



MEDICO-LEGAL AFFAIRS COMMITTEE

Guidelines for Medical Records - 2019

The fees suggested herein should be considered only as recommendations of the work of this joint committee comprised of physicians and attorneys, appointed by their respective professional organizations. It is not the intention of the Medical Society of Delaware or the Delaware State Bar Association to set any fee or range of fees for medical records, nor contravene federal or state law. The Medico-Legal Affairs Committee views its role in Delaware as facilitating an amicable inter-professional work environment for the benefit of patient-clients and strives for this document to aid in that goal.

The Committee has found that the landscape for medical records fees and production has been a source of contention between the legal and medical professions for too long. Local and federal guidance has created further inconsistencies.

However, participants in the workers' compensation system have generally found the process and fee schedule to be fair and produce timely results for patient-clients. Therefore, for medico-legal interactions between physicians and attorneys as it comes to medical records:

2019 Medico-Legal Affairs Committee Policy Recommendation

Voluntary adoption and standardization of 19 Del. Admin. Code 4.16.1.1 - Retrieving, copying and transmitting existing medical reports and records, to include copying of medical notes and/or records supporting a bill or invoice for charges for treatment or services, as may be amended from time to time and incorporated in the Committee Recommendation:

- \$25.00 for search and retrieval
- \$1.25 per page for first 20 pages
- \$.90 per page for pages 21 through 60
- \$.30 per page for pages 61 and thereafter

Set Fees: Due to the differences in practices and staffing, the committee also recognizes that physician practices may have appropriate alternative systems in place. For instance, a flat rate, based on an average of costs and a volume of records with an individual legal practice. We find such alternative arrangements to be consistent with this recommendation as it creates a smoother relationship

between the physician practice producing the records and the attorney practice making the request.

Copy Services: Per IAB Hearing No. 1472701, the Industrial Accident Board has suggested that use of a copy service may at times be appropriate. Particularly for large requests from small practices, attorneys are urged to consider use of a copy service. Physician practices are similarly urged to accommodate these services in their records room for a time appropriate to retrieve the records on behalf of the attorney.

Lookback Period: With some consideration for the particular facts of a matter, requesting attorneys should limit voluminous requests to 10 years of records. This length of time is sufficient for the vast majority of issues.

Timeliness: Physician practices must be aware of the time-sensitive nature of document requests. Not only are attorneys under legal timelines from courts, but patients' rights — and factors in social determinants of their ongoing health — are at issue. Record requests should be complied with in a timely fashion.

State & Federal Guidance: The committee has examined and is aware of both state and federal law and guidance on the issue of medical records. For instance, HIPAA and HITECH guidance from the Office of the National Coordinator (ONC) and Board of Medical Licensure & Discipline fee caps at 24 Del. Admin. Code 16.0. The committee considers these important and binding *for interactions between a patient requesting their records from a practice for their continued care between medical practice settings.*

We encourage legal practices not to place patients or practices in an awkward position by circumventing the recommendations using that pathway. For consistency, certainty, and trust between the professions, voluntary adoption of the workers' compensation fee schedule will lead to better outcomes for all involved.