



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

Date

Via Fax to
[NAME OF PROVIDER
ADDRESS]

RE: Patient:
Invoice No.:
Disputed charge: \$XXX

Dear Sir or Madam:

This office has been retained by **[CLIENT NAME]** to assist with a dispute over a bill **he/she** received associated with **his/her** personal use request for a copy of her Protected Health Information.

[CLIENT NAME] is in receipt of the above-reference invoice for providing medical records to **[CLIENT NAME]**. These charges for medical records violate federal law 45 C.F.R. § 164.524(c)(4); *See also*, 65 Fed. Reg. 82,577. Federal Rules have clarified that the costs that may be charged must be reasonable, cost-based, and may only include those actual costs for providing the copies in the requested format *after* the responsive records have been located, collated and readied for copy. 45 C.F.R. § 164.524 (c)(4).

[CLIENT NAME] has requested that all Protected Health Information be produced in a .pdf file format via email, thumb drive, compact disc or portal access site. Your invoice (a copy of which is attached) includes per-page charges, and/or charges for segregating, collecting, compiling or otherwise preparing the responsive information for copying. None of these charges for a digital file that can be copied to a single digital format are “reasonable cost-based fees.”

As you know the 2000 law, commonly referred to as “HIPAA”, restricted any “covered entity” (which is a health care provider or its “business associates”) from charging more than a “reasonable, cost-based fee” for a patient’s request for a copy of his or her Protected Health Information. 45 C.F.R. § 164.524 (c)(4).

The HITECH Act of 2009 also directs that a patient shall have the right to obtain Electronic Health Records for a reasonable, cost-based fee:

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...
(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

(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 office is well aware of the recent ruling in *CIOX v. Azar*, in the DC Federal District Court (January 23, 2020). If you have reviewed this opinion, you know that this portion of the HITECH Act, dealing with the cost-based restriction, was specifically affirmed by the DC judge as simply a clarification of the original law found in the 2000 HIPAA legislation. In that opinion, Judge Mehta stated that any confusion over the language used by HHS, “does not alter what the [HIPAA] Privacy Rule allows, which is recovery of the costs of ‘[l]abor for copying [PHI],’ as distinct from the costs incurred *from pre-copying activities*.” (Mehta Opinion, at p. 54; emphasis added).

Providers must follow the cost-based charge rule when a request is made by a patient.

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 **[CLIENT NAME]** reflecting either of the permissible billing frameworks allowed by federal law; specifically: 1) actual costs for producing the PHI; 2) average costs for producing the PHI; or 3) a \$6.50 flat fee. If you believe a fourth calculation method is appropriate, complying with the rules, excluding “pre-copying activities”, *and* which is consistent with Judge Mehta’s clear instructions in the order, please submit that billing to **[CLIENT NAME]** for review. Upon receipt of the revised bill **[CLIENT NAME]** will either submit payment, or forward to the undersigned for any further discussion, or referral to HHS-OCR.

Any further *dispute* over this bill should be directed to this office as attorney for **[CLIENT NAME]** regarding this dispute.

I look forward to hearing from you soon.

Sincerely,

Matthew A. Lathrop
For the Firm

Encls. Invoice