records in a digital or electronic format unless the providers’ record system does not provide for the creation or transmission of records in a digital or electronic format, in which case the provider must provide a written explanation for why the copies cannot be provided in a digital or electronic format.”

### **Time Limits.**

Act 28 requires health care providers, upon request as outlined above, to provide a copy of a report regarding an X-ray of a patient or a copy of an X-ray to another health care provider of the patient’s choice within 30 days of the request. *See* § 146.83(1f)(b), Wis. Stats.

Except as provided above, all HIPAA timeframes continue to apply. In general, health care providers must provide copies of requested health care records within 30 days if the records are stored onsite and 60 days if the records are stored offsite. *See* 45 CFR 164.524(b)(2).

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