Many covered entities provide copies of medical records to patients at no cost if the information is being used for continued care or when the request is small. However, the HIPAA Privacy Rule permits a covered entity to impose a reasonable, cost-based fee if the individual requests a copy of their protected health information (PHI). The Office for Civil Rights (OCR) recently published guidance on its website about how to charge for copies of medical records. These new guidelines outline a significant change from past practices.

Under the new guidance, the copy fees for medical records may include only the cost of:

1. Labor for copying the PHI requested by the individual, whether in paper or electronic form;
2. Supplies for creating the paper copy or electronic media (i.e., CD or USB drive) if the individual requests the electronic copy be provided on portable media;
3. Postage, when the individual requests the copy, or summary or explanation, be mailed; and
4. Preparation of an explanation or summary of the PHI, if agreed to by the individual. See 45 CFR 164.524(c)(4).

The fee charged by the covered entity may not include costs associated with verification; documentation; searching for and retrieving the PHI; maintaining systems; recouping capital for data access, storage or infrastructure; or other costs not listed above, even if such costs are authorized by state law. Options for determining cost structure for your organization should be determined in advance and written in HIPAA policies and procedures so staff knows how to respond to requests from patients.

Along with the guidance, OCR has posted on its website several questions and answers about HIPAA’s Access Right (FAQs) and fees for copies.

The first section of the FAQs, “Fees That Can Be Charged to Individuals for Copies of their PHI,” has several answers about release of information, fees and charging patients. We encourage you to read through the entire list of FAQs.
A few helpful questions/answers addressed include:

**Must a covered entity inform individuals in advance of any fees that may be charged when the individuals request a copy of their PHI?**

**Yes.** When an individual requests access to his or her PHI and the covered entity intends to charge the individual the limited fee permitted by the HIPAA Privacy Rule for providing the individual with a PHI copy, the covered entity must inform the individual in advance of the approximate fee that may be charged for the copy. The failure to provide advance notice is an unreasonable measure that may serve as a barrier to the right of access. Thus, this requirement is necessary for the right of access to operate consistent with the HIPAA Privacy Rule. Further, covered entities should post on their web sites or otherwise make available to individuals an approximate fee schedule for regular types of access requests. If an individual requests it, covered entities should provide the individual with an itemized list of charges for labor, supplies and postage if applicable, that make up the total fee charged. This information would likely be requested in any action taken by OCR in enforcing the individual right of access, so entities will benefit from having this information readily available.

**May a covered health care provider charge a fee under HIPAA for individuals to access the PHI that is available through the provider’s EHR technology that has been certified as being capable of making the PHI accessible?**

**No.** The HIPAA Privacy Rule at 45 CFR 164.524(c)(4) permits a covered entity to charge a reasonable, cost-based fee that covers only certain limited labor, supply, and postage costs that may apply when providing an individual with a copy of PHI in the form and format requested or agreed to by the individual. Where an individual requests or agrees to access his or her PHI available through the View, Download, and Transmit functionality of the CEHRT, we believe there are no labor costs and no costs for supplies to enable such access. Thus, a covered entity cannot charge an individual a fee when it fulfills an individual’s HIPAA access request using the View, Download and Transmit functionality of the provider’s CEHRT.

**Source:**


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