



Changes to Medical Record Access in the 2009-2011 Wisconsin State Budget

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 effective date for the changes is July 1, 2009.

Fee Schedule.

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 a request for copies from a patient or person authorized by the patient, an informed consent, and payment of the applicable fees. Refer to § 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.
- 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.
Refer to § 146.83(1f)(c), Wis. Stats.

Since the law is silent regarding sales tax, the organization processing the record requests needs to determine how sales tax will be addressed.

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:

- A single \$15 processing and handling charge for all copies requested.
Refer to § 146.83(1h)(b), Wis. Stats.
- \$5 for certification of copies

“Patient health care records” definition is revised 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”. “Billing statements and invoices for treatment or services provided by a health care provider” are included as “patient health care records”.

Refer to §146.81(4), Wis. Stats.

Note: “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. Also, HIPAA limits the fees that can be charged to patients and the patient’s “personal representative” as defined under 45 CFR 164.502(g). Refer to 45 CFR 164.524(c)(4). Therefore, a health care provider cannot charge the processing and handling fee to a “personal representative” (HIPAA) or “a person authorized by the patient” (Wis. Stats.)

Exceptions to the fees outlined above.

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.

Patient 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. Refer to §146.83(1d), Wis. Stats.

Medical Assistance Patient. 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 2nd or additional set of copies of the patient's health care records. Refer to § 146.83(1f)(d)2., Wis. Stats.

Social Security Disability Requests. The Disability Determination Bureau (DDB) is the agency responsible for determining eligibility for Social Security Disability Insurance and Supplemental Security Income for Wisconsin residents on behalf of the Social Security Administration (SSA). A flat fee of \$26 per submission will be reimbursed to the health care provider, 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.

A Department of Health Services memo is included with this document.

Copies in electronic format.

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.

All HIPAA timeframes continue to apply. 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. Refer to 45 CFR 164.524(b)(2).



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To: Providers of Medical Records to the Wisconsin Social Security Disability Determination Bureau:

This letter concerns the fees you may charge for medical records submissions to the Department of Health Services / Wisconsin Disability Determination Bureau (DDB) in light of the enactment of 2009 Wisconsin Act 28. The DDB is the agency responsible for determining eligibility for Social Security Disability Insurance and Supplemental Security Income for Wisconsin residents on behalf of the Social Security Administration (SSA).

Act 28 created section 146.83(1h)(c) that caps the fees that may be charged for copies of patient health care records requested by DDB at the amount that the Social Security Administration reimburses the Department for copies of patient health care records. That amount is a flat fee of \$26 per submission. Therefore, effective immediately the DDB will be capping its payment at \$26 for each request for copies made by DDB on or after June 30, 2009. To facilitate automated payment, you should return the bar coded invoice / cover sheet with your submissions.

Note that this same fee cap applies to records requested by patients or their authorized representatives for purposes of appealing a denial of Social Security Disability Insurance or Supplemental Security Income.

The Act also requires that medical providers submit medical records in a digital or electronic format upon request. SSA and the DDB fully support receiving records in an electronic format. The DDB encourages medical providers to receive our records requests via fax and respond back to us via fax with our bar coded coversheet / invoice. Not only does this automate your payment, but your submission is immediately associated in your patient's electronic disability file.

SSA also provides a secure web site called the Electronic Records Express (ERE) for receiving our requests and uploading your responses. A demonstration is located at: <http://www.ssa.gov/ere>. The DDB can sponsor users of this web site and provide support.

If you are interested in fax requests and submissions or in using the ERE website or have any questions about this letter, please contact us.

Sincerely,

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