

YOUR RIGHTS REGARDING FEES FOR RECEIVING A COPY OF MENTAL HEALTH RECORDS IN MASSACHUSETTS

**Prepared by the Mental Health Legal Advisors Committee
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An individual has rights regarding receiving a copy of their own mental health records. Often a fee is assessed for the records.

Federal standards, known as the “Privacy Rule,” establishes national rules for the protection and dissemination of personal health information.¹ Because the Privacy Rule implements the requirement of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”),² the standards are often called HIPAA standards.

Under the HIPAA Privacy Rule, facilities and providers supplying copies of an individual's mental health record are entitled to charge a reasonable, cost-based fee.³ Inpatient facilities licensed by the Department of Public Health (DPH) or Department of Mental Health (DMH) may charge no more than the actual cost of copying.⁴ The same standard applies to community programs licensed or contracted for by DMH.⁵

Individuals may request that the fee be waived, such as for inability to pay. Facilities and providers may waive the fee in these or other special circumstances.

The request form typically has a place to indicate the reason for requesting the records. An individual has no obligation to tell the facility/provider why the records are wanted.⁶ This includes releases that specifically ask for this information and have boxes to check listing various reasons.

However, in our experience, if individuals request records for the purpose of “changing physicians,” “consultation,” or “continuing care,” we have found that charges are slightly less likely to be assessed. We have also found that it is quite unlikely that charges are levied if the records are being sent directly to a provider.

If the records are needed to support a claim or appeal under any provision of the Social Security Act or any federal or state needs-based benefit program, such as SSI, SSDI, EAEDC, or Medicare, a hospital licensed by the Department of Public Health or supported by the Commonwealth of Massachusetts to any degree may not charge a fee for copying.⁷

ENDNOTES

¹ 45 CFR Part 160 and Part 164, Subparts A and E (final publication Aug. 14, 2002).

² Public Law 104-191 (enacted August 21, 1996).

³ 45 CFR 164.524(c)(4). The fee may only include the cost of copying (including supplies and labor), postage (when the individual has requested that the records be mailed) and preparing a summary or explanation (if agreed to by the individual). *Id.*

⁴ Mass. Gen. L. ch. 111, § 70E, fifth paragraph, subparagraph (g) ("Every patient or resident of a facility shall have a right... (g) upon request, to inspect his medical records and to receive a copy thereof in accordance with section seventy, and the fee for said copy shall be determined by the rate of copying expenses.") DMH has promulgated guidelines which set the rate for copying DMH inpatient records at \$0.25 per page. DMH Guidelines, I.A.6. However, since this provision is not a regulation and is contrary to a state statute, DMH should not be able to charge more than the rate of copying expense.

⁵ 104 CMR 28.09 (3).

⁶ 45 CFR s. 164.524(b)(2)(iii) A covered health care provider may not require an explanation from the individual as to the basis for the request as a condition of providing communications on a confidential basis.

⁷ Mass. Gen. L. ch. 111, § 70.