

DEPARTMENT OF HEALTH

Amendments to Charges for Medical Records

In the notice published at 49 Pa.B. 7252 (December 7, 2019), the Department of Health (Department) published the guidelines and fees that a health care provider or facility may charge in response to a request for production of medical charts or records. This notice updates the notice published on December 7, 2019.

Under 42 Pa.C.S. §§ 6152, 6152.1, and 6155 (relating to subpoena of records; limit on charges; and rights of patients), a health care provider or facility is allowed to charge a fee in response to a request for medical charts or records. The Secretary of Health (Secretary), under 42 Pa.C.S. §§ 6152 and 6152.1, is directed to adjust annually the amounts which may be charged by the health care provider or facility.

The Secretary is directed to base these adjustments on the most recent changes in the Consumer Price Index reported annually by the Bureau of Labor Statistics of the United States Department of Labor. For the annual period of October 31, 2019, through October 31, 2020, the Consumer Price Index was 1.2%.

Accordingly, effective January 1, 2021, the following fees may be charged by a health care facility or health care provider in response to a request for production of medical charts or records:

<i>Amount charged per page for:</i>	<i>Not to Exceed</i>
Pages 1—20	\$1.60
Pages 21—60	\$1.19
Pages 61—end	\$0.41
Microfilm copies	\$2.36
* Search and retrieval of records (cannot be charged if requestor is requesting their own personal health record)	\$23.73
Flat fees (providers may not charge the above search and retrieval fee in addition to a flat fee)	
Production of records to support any claim under Social Security or any Federal or State financial needs-based program;	\$30.08
Supplying records requested by a district attorney	\$23.73

The previously listed fees shall apply for paper copies or reproductions on electronic media whether the records are stored on paper or in electronic format.

In addition to the amounts listed previously, charges may also be assessed for the actual cost of postage, shipping and delivery of the requested records.

The Department is not authorized to enforce these charges.

The previously listed charges, however, are subject to the following exceptions:

(1) An insurer shall not be required to pay for copies of medical records required to validate medical services for which reimbursement is sought under an insurance contract, except as provided in:

a. The Workers' Compensation Act (77 P.S. §§ 1—1041.4 and 2501—2506) and the regulations promulgated thereunder.

b. 75 Pa.C.S. Chapter 17 (relating to Motor Vehicle Financial Responsibility Law) and the regulations promulgated thereunder.

c. A contract between an insurer and any other party.

(2) The charges listed in this notice do not apply to an X-ray film or any other portion of a medical record which is not susceptible to photostatic reproduction.

(3) The charges for the production of medical records by a health care provider in response to a request made by either an individual who is the subject of the health information or the individual's personal representative is governed by the Health Insurance Portability and Accountability Act (Pub.L. No. 104-191) (HIPAA) and Federal regulations enacted under HIPAA, including (42 U.S.C.A. § 17935(e)) and 45 CFR 164.524 (relating to access of individuals to protected health information), as follows:

a. *Electronic health record.* Under section 13405, if a health care provider uses or maintains health records in an electronic format with respect to protected health information of an individual, the individual shall have a right to obtain from the health care provider a copy of the information in an electronic format. The individual also has a choice to direct the health care provider to transmit electronically a copy of the health record directly to an entity or person designated by the individual, provided that any choice is clear, conspicuous and specific. Any fee that the health care provider may impose for providing the information (or a summary or explanation of the information) in an electronic format shall not be greater than the labor costs in responding to the request. The Department of Health and Human Services has stated that the labor costs may not include costs associated with searching for and retrieving the requested information.

b. Health record used or maintained in other types of format (for example, paper). Under 45 CFR 164.524(c)(4), if the individual requests a copy of the protected health information or agrees to a summary or explanation of the information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

(i) Labor for copying the protected health information requested by the individual, whether in paper or electronic form.

(ii) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media.

(iii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed.

(iv) Preparing an explanation or summary of the protected health information, if the individual agrees in advance to a summary or explanation and the fees to be imposed, in accordance to 45 CFR 164.524(c)(2)(iii). Similarly, the labor costs under 45 CFR 164.524(c)(4) shall not include the cost attributable to search and retrieval of the records.

Inquiries for further clarification on this exception should be directed to the Office of Civil Rights, United States Department of Health and Human Services, 200 Independence Avenue, SW, Room 509F, HHH Building, Washington, DC 20201, (866) 627-7748, <http://www.hhs.gov/ocr/office/about/contactus/index.html>.

Questions or inquiries concerning this notice should be sent to Department of Health, Office of Legal Counsel,

Room 825, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120, (717) 783-2500.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotope, Braille) should contact the Department of Health, Office of Legal Counsel, at the previously listed address or phone number, or for speech and/or hearing-impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD,
Secretary

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DEPARTMENT OF HEALTH

Establishment of Minimum Standard Requirements for Sexual Assault Evidence Collection

Section 3 of the Sexual Assault Testing and Evidence Collection Act (act) (35 P.S. § 10172.3) establishes a Statewide sexual assault evidence collection program to be administered by the Department of Health (Department). Under this program the Department is to consult with the Pennsylvania Coalition Against Rape (PCAR) and the State Police to develop and review on a scheduled basis the minimum standard requirements for all rape kits used in hospitals and health care facilities in this Commonwealth, to test and approve commercially available rape kits for use in this Commonwealth and to establish a program to train appropriate personnel in the correct use and application of rape kits.

Under the act, the Department, in consultation with PCAR and State Police, established a Sexual Assault

Evidence Collection Committee (Committee). The Committee includes representatives of the Department, PCAR, the State Police, forensic nurse examiners, members of sexual assault response teams and law enforcement.

In accordance with the act, the Committee met on September 3, 2020, and formulated minimum standard requirements for sexual assault evidence collection in this Commonwealth. The minimum standards requirements established by the Committee should be observed by all health care facilities and child advocacy centers in this Commonwealth, and these facilities and centers should meet or exceed those minimum standard requirements.

Under 28 Pa. Code § 117.52(a)(1) (relating to minimum requirements for sexual assault emergency services), all hospitals providing sexual assault emergency services under 28 Pa. Code §§ 117.51—117.58 (relating to sexual assault victim emergency services) “shall utilize a rape kit that complies with the minimum standard requirements developed by the Department or that is otherwise approved by the Department under the [act].” Accordingly, this publication shall serve as notice to those hospitals of the minimum standard requirements developed by the Committee and approved by the Department under the act.

As of October 1, 2020, the following minimum standard requirements for sexual assault evidence collection are in effect:

Per these minimum standard requirements, kit manufacturers will be responsible for adding a unique identifier and bar code; however, any existing inventory will need to be uniquely identified by the health care facility once a tracking system is implemented. The unique identifiers provided by a manufacturer should use an alpha-numeric combination to prevent duplication by other manufacturers.

Minimum Standard Requirements

Sexual Assault Evidence Collection Kit Contents

- Step 1 Consent for Collection and Release of Evidence and Information Form
- Step 2 Clothing and Underpants Collection
- Step 3 Oral Assault Collection Samples
- Step 4 Miscellaneous Collection (Debris, Dried Secretions, Tampon/Sanitary Napkin)
- Step 5 Fingernail Swabbings
- Step 6 External Genitalia Collection Sample
- Step 7 Vaginal Assault Collection Samples
- Step 8 Perianal/Rectal Assault Collection Samples
- Step 9 Buccal Swab Collection (for DNA Analysis)
- Step 10 Transfer of Evidence Form

Cap-Shure swabs are an acceptable substitute for the current swabs and boxes and may be used in place of the buccal swab collector

The Committee also formulated minimum standard guidelines for suspect kits.

Minimum Guidelines for Suspect Evidence Collection Kits

Recommended Sources and Time Frames for Evidence Collection*

<i>Area of Contact on Suspect</i>	<i>Collection Time Frame</i>	<i>Collection Method</i>
Known DNA Sample	Always collect	Buccal swab, FTA card or oral swab recommended; Whole blood not recommended but acceptable