

# Minimizing the Costs of Obtaining Medical Records



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To pursue a personal injury claim on behalf of injury victims, we need to obtain their medical records. Depending on the type of claim, you may need to order the records just for the evaluation, as in most medical malpractice cases. Even if you are evaluating liability in a non-medical malpractice case, you may choose to order medical records, perhaps to see your client's report of injury, to obtain toxicology records, to see a description of a medical device that failed, or for various other reasons. A hospital chart, depending on its size, could cost thousands of dollars to obtain, which can be unsettling if you do not know if you are even taking the case yet. In all cases, you certainly want to minimize costs by using the most efficient method to obtain the records.

The Pennsylvania Department of Health has published a fee schedule that medical providers are permitted to charge for production of medical records.<sup>1</sup> Pursuant to *42 Pa. C.S. §§6152, 6152.1* and *6155*, healthcare facilities may charge a fee in response to a request for medical charts and records. This fee may

be adjusted annually by the Secretary of Health, pursuant to *42 Pa. C.S. §6152* and *§6152.1*. As of January 1, 2017, the fees are as follows:

<u>RECORDS</u>	<u>NOT TO EXCEED</u>
Pages 1-20	\$1.48
Pages 21-60	\$1.10
Pages 61-end	\$ .37

However, an important qualification to these copy charges is when patients request the records themselves, or request that their records be sent to someone they authorize to receive them (i.e. an attorney). Pursuant to the Health Information Technology for Economic and Clinical Health Act (HITECH Act)<sup>2</sup>, if the healthcare provider maintains records electronically, the patient has the right to obtain from the provider the information in an electronic format. Additionally, the patient may direct that the records be provided to counsel. The fee that the healthcare provider may charge may not be any greater than the labor costs in responding to the request. This labor cost cannot include the costs associated with a search for or retrieval of the requested information. Therefore, essentially, with electronic reproductions, the only cost is the cost of the media on which the production is made and some incidental labor in assembling the production.

A form HITECH letter that a client might sign can read as follows:

Dear Records Custodian:

I request copies of any and all of my medical records

including, but not limited to, my complete medical chart, office notes, laboratory reports, radiology reports, and outside records. Provide the records in electronic form on CD in the Adobe Acrobat .pdf format. **Please note that HIPAA requires that you provide the records for the cost of the CD and the cost of the actual time spent putting the records and/or films on the disk.** Please note that I am not requesting any paper be produced, but only records in electronic format.

I realize that I have the right to revoke this request at any time. I understand that this request may result in the production of records that contain information related to sexually transmitted infections, HIV and AIDS and may also include behavioral health and treatment records.

Please send the records to Juliet Capulet, Esquire as follows:

Juliet Capulet, Esquire  
1 Law Street  
Philadelphia, PA 12345

Sincerely,  
Romeo Montague

This letter can then be sent by Ms. Capulet to the healthcare provider.

If the records are in paper format, then, again, the production costs are limited to the labor for copying the requested records, supplies to duplicate the records, and postage.<sup>3</sup> The labor costs may not include the cost for search

and retrieval of the records.<sup>4</sup> So, if the records are not kept electronically, which might be more likely for smaller medical practitioners, but the records can be scanned in by them, the costs again will be limited to the time to scan them in and the reproduction medium. However, they can charge the per page copy costs if they do not have them electronically and are producing paper copies. The above costs are the maximum costs, not the costs that must be charged.<sup>5</sup>

Thus, use of the above HITECH letter reduces costs associated with the production of medical records significantly. Hospital medical charts that exceed 1,000 pages are limited to the disc or thumb drive it is produced on, which is often less than \$10.00. In the event that the healthcare provider submits a customary bill along with the production, instead of complying with the Federal HIPAA and HITECH Acts, a letter back to the healthcare provider referencing 42 U.S.C. §17935 is usually successful.

There are exceptions to the production of these records, including psychotherapy notes<sup>6</sup>, and

information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.<sup>7</sup> The production must be made within 30 days from receiving the request.<sup>8</sup>

Of course, in the normal course of discovery when served with discovery requests, you will produce your client's medical records to defense counsel. Defense counsel might then issue subpoenas to those providers which invariably do not comply with the HITECH Act, and/or might use a copy service for the request. Despite the fact that you might produce records free of charge, which is the norm, counsel may seek to charge for the copies of the records they receive. Reference is made to Philadelphia Rule of Civil Procedure \*4018.1, which provides, "the record reproduction service must make any records obtained by notice of deposition available for inspection by any party in a Center City office without charge whether or not that party has ordered a copy." Thus, if you wish to review the records before ordering them to see if there is anything different

than the records you received through the HITECH procedure, the records should be made available free of charge, at least for inspection. A reasonable practice from defense counsel is to produce what they receive via subpoena to your office, again, in an electronic format.

The use of the HITECH Act and method should save considerable costs in retrieving records and reducing costs associated with evaluating cases. Best of luck! ♦

<sup>1</sup> 46 Pa. B. 7598

<sup>2</sup> 42 U.S.C. §17935(e)

<sup>3</sup> 45 C.F.R. 164.524(c)(4)

<sup>4</sup> 45 C.F.R. 164.524(c)(4)

<sup>5</sup> *Chiurazzi Law Inc. v. MRO Corporation*, 97 A.3d 275 (Pa. 2014)

<sup>6</sup> 45 C.F.R. §164.524(a)(1)(i) and 164.501

<sup>7</sup> 45 C.F.R. §164.524(a)(1)(ii)

<sup>8</sup> 45 C.F.R. §164.524(b)(2)

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