

1. Background

Medical and billing copies are expensive for four specific reasons.

First, the allowable rates under state laws for producing copies of medical records were established when information was stored in paper charts in a file room, and most state laws do not account for technological advancements. When records were kept on paper, the per-page rate for copies made sense. It required time and effort for someone to go to the file room, pull a physical chart from the shelf, return to their desk, disassemble the chart, make physical copies of the pages using a photocopier, reassemble the chart, return it to the file room, and mail the paper records.

In most states, the legislation governing the cost of medical records has not caught up with electronic health records technology. The fees for medical record copies do not differentiate whether the information is provided as paper copies or PDF files. The costs and rates are still based on the number of pages in the document. This leads to a situation whereby the release of information vendors and healthcare providers can profiteer from providing access to protected health information to 3rd parties.

Second, the clinical information stored in electronic health records has caused the volume of data—and, consequently, the number of pages in a medical record—to increase dramatically. For instance, 30 years ago, an emergency room visit for a minor motor vehicle accident that resulted in some soft tissue injuries and a minor orthopedic injury (such as a simple fracture) would have been documented on 25 to 30 pages of paper. Now, the same encounter generates between 150 and 200 pages.

Third, today's electronic health record includes many unnecessary documents that may not aid your client's claim or case. For instance, requesting "all medical records" will result in multiple copies of home care instructions for each injured body part, doctors' orders, telemetry data, nursing notes, progress notes, and so on.

Fourth, in January 2020, Judge Metha's decision in *Ciox vs. Azar* vacated the Department of Health and Human Services' 2016 Omnibus Ruling, which had extended cost-based rates to protected health information delivered to designated third parties in electronic format. Judge Metha ruled that the Department of Health and Human Services did not comply with the Administrative Procedures Act. Consequently, the cost of medical records surged because healthcare providers and release of information vendors were able to charge per-page fees based on state rates for information sent to designated third parties.

2. What is the Department of Health and Human Services doing about the problem?

In January 2021, the Department of Health and Human Services issued a proposed modification to the HIPAA Privacy Rule that would:

1. Require healthcare providers and release of information vendors to respond to an individual right of access request as soon as practicable, but not longer than 15 calendar days. One 15-calendar-day extension is available, provided written notice is sent to the individual explaining the reason for the delay.
2. Limit the fees for producing an electronic copy of protected health information delivered electronically to a designated third party to a cost-based structure that covers only the labor involved in creating the document.
3. Close the remaining loopholes regarding what qualifies as electronic health records.
4. Eliminate unreasonable measures for submitting an individual right of access request to a healthcare provider, such as requiring a notarized signature, only accepting requests in person, or requiring the individual to use the provider's online portal to submit a request.

The original date for the final action on the proposed rule modification was October 2022, effective January 2023. In September 2022, the Department of Health and Human Services pushed back the date for the final action six months to March 2023, with the new rules going into effect in June 2023. However, the Department of Health and Human Services did not issue the final ruling in March 2023 and pushed the date back to December 2024. Once again, in November 2024, the Department of Health and Human Services pushed back the final action to November 2025.

There was no explanation for the delay, and waiting four years for a rule modification is unreasonable. We have reached out to our local elected officials and encourage you to do the same. We can provide letter templates for your convenience.

Independent of any political discussion or beliefs, one development that should help the final action to occur in November 2025 is President Trump's return to the White House. The initial rule modification was published in January 2021 as President Trump left the White House. Under President Biden's administration, the proposed modification was delayed numerous times, which makes no sense. Typically, Democratic administrations favor implementing regulations, and Republican administrations eschew regulations. The American people continue to be economically punished by allowing unreasonable fees for electronic copies of protected health information.

The current agenda is available at: <https://www.regulations.gov/docket/HHS-OCR-2021-0006/unified-agenda>.

3. Arctrieval Options to Curtail Copy Costs

In the meantime, you can take these steps to manage the costs of protected health information:

1. When you create a request, be strategic in the documents you request to minimize the page counts. Only request information documenting the client's injuries, provided treatments, recommended future treatments, and the associated costs. Arctrieval makes it easy to select specific documents you need and customize the document list.
2. If you know in advance that the record set is large, send the records to your client instead of your office. Select the "Patient to Self" option in the Send New Request dialog box. Instructing the provider to send the records directly to your client will limit the fees charged to a cost-based rate that should not exceed \$30 to \$40 for all the records.

3. If you receive a large invoice from a provider or copy service, cancel the request. Remember that the individual right of access request states, "If you charge a fee for producing a copy of my PHI, please email or fax a pro forma invoice before any record production. Neither I nor my designated third party shall be responsible for unapproved fees." You may have to pay a small fee for the search and retrieval of the records. Resubmit the request using the "Patient to Self" option.
4. If you request records for disability or public benefits claims or appeals, please include supporting information. For instance, if you are pursuing a Federal SSA claim, attach a copy of Form SSA-1696 Claimant's Appointment of a Representative. If you are filing a state-based claim, submit the appropriate state form. Most states require healthcare providers to furnish the first copy of records at no or very little cost for a disability or public benefits claim or appeal.
5. Requests for billing records and financial information should be sent directly to the billing or patient financial services department. Do not send billing requests to the medical records or health information management department. The billing departments will usually send the information without charging you for it. If it goes to the medical records department and the department has access to billing information, they will charge you for the information.