



LAW OFFICE OF
MATTHEW A. LATHROP, PC, LLO
PERSONAL INJURY TRIAL ATTORNEY

Date

Via Fax to
[NAME OF PROVIDER
ADDRESS]

RE: Our Client:
Date of Birth:
Invoice No.:
Provider:
Dates of Treatment:

Dear Sir or Madam:

We are in receipt of the above-reference invoice for providing medical records to this office. Your charges for medical records violate federal law 42 USC § 17935 (e). That statute limits charges for medical records to cost-based fees for providing records to a patient or "any entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific; . . ."

My client has requested that all electronic records be produced in a .pdf file format on compact disc (CD) for the cost of labor and of a CD. Your invoice (a copy of which is attached) includes per-page charges. Page charges for a digital file that can be copied to a single CD are not reasonable cost-based fees. The HITECH Act directs that a patient shall have the right to obtain electronic records for a reasonable cost-based fee.

. . .
(e) Access to certain information in electronic format
In applying section 164.524 of title 45, Code of Federal Regulations [HIPAA regulations], in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—

(1) the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format and, if the individual chooses, to direct the covered entity to transmit such copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific; and

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(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

42 USC § 17935(e).

This new rule was written specifically to allow a patient to direct medical records to “any” 3rd party representative. The rule includes attorneys or anyone else the patient designates in his letter requesting records. Providers must follow the cost-based charge rule regardless of whether the records are being provided to the patient, or the patient’s representative. The statute distinguishes this process from any request which is subject to HIPAA authorizations.

These regulations are enforced by the Department of Health and Human Services, Office of Civil Rights. Violation of the statute or its supporting regulations will subject **[PROVIDER]** to fines.

I request a revised invoice be forwarded to the undersigned reflecting the true cost of labor and materials (CD). I look forward to hearing from you soon.

Sincerely,

Matthew A. Lathrop
For the Firm

Encls. Invoice