

**The Brave New World of ROI and Copy Fees in Wisconsin**

2022 HIPAA COW Spring Conference

*Quarles & Brady LLP*

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**Overview**

- The statute & fee schedule
- Retrieval and certification fees
- Class actions
- Providers, third-party vendors, and carriers
- Exposure
- Defenses/limitations
- Statute of limitations
- Electronic copies of electronic records
- Related federal developments

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**Overview**

- The statute & fee schedule

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### Wisconsin Statute § 146.83

#### 146.83 Access to patient health care records.

(3f) (a) Except as provided in sub. (1f) or s. 51.30 or 146.82 (2), if a person requests copies of a patient's health care records, provides informed consent, and pays the applicable fees under par. (b), the health care provider shall provide the person making the request copies of the requested records.

(b) Except as provided in sub. (1f), a health care provider may charge no more than the total of all of the following that apply for providing the copies requested under par. (a):

1. For paper copies: \$1 per page for the first 25 pages; 75 cents per page for pages 26 to 50; 50 cents per page for pages 51 to 100; and 30 cents per page for pages 101 and above.
2. For microfiche or microfilm copies, \$1.50 per page.
3. For a print of an X-ray, \$10 per image.
4. If the requester is not the patient or a person authorized by the patient, for certification of copies, a single \$8 charge.
5. If the requester is not the patient or a person authorized by the patient, a single retrieval fee of \$20 for all copies requested.
6. Actual shipping costs and any applicable taxes.



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### DHS fee schedule

#### 146.83 Access to patient health care records.

(3f) (c)

- ...
2. On each July 1, beginning on July 1, 2012, the department shall adjust the dollar amounts specified under par. (b) by the percentage difference between the consumer price index for the 12-month period ending on December 31 of the preceding year and the consumer price index for the 12-month period ending on December 31 of the year before the preceding year. The department shall notify the legislative reference bureau of the adjusted amounts and the legislative reference bureau shall publish the adjusted amounts in the Wisconsin Administrative Register



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### DHS fee schedule

TABLE 1000000000  
 Department of Health Services  
 Health Care Access Fee Schedule  
 Effective July 1, 2012

Wisconsin Statute 146.83 (3f) (c) 2. On each July 1, beginning on July 1, 2012, the department shall adjust the dollar amounts specified under par. (b) by the percentage difference between the consumer price index for the 12-month period ending on December 31 of the preceding year and the consumer price index for the 12-month period ending on December 31 of the year before the preceding year. The department shall notify the legislative reference bureau of the adjusted amounts and the legislative reference bureau shall publish the adjusted amounts in the Wisconsin Administrative Register.

Fee Category	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Page 1-25	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
Page 26-50	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
Page 51-100	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50
Page 101 and above	\$0.30	\$0.30	\$0.30	\$0.30	\$0.30	\$0.30	\$0.30	\$0.30	\$0.30	\$0.30
Microfiche or microfilm	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50
X-ray print	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Certification of copies	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00
Retrieval fee	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00



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### Retrieval and certification fees

*Moya v. Aurora Health Care, Inc.*, 2017 WI 45, 375 Wis. 2d 38, 894 N.W.2d 405

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### Retrieval and certification fees

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6. Actual shipping costs and any applicable taxes.

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### Retrieval and certification fees

*Moya v. Aurora Health Care, Inc.*, 2017 WI 45, 375 Wis. 2d 38, 894 N.W.2d 405

Justice Ziegler dissent



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### Retrieval and certification fees

#### 146.83 Access to patient health care records.

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### Retrieval and certification fees

**TABLE 101-0178 - Fees for Retrieval and Certification of Health Care Records**

**SECTION 101.01(1) - Statewide**

Item	Fee	Fee	Fee
	Paper Copies	Microfilm	Microfiche
First 25 pages	\$1.00	\$1.50	\$1.50
Pages 26 to 50	\$.75	\$1.50	\$1.50
Pages 51 to 100	\$.50	\$1.50	\$1.50
Pages 101 and above	\$.30	\$1.50	\$1.50
X-ray print	\$10.00		
Search and retrieval fee (if not patient or authorized person)	\$8.00		
Retrieval fee (if not patient or authorized person)	\$20.00		
Shipping and handling			
Taxes			



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**Retrieval and certification fees**

*Moya v. Aurora Health Care, Inc.*, 2017 WI 45, 375 Wis. 2d 38, 894 N.W.2d 405

Justice Ziegler dissent

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**Copy fee claims as class actions**

*Harwood v. Wheaton Franciscan Services, Inc.*, 2019 WI App 53, 388 Wis. 2d 546, 933 N.W.2d 654

*Hammett v. Verisma Systems, Inc.*, 2021 WI App 53, 399 Wis. 2d 211, 963 N.W.2d 874

*Fotusky v. ProHealth Care, Inc.*, Wis. Appeal No. 21-AP-1395

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**Providers, third-party vendors, and carriers**

*Townsend v. ChartSwap, LLC*, 2021 WI 86, 399 Wis. 2d 599, 967 N.W.2d 21

Contractual/common law indemnity

*Navigators Specialty Insurance Company v. SVA Healthcare Services, LLC*, W.D. Wis. No. 18-CV-1062

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## Exposure

### Wis. Stat. § 146.84

#### (1) Actions for violations; damages; injunction

(a) A custodian of records incurs no liability under par. (b)(m) for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, **exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees.**

(b)(m) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, **exemplary damages of not more than \$1,000 and costs and reasonable actual attorney fees.**

(c) An individual may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with s. 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.

### Constitutional constraints

*Schutte v. Ciox Health, LLC*, 28 F.4th 850 (7<sup>th</sup> Cir. 2022)

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## Defenses/limitations

- *Schuler v. Schubbe Family Chiropractic, Ltd.*, No. 20-AP-1753, 2021 WL 6057889 (Wis. Ct. App. Dec. 22, 2021)
- *Moya v. Walgreen Co.*, No. 18-CV-1785, 2019 WL 400618 (E.D. Wis. Jan. 31, 2019)
- *Hills v. Essentia Health*, No. 19-CV-907, 2021 WL 6072560 (W.D. Wis. Dec. 23, 2021) / *Bloss v. St. Luke's Hospital of Duluth, Wis.* Appeal No. 21-AP-352
- *Shannon v. Mayo Clinic Health System*, 2021 WI App 49, 398 Wis. 2d 685, 963 N.W.2d 115

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**Statute of limitations**

*Hammetter*, 2021 WI App 53

Clarke v. SSM Health Care, Wis. Appeal No. 21-AP-908

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Electronic copies of electronic records

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Banuelos v. University of Wisconsin Hospitals and Clinics Authority, 2021 WI App 70, 399 Wis. 2d 568, 966 N.W.2d 78 (petition for review granted)

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Seven horizontal lines for notes.

Electronic copies of electronic records

"We conclude that the pertinent statutory language permits a health care provider to charge for providing requested copies of patient health care records only those fees enumerated in § 146.83(3f) that apply to the request . . . and there are no statutorily enumerated fees for electronic copies."

Banuelos, 2021 WI App 70, ¶ 1 (petition for review granted)

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Seven horizontal lines for notes.

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Seven horizontal lines for notes.

### Related federal developments

Proposed rule: *Modifications to the HIPAA Privacy Rule to Empower Patients, Improve Coordinated Care, and Reduce Regulatory Burdens* (Jan. 21, 2021)

Preemption/interaction with state law



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Thank you!

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### Questions?



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