

DEPARTMENT OF LABOR AND INDUSTRY

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In the Matter of the Proposed
Permanent Rules Relating to Reimbursement
for copies of Workers' Compensation
Medical Records

STATEMENT OF
NEED AND
REASONABLENESS

5219.0100-5219.0300

The rules for the regulation of the cost of copies for medical records are required by Minnesota Statutes §176.135, subd. 7 which states, "The commissioner shall adopt a schedule of reasonable charges by emergency rules." Effective January 11, 1988, the Department of Labor and Industry adopted emergency rules relating to workers' compensation cost of medical record copies (Minn. Rules, parts 5219.0010-5219.0030). On June 13, 1988, these rules were extended for an additional six months. On January 5, 1989 the emergency rules expired.

Minnesota Statutes §176.135, subd. 7 states that "Health care providers may charge for copies of any records or reports that are in existence and directly relate to the items for which payment is sought under this chapter. Charges for copies provided under this subdivision shall be reasonable." In these proposed rules, the Department of Labor and Industry has considered the differing interests of its constituents in complying with the statutory mandate to develop a schedule of reasonable charges for copies of medical records.

5219.0100 Purpose.

Since the emergency rule expired, providers may set their own rates for the cost of copies of medical records. These rates vary and result in excessive charges in some cases. The basic purpose of the rule is to provide a schedule for reimbursement of costs of copies of medical records in order to promptly and fairly compensate health care providers for the costs in supplying medical records and eliminate excessive charges. The rule also encourages prompt submission of these records to the insurer and others involved in the workers' compensation system by reducing the number of disputes regarding costs of copies of medical records. The rule does not affect any law pertaining to privacy or the release of medical records. The provider retains responsibility for determining whether the release of the medical record is permitted by law. Because privacy issues are governed by numerous existing statutes and rules, this clear statement of an intent not to disturb existing law in that regard discourages further disputes and litigation.

5219.0200 Scope.

The purpose of this section is to identify who is covered by the rule and in what situations the rule applies.

M.S. §176.135, subd. 7 does not restrict the scope of the authorized rules by provider, requestor or type of record. It is unlikely that the provider's cost in providing copies of existing medical records varies depending on the person requesting the record. Accordingly, to promote uniformity, fair reimbursement and ease of application, the rule applies to any person or business entity who requests copies of medical records related to a workers' compensation claim (including employers, payers, employees, attorneys and QRCs) and to all health care providers as defined in M.S. §176.011, subd. 24, including hospitals, who provide copies.

The rule applies to all existing medical records related to a current workers' compensation claim, except for records governed by another law or rule. The purpose of the rule is to specify a reasonable charge for copies in those instances in which the statute or another rule does not already specify the charge. For instance, under Minn. Rules 5220.2590, the Physician's First Report form and Maximum Medical Improvement form must be provided to the insurer without charge. M.S. §176.155, subd. 1 requires a copy of the employer's physician's report to be provided to the employee or employee's representative upon request without charge. The rule governs only copies of existing medical records; professional charges for medical reports generated in response to a request for an opinion or specific information are not governed by the rules.

5219.0300 Cost of Copies of Medical Records.

The proposed rule distinguishes by reimbursement amount between the "appropriate record" and all other types of medical records. "Appropriate record" is defined by M.R. 5221.0100, subp. 1a (proposed on April 19, 1990 at 14 State Register 2412) as "a legible medical record or report which substantiates the nature and necessity of a service being billed and its relationship to the work injury."

Subpart 1 First Copy of Appropriate Record

Subpart 1 of the rule states that for the first copy of the appropriate record, when supplied by the health care provider to the payor for the purpose of substantiating the nature and necessity of the medical bill, a fee is reasonable if it does not exceed \$.75 per page to compensate the provider for direct costs. This amount applies whether or not the health care provider submits the record with the billing statement or after a request by the payor. Only a per page fee is allowed for the first copy of the appropriate record. Minnesota Statutes §176.135, subd. 7 requires providers other than hospitals to submit records in support of the medical service. The statute requires hospitals to submit information in support of the bill if requested by the payor. A retrieval fee is inappropriate because submission of the appropriate record is required to substantiate the bill and is therefore part of the provider's cost of doing business.

Subpart 2 Other Copies

Subpart 2 deals with all other requests from the payor or any other party for costs of copies of existing medical records which are not specifically addressed in Subpart 1, or in Minnesota Statutes §176.155 (the employer's physician report) or Minnesota Rules, Part 5220.2590 (Physicians First Report form and Maximum Medical Improvement form). This subpart states that a fee is reasonable if it does not exceed a \$10.00 retrieval fee and a \$.75 per page fee for preparing and copying the medical records requested. Since these records are provided for reasons other than to substantiate the bill, preparation of a copy of the record is not included as part of the medical service. For example, an insurer may request the health care provider's records to document a preexisting condition to establish the insurer's liability for compensation to the employee. In such a case, the medical record is not for the purpose of substantiating a bill. Accordingly, a retrieval fee is permitted as well as a per page fee.

To avoid disputes in situations where a provider's charge involves a different retrieval fee or per page fee amount, the rule requires that the total charge be equal to or less than the sum of the retrieval fee and per page fee established by the rule.

The reimbursement amounts are supported by a survey of 76 health care providers located in the Twin Cities and in greater Minnesota conducted by the Department in December 1989 and January 1990. The attached document gives the survey results for the cost of copies of medical records. This document summarizes the type of providers surveyed, their location, and the results analyzed by the type of charge. The Department evaluated 57 responses as of February 1, 1990. The largest category of responses (34) combines hospitals and independent providers who charge a retrieval fee plus a per page fee. The mean retrieval fee is \$10.47 and the mean per page charge is \$.75.

Subpart 3. Postage & Other Charges

Subpart 3 clarifies that the cost for postage, sales tax and notary fees are not included in the retrieval and per page fees set in the rule. These are additional costs and are not direct costs incurred in copying records. Notary fees may not be charged unless the requestor specifically asks that the records be notarized. There is no legal requirement that workers' compensation medical records be notarized, and the decision should therefore be left to the requestor.

Subpart 4. Time for Payment

Subpart 4 indicates the time limit that the payor has for reimbursement to the health care provider when copies are requested. The rule states that the payor must pay within 30 days of receipt of the records. Minnesota Statutes §176.135, subd. 6 requires the payor to pay the medical bill no later than 30 calendar days after receiving the bill. Since this is a standard for the payor when paying for a medical treatment or service, this should also be the standard for paying for cost of copies of medical records.

SMALL BUSINESS CONSIDERATIONS

The rules are intended to provide a uniform, reasonable rate of reimbursement to health care providers for the cost of providing copies of workers' compensation medical records. Presently, health care providers set their own rates, which may vary greatly and result in excessive charges in some cases. This in turn creates disputes and potential delay in providing copies to the parties and reimbursement to the provider. While the Department believes that the reimbursement rate established by the rule is reasonable and should not have a significant impact on requestors or providers as a group, there will be some impact on individual providers who are currently charging more than the amount set by the proposed rule. However, this impact is small. The medical study on Health Care Costs and Cost Containment in Minnesota Workers' Compensation, reported to the Legislature by the Department of Labor and Industry in March, 1990, indicates that workers' compensation accounts for only 2 percent of health care costs in Minnesota. The cost of copies of medical records is undoubtedly only a small percentage of workers' compensation health care costs.

When there is an impact on small business, M.S. §14.115 requires the agency to consider methods to reduce the impact. These rules are exempt from the requirements of this statute because the rules apply to service businesses regulated by governmental bodies for standards and costs, such as nursing homes, long term care facilities, hospitals and providers of medical care. Nonetheless, the Department has considered the methods set forth in M.S. §14.115 to reduce the impact of the rule as follows:

- a) The establishment of less stringent compliance or reporting requirements. The rules do not impose a reporting requirement. To impose less stringent compliance requirements would defeat the purposes of the rule since most providers meet the definition of a small business. The rules should not have a significant impact on requestors because, overall, the reimbursement rate should be comparable to what is currently being paid at differing rates.
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements. The rules do not impose a deadline except that requestors of medical records are required to pay for the copies within 30 days, which is the same time frame as for other medical expenses.

- c) Consolidation or simplification of compliance or reporting requirements. The rule is intended to simplify and standardize payment for cost of copies. This uniform standard should be of benefit to all providers with respect to receiving prompt reimbursement and eliminating disputes.
- d) The establishment of performance standards for small business to replace design or operational standards required. The rule does not impose design or operational standards.
- e) The exemption of small business from any or all requirements of the rule. Again, this would defeat the purpose of the rule to facilitate the release of records and to provide prompt, fair and uniform reimbursement.

FISCAL NOTES

Minnesota Statutes §3.982 requires preparation of a fiscal note where the state proposes that a local agency or school district take action and when reasonable compliance with the action would force the agency or school district to incur costs "mandated" by the state. "Mandate" is defined as a requirement which, if not complied with, results in civil liability, criminal penalty, substantial economic sanction such as loss of funding, or severe administrative sanctions such as closure or nonlicensure of a facility or program.

Although the rules may affect self-insured independent school districts and local governments to the extent they request copies of medical records for their injured employees, the rules do not mandate increased costs, as they are expected to result in savings that equal or exceed costs. Furthermore, a fiscal note is not needed because M.S. §3.983 provides an exception from the requirement if increased local costs do not result from a new program or an increased level of service.

Minnesota Statutes §14.11 requires a fiscal note if the rule will require the expenditure of public money by local public bodies if the estimated total cost to the public body exceeds \$100,000 in either of the two years following adoption. As noted earlier, the rule is not expected to have a significant fiscal impact on self-insured cities or school districts because, overall, the amounts paid under the rule should be similar to what is currently being paid at differing rates.

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