



December 12, 2005

Mr. Dan Rode  
American Health Information Management Association  
1730 M Street, NW, Suite 409  
Washington, DC 20036

Transaction Number: 05-39719

Dear Mr. Rode:

Thank you for your letter on behalf of the American Health Information Management Association (AHIMA), seeking clarification regarding applicability of the limitation on fees for copying medical records provided in response to an individual's request for access under the HIPAA Privacy Rule. Particularly, you are inquiring whether fees charged for copies provided in response to requests submitted by third parties, such as attorneys, are subject to the fee limitations that apply when individuals or their personal representatives request copies of these medical records. We trust that the following explanation of the Privacy Rule's access provisions will be helpful.

As we explained in the preamble to the August 14, 2002, final modifications to the Privacy Rule (67 Fed. Reg. 53254), the limitation that a covered entity may charge only reasonable, cost-based copying fees applies when individuals, or their personal representatives, are seeking to obtain a copy of their medical records under their right of access. (See 45 CFR 164.524(c)(4)). Unlike other disclosures permitted by the Privacy Rule, such as disclosures to the individual for treatment, payment, or health care operations, or in response to the individual's written authorization, the covered entity is required to disclose protected health information that is requested by the individual, or the individual's personal representative, under the right of access.

With respect to the particular concerns raised in your letter, we offer the following comments:

- ***The request for access or to obtain a copy of the protected health information must be made by an individual or the individual's personal representative.*** A covered entity may not limit the individual's right of access based on the purpose for the request or the intended use of the information. If the covered entity requires the request for access be made in writing (and has properly notified individuals of this requirement in advance), the individual, or the personal representative, must sign the written request or other appropriate release form. Under the Rule, a "personal representative" is any person who, under applicable law, is authorized to make health decisions on behalf of the individual. (See 45 CFR 164.502(g)). For example, an attorney or other person holding a healthcare power-of-attorney or who is otherwise legally authorized to act for the individual in making decisions related that individual's health care must be treated as the individual

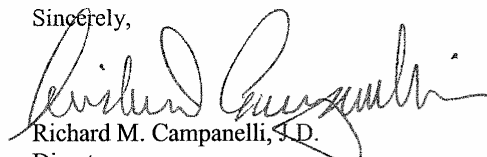
and recognized as the individual's personal representative when making a request for access under the Rule. By contrast, an attorney, insurer, or other third party seeking health records on behalf of the individual, but who is not the individual's personal representative, is not entitled to access to the records, or the fee limitations applicable, under 45 CFR 164.524; instead, such an attorney, insurer or other third party must typically present an authorization, signed by the individual, that is valid under 45 CFR 164.508.

- ***The covered entity must provide the access as requested by an individual, or the individual's personal representative, including arranging for a convenient time and place for the individual to obtain a copy of the protected health information or mailing a copy at the request of the individual (45 CFR 164.524(c)(3)).*** When processing a request by an individual, or the individual's personal representative, to have a copy of the protected health information mailed, the covered entity may impose a reasonable, cost-based fee for the cost of the copying and postage. The covered entity should timely arrange for a convenient time and place for the individual to obtain a copy, including mailing the copy to the address specified by the individual or the personal representative as part of the request for access. These requirements apply to requests for access made by individuals or their personal representatives whether the request is submitted directly to the covered entity by the individual or personal representative or is forwarded to the covered entity by another person.

We appreciate the feedback you have provided on this issue and hope the clarification in this letter will assist in explaining the Privacy Rule's provisions for an individual's right of access and the attendant limitation on copying fees. It is our goal to ensure that individuals receive the benefits of the rights and protections afforded their health information under the Rule, while at the same time avoiding any undue administrative burden on covered entities and their business associates in managing this information.

If we can be of any further assistance to you in this matter, please do not hesitate to let me know.

Sincerely,



Richard M. Campanelli, J.D.  
Director