Hospital Medical Records Copying-Treacherous Waters?

by Patrick Convery, Esq.

Editor's Note: Subsequent to the submission of this article for publication, the New Jersey Department of Health and Senior Services determined to take action on a petition for rulemaking seeking clarification of N.J.A.C. 8:43G-15.3 (d).

It would seem to be a foregone conclusion that when a New Jersey hospital (and/or its medical records copying contractor) has charged individuals fees for copying requested patient medical records in accordance with the New Jersey Department of Health and Senior Services' own interpretation and enforcement of the applicable state regulations, that hospital would not be subject to a civil lawsuit for the overcharging of fees for copies of requested patient medical records. Unfortunately, that is not the case with respect to at least one New Jersey hospital.

The current New Jersey regulation governing the charging of fees for initial copies of hospital patient medical records, N.J.A.C. §8:43G-15.3(d), generally states that copies of hospital patient medical records requested by a patient or a patient's "legally authorized representative"i shall be furnished at a "fee based on actual costs," and may not exceed $1.00 per page or $100 per record for the first 100 pages and 25¢ per page for pages in excess of the first 100 pages, up to a maximum of $200 for the entire record. In addition to the per page fees described above, N.J.A.C. §8:43G-15.3(d) permits the following charges in connection with the production of copies of requested patient medical records: (i) a search fee of no more than $10 per patient per request,ii and (ii) a postage charge of actual costs of mailing. Similarly, under N.J.A.C. §8:43G-15.3(e), with respect to (i) subsequent requests by patients for additional copies of medical records and (ii) requests for copies of medical records from persons other than "legally authorized representatives" of a patient (to whom the patient has authorized the release of his or her medical record), the fee for copies of requested patient medical records must be "based on actual costs," and may not exceed $1.00 per page and $10 per search.

It appears that nearly all of the hospitals in the State of New Jersey (and their medical records copying contractors) are of the understanding that DHSS intended to establish the fee limits under N.J.A.C. §8:43G-15.3(d) and (e) as reasonable fees for copies of hospital medical records

Unfortunately, the term "fee based on actual costs" is not defined anywhere in N.J.A.C. §8:43G-15.3, and no meaningful formal guidance on this issue has been provided by the New Jersey Department of Health and Senior Services ("DHSS") in the administrative history of the regulation or otherwise. Nevertheless, it appears that nearly all of the hospitals in the State of New Jersey (and their medical records copying contractors) are of the understanding that DHSS intended to establish the fee limits under N.J.A.C. §8:43G-15.3(d) and (e) as reasonable fees for copies of hospital medical records, and that they are authorized to charge for copies of medical records at the fee limits set forth in the regulation. Moreover, it appears that nearly all New Jersey hospitals (and their medical records copying contractors) have consistently charged fees for copies of patient medical records under N.J.A.C. §8:43G-15.3(d) and (e) at the fee limits set forth in the regulation since its adoption in 1992.

However, since the adoption of the regulation in 1992, DHSS's informal interpretation and enforcement of N.J.A.C. §8:43G-15.3(d) and (e) has apparently been consistent with the interpretation and general understanding of the regulation by New Jersey hospitals (and their medical records copying contractors). Indeed, despite having conducted nearly one thousand annual compliance surveys at New

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Jersey's hospitals since the adoption of N.J.A.C. §8:43G-15.3 in 1992 (including surveys of the Health Information Management ("HIM") Departments of such hospitals), there have apparently never been any administrative actions or other enforcement actions taken by DHSS against any New Jersey hospital (or a medical records copying contractor) for violations of the regulation relating to the charging of fees for copies of patient medical records at the fee limits set forth in the regulation.

The decision by DHSS to not take any administrative actions or other enforcement actions against New Jersey hospitals (or their medical records copying contractors) relating to the charging of fees for copies of medical records under N.J.A.C. §8:43G-15.3(d) and (e) at the fee limits set forth in the regulation may be the result of a conclusion by DHSS that such fees charged by hospitals are reasonable. Perhaps DHSS believes that the costs incurred by New Jersey hospitals of maintaining medical records and operating a HIM Department (which are essential to a hospital being able to copy a medical record) justify the charging of such fees by New Jersey hospitals. Another reason may be that requiring hospitals (and/or their medical records copying contractors) to calculate their "actual costs" of copying patient medical records would be extremely difficult to implement and impossible for DHSS to uniformly monitor and enforce. One can only speculate as to the mindset of DHSS with respect to this issue.

Nevertheless, difficulties abound with respect to the implementation, monitoring and enforcement of any requirement that hospitals (and/or their medical records copying contractors) must calculate their "actual costs" in connection with the copying of different types of medical records and then charge a copying fee "based on" those "actual costs." For instance, does the term "actual costs" include only the actual costs of the paper, ink, electricity and maintenance of the copying machines involved in the reproduction process? Or does this term include the salaries of those individuals who actually process the request and physically perform the copying and sorting of the reproduced medical records? Are other indirect costs to a hospital in connection with

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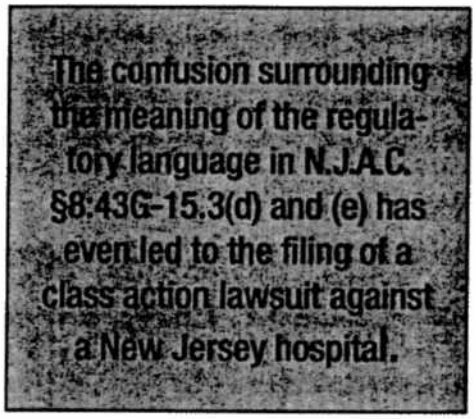
the reproduction of these records, such as the cost of maintaining the records, included as part of the "actual costs" of copying a medical record? Does this language include bad debts of the hospital with respect to the copying of medical records for which the hospital is unable to collect any copying fees or for which the hospital cannot otherwise bill? Does a hospital need to go through the process of determining the "actual cost" of processing each and every medical records request? Indeed, depending upon the type of record, the paper or other sheet on which the record is reproduced may differ dramatically (i.e., x-rays, EKG reports, etc.). Additionally, most, if not all, hospitals in the State of New Jersey use outsourcing services to copy medical records requested by patients. Is the "actual cost" of the hospital of copying medical records equivalent to the fee charged by such outsourcing service to the hospital for the copying of these records?

Based upon the language of N.J.A.C. §8:43G-15.3(d) and (e), there are also serious questions as to whether DHSS ever intended New Jersey hospitals to calculate their "actual costs" and then charge copying fees based on such "actual costs." Indeed, if DHSS actually intended to require hospitals to calculate their "actual costs" of copying medical records and base those fees on their "actual costs," then what happens if the "actual costs" of reproducing any medical record with more than 100 pages exceeds the 25¢ per page fee limit set forth in the regulation? It is highly likely that the per page cost to a hospital of copying medical records greatly exceeds the 25¢ per page fee limit for pages 101 and up of any medical record. If such a per page cost to a hospital of copying medical records is in excess of 25¢ per page, then would the hospital be entitled to an amount equal to its actual per page cost for those copied medical records in excess of 100 pages, even though such amount is above the 25¢ per page limit?

If the intent of DHSS was truly to require hospitals to charge only their "actual costs" of copying medical records, wouldn't DHSS have simply used the $1.00 per page fee limit (or something more than the 25¢ per page) for all pages of a medical record? That way, a hospital could at least make back its costs of reproducing all of the pages it reproduces. The practical impact of the language of N.J.A.C. §8:43G-15.3(d) lends one to believe that DHSS did, in fact, intend the per page fee limits set forth in the regulation to be considered "reasonable" fees (and that the 25¢ per page fee limit was possibly meant to balance out the overall fees being paid by those parties requesting copies of patient medical records). Furthermore, now that the Diagnosis Related Groups ("DRG") system of reimbursement has been dismantled, how will DHSS monitor and track the costs of operating the HIM Department of a hospital?



In response to comments by commentators in the administrative history behind the adoption of the medical records copying regulation for physicians, N.J.A.C. §13:35-6.5, that copying fees should be equal to or based on "actual costs," the New Jersey Board of Medical Examiners concluded that basing such fees on "actual costs" was too difficult to handle administratively.[iii] Is it any less difficult for hospitals to handle administratively? Surely it is not.

The confusion surrounding the meaning of the regulatory language in N.J.A.C. §8:43G-15.3(d) and (e) has even led to the filing of a class action lawsuit against a New Jersey hospital. In early 1997, a small group of plaintiffs filed a class action lawsuit against a New Jersey acute care general hospital, its medical records copying contractor and DHSS, among others, alleging claims of violations of N.J.A.C. §8:43G-15.3(d), violations of the New Jersey Consumer Fraud Act, fraudulent and negligent misrepresentation and unjust enrichment, among other claims, relating to the charging by the hospital and its medical records copying contractor of fees for copies of patient medical records at the fee limits set forth in the regulation, and the alleged failure on the part of such entities to base those fees on their "actual costs" of copying. The plaintiffs also sought injunctive relief against DHSS requiring it to enforce the language of N.J.A.C. §8:43G-15.3(d) in accordance with the plaintiffs' own interpretation of the regulation and to prevent further alleged overcharging of fees for copies of medical records by the hospital, its medical records copying contractor and other New Jersey hospitals and their medical records copying contractors.

Shortly after the filing of the complaint by the plaintiffs, the hospital and

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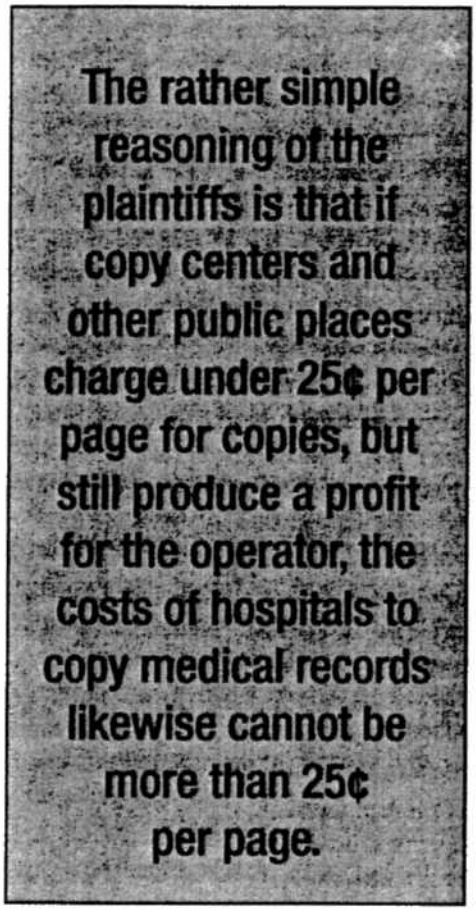
its medical records copying contractor moved for dismissal of the case, arguing that the charging of fees at the fee limits set forth in N.J.A.C. §8:43G-15.3 was not in violation of the law, but in fact was consistent with the language of the regulation as interpreted and enforced by DHSS. DHSS also moved to dismiss the plaintiffs' complaint and ultimately took an informal position before the trial court that the charging of fees by the hospital and its medical records copying contractor for copies of patient medical records at the fee limits set forth in the regulation was in accordance with DHSS's longstanding interpretation of N.J.A.C. §8:43G-15.3 (and thus no violation of the regulation had occurred). Shortly thereafter, in an apparent effort to prevent the presentation by DHSS of a formal interpretation of the language of N.J.A.C. §8:43G-15.3 which was contrary to their own, the plaintiffs voluntarily dismissed DHSS as a party to the lawsuit.

Despite the plaintiffs' dismissal of DHSS as a party to the lawsuit, judgment was ultimately entered by the trial court in favor of the hospital and its medical records copying contractor, and the matter was dismissed. However, the plaintiffs immediately appealed the trial court's dismissal of the lawsuit. Approximately fifteen (15) months later, in Boldt v. Correspondence Management, Inc., 320 N.J. Super. 74 (App. Div. 1999), the Appellate Division reversed the trial court's dismissal of the lawsuit, and remanded the matter back to the trial court with general instructions to transfer the matter to DHSS to (i) provide an interpretation of N.J.A.C. §8:43G-15.3(d) and (e) and the terms "based on actual costs" in the regulation, and (ii) make a determination as to whether the hospital and/or its medical records copying contractor were in violation of the regulation.

Almost two years later, after receiving submissions from the plaintiffs, the hospital and its medical records copying contractor with respect to these issues, DHSS appeared back before the trial court and ultimately indicated that the interpretation of N.J.A.C. §8:43G-15.3(d) and (e) offered by the hospital and its medical records copying contractor comported with DHSS's interpretation, and again rejected the plaintiffs' proffered interpretation of the regulation.iv DHSS specifically indicated that (i) its interpretation of N.J.A.C. §8:43G-15.3 was consistent with and supported the interpretation of the regulation by the hospital and its medical records copying contractor and (ii) it never intended New Jersey hospitals to calculate or conduct an analysis of their "actual costs" in connection with their charging of fees for copies of patient medical records, but that if such an analysis was ultimately required, the elements suggested by the hospital and its medical records copying contractor were appropriate for inclusion in the analysis. DHSS also indicated that since it never actually intended New Jersey hospitals to perform such an "actual costs" analysis before charging such copying fees, it was not equipped to make a determination as to whether the hospital, its medical records copying contractor or any other New Jersey hospital or medical records copying contractor had charged fees for copies of patient medical records at an amount over their "actual costs" of copying. Moreover, to the knowledge of the authors, DHSS has still not taken any action against the hospital, its medical records copying contractor or any other New Jersey hospitals or medical records copying contractors relating to the charging of fees for copies of medical records at the fee limits set forth in N.J.A.C. §8:43G-15.3(d) and (e), despite being keenly aware of these issues and being intricately involved in the lawsuit by the plaintiffs over the past six years.



Despite the foregoing, the trial court has permitted the class action lawsuit against the hospital and its medical records copying contractor to proceed, and trial in this matter is likely to be scheduled for early next year. The parties in this lawsuit are currently in the process of exchanging discovery materials and having expert reports prepared relating to what constitutes "actual costs" in connection with the copying of patient medical records and the specific "actual costs" of the hospital and its medical records copying contractor in connection with the copying of patient medical records. The discovery process has been

lengthy, extensive and complicated.

Throughout the litigation, the plaintiffs have taken the position that the "actual costs" of the hospital and its medical records copying contractor in connection with the copying of patient medical records cannot possibly be "equal to" or "based on" the per page fee limits set forth in N.J.A.C. §8:43G-15.3(d) and (e), based on the fact that there are copying machines in copy centers and other public places which provide copies for under 25¢ per page that produce a profit for the operator. The rather simple reasoning of the plaintiffs is that if copy centers and other public places charge under 25¢ per page for copies, but still produce a profit for the operator, the costs of hospitals to copy medical records likewise cannot be more than 25¢ per page. The plaintiffs have furthermore asserted that the cost of maintaining medical records and the other costs of operating the HIM Department of a hospital should not be subsidized through the charging of fees to individuals who request copies of patient medical records, and that these costs should be absorbed by the hospital.

However, the plaintiffs' analysis of this issue is woefully inadequate. DHSS requires New Jersey hospitals to create, maintain and safeguard patient medical records, as well as develop systems for the identification, accessing and storing of medical records, among other things.v DHSS also requires New Jersey hospitals to have a full-time HIM director and HIM staff to operate the HIM Department.vi Furthermore, New Jersey hospitals are required to provide the HIM staff with education and training, including training in continuous quality improvement methods.vii New Jersey hospitals are also required to implement and monitor programs of continuous quality improvement in connection with the operation of their HIM Departments.viii

These great responsibilities imposed by DHSS on New Jersey hospitals with respect to medical records

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and the operation of a HIM Department come at a great cost. It is the understanding of the authors that the HIM Departments of most, if not all, New Jersey hospitals are not nearly financially self-supporting, despite the charging of "maximum" fees under N.J.A.C. §8:43G-15.3(d) and (e), and, in many cases, despite the use of medical records copying contractors. Indeed, New Jersey hospitals already absorb a large portion of the cost of the operation of their HIM Departments. If the costs to a New Jersey hospital of the implementation of the responsibilities of operating its HIM Department and the other costs of complying with DHSS requirements relating to medical records are not incorporated in an "actual costs" calculation with respect to the fees charged to individuals requesting copies of patient medical records, where would these costs be incorporated? A substantial majority of the hospitals in New Jersey are nonprofit corporations which are already reeling from cutbacks in reimbursement from Medicare, Medicaid and other public and private third-party payors. Would this be yet another cost to be borne by New Jersey hospitals? It is submitted by the authors that forcing New Jersey hospitals to absorb the entire cost of operating their HIM Departments could be financially disastrous.

At this point in time, DHSS has still not amended or revised the language of N.J.A.C. §8:43G-15.3(d) and (e). Moreover, the plaintiffs' counsel has strongly indicated that similar class action suits will likely be brought against every hospital in the State of New Jersey and their respective medical records copying contractors in the very near future. Therefore, it is a near certainty that, unless and until the language of N.J.A.C. §8:43G-15.3(d) and (e) is changed, and DHSS provides further guidance on its intent with respect to the language of the regulation, New Jersey hospitals and their medical records copying contractors will most likely be the subject of similar lawsuits in the very near future. In addition, it appears that unless DHSS takes some action, the trial court or a jury in the plaintiffs' current lawsuit will be the ultimate decision-maker as to: (i) the meaning of the regulatory language under N.J.A.C. §8:43G-15.3(d) and (e); (ii) the elements to be included in any "actual costs" analysis under the regulation; and (iii) whether the hospital and/or its medical records copying contractor violated the regulation by charging in excess of their "actual costs" of copying patient medical records.

Furthermore, if counsel for the plaintiffs brings similar class action lawsuits against other New Jersey hospitals as has already been strongly suggested, it is a distinct possibility that separate trial courts or juries in each case may make separate determinations as to each of the above-referenced issues, thereby creating a complete lack of uniformity in the definition and application of the regulatory language in N.J.A.C. §8:43G-15.3(d) and (e). This result is exactly what the Appellate Division wanted to avoid when it rendered its 1999 opinion in this lawsuit.

As a result of the confusion surrounding the language of N.J.A.C. §8:43G-15.3(d) and (e) and the current lawsuit by the plaintiffs, a Petition for Rulemaking was filed with DHSS in March 2003 (the "Petition for Rulemaking") seeking changes to the language contained in N.J.A.C. §8:43G-15.3(d) and (e) deleting the reference to medical records copying fees being "based on actual costs" and imposing the existing per page fee limits as mandated copying fees.ix DHSS is still reviewing the Petition for Rulemaking and the impacts of the privacy regulations under the Health Insurance Portability and Accountability Act, 45 C.F.R. §164.524 ("HIPAA"), on the Petition for Rulemaking and the language of N.J.A.C. §8:43G-15.3(d) and (e).

The waters surrounding the issue of charging of fees by hospitals (and/or their medical records copying contractors) for copies of requested patient medical records have become even more treacherous as a result of adoption of the HIPAA privacy regulations, which became effective April 14, 2003. The HIPAA privacy regulations found at 45 C.F.R. §164.524(c)(4) now require hospitals and their medical records copying contractors to charge patients and their "personal representatives"x a "reasonable cost-based fee" for the copying of medical records, which may only include: (i) the costs of copying (including labor and supply costs of copying), (ii) the cost of postage, if an individual requests the information to be mailed and (iii) the cost of preparing an explanation or summary of the requested medical information, if requested.

The charging of search fees and any other fees relating to the retrieval or handling of medical records or the processing of a request for medical records to patients and their "personal representatives" is thus not permissible under HIPAA.xi Fortunately, both the language of 45 C.F.R. §164.524(c) and the comments relating to the adoption of this regulation clearly indicate that other individuals or entities with a medical records release or authorization from a patient who have requested copies of patient medical records but do not qualify as "personal representatives" of a patient under the HIPAA regulations (including attorneys and insurers), are not eligible to take

advantage of the fee restrictions under HIPAA.[xii]

Since the provisions of HIPAA and the HIPAA privacy regulations preempt any contrary state laws relating to individually identifiable health information which are less stringent than HIPAA,[xiii] New Jersey hospitals (and their medical records copying contractors) can no longer charge patients or their "personal representatives" the $10 search fee which is specifically permitted under N.J.A.C. §8:43G-15.3(d) and (e). However, hospitals and their medical records copying contractors can apparently continue to charge the $10 search fee permitted under N.J.A.C. §8:43G-15.3(d) and (e) to any other individuals or entities who have requested copies of medical records, but which are not patients or "personal representatives" as defined in the HIPAA privacy regulations.

To add to the confusion, the comments relating to the adoption of 45 C.F.R. §164.524(c)(4) also indicate that fees for copying and postage provided under state law are presumed to be "reasonable."[xiv] Many hospitals, medical records copying contractors and HIM associations have interpreted these comments to mean that in those regulated states which have mandated copying and postage fees for requested medical records, hospitals and their medical records copying contractors will be in compliance with the language of 45 C.F.R. §164.524(c)(4) by simply charging these "state-mandated" fees to patients and their "personal representatives." However, to the knowledge of the authors, the federal agency which promulgated and adopted the HIPAA privacy regulations, the United States Department of Health and Human Services, has not provided any further guidance on this issue.

If the above interpretation of the comments to 45 C.F.R. §164.524(c) of the HIPAA privacy regulations relating to the presumption of reasonableness for mandated fees for copying and postage provided under state law is correct, and the language of N.J.A.C. §8:43G-15.3(d) and (e) is ultimately changed to (i) delete the references to medical records copying fees being "based on actual costs" and (ii) impose the existing fee limitations as mandated copying fees, New Jersey hospitals and their medical records copying contractors theoretically may be able to generally maintain compliance with both N.J.A.C. §8:43G-15.3(d) and (e) and the HIPAA privacy regulations under 45 C.F.R. §164.524(c)(4) simply by continuing to charge copying and postage fees for copies of medical records in the manner in which they have charged for copies of medical records over the past decade (with the exception of the charging of the $10 search fee by New Jersey hospitals and their medical records copying contractors to patients and their "personal representatives").

Unless and until the foregoing occurs, the murky waters surrounding the issue of charging of fees for copies of requested hospital patient medical records under state and federal law will continue to be treacherous, and more lawsuits relating to the charging of fees for copies of requested patient medical records under N.J.A.C. §8:43G-15.3(d) and (e) will likely be filed against New Jersey hospitals and their medical records copying contractors.

Under N.J.A.C. §8:43G-15.2(d)(5), a "legally authorized representative" of a patient includes: (i) spouse, (ii) immediate next of kin; (iii) legal guardians; (iv) a patient's attorney; (v) a patient's third-party insurer; and (vi) worker's compensation carriers, where access is permitted by contract or law but limited only to the portion of the medical record which is relevant to the specific work-related incident at issue in the worker's compensation claim.

ii Although a patient may have had more than one admission, and there are more than one record, only one fee shall be permitted for that request. Furthermore, the search fee is permitted [illegible]

iii See 46 N.J.R. 523(a)(2), April 4, 1994. "The idea of basing the fee [illegible]

iv The elements which the hospital and its medical records copying contractor suggested for inclusion in such an "actual costs" analysis (which DHSS informally adopted) were: (a) the cost of direct salaries and benefits of employees in the HIM Department; (b) the depreciation associated with equipment in the HIM Department; (c) subcontractor charges for copy and other services rendered on behalf of the HIM Department; (d) space cost attributable to the HIM Department; and (e) overhead cost allocated to the HIM Department.

v See N.J.A.C. §8:43G-4.1(a)(21), (a)(24) and (a)(25), N.J.A.C. §8:43G-15.1 through 15.3.

vi See N.J.A.C. §8:43G-15.4

vii See N.J.A.C. §8:43G-15.5 and 15.6.

viii See N.J.A.C. §8:43G-15.7.

ix The Petition for Rulemaking was published by DHSS in the May 5, 2003 New Jersey Register at 35 N.J.R. 962.

x Under 45 C.F.R. §164.502(g), a "personal representative" only includes: (i) a person who has the legal authority to make decisions relating to health care on behalf of another person (i.e., a parent or guardian of a minor, or health care power of attorney for an adult), and (ii) an executor, administrator or other person who has the authority to act on behalf of a deceased individual or of the individual's estate.

xi In the comments to the adoption of 45 C.F.R. §164.524(c) found at 65 F.R. 82557 (December 28, 2000), HHS states with respect to requests for copies of medical records that "[c]overed entities may not charge any fees for retrieving or handling the information or for processing the request." Furthermore, on the same page of those comments, HHS later indicates that, with respect to the inclusion of any costs of retrieving or handling medical records requests in per page copying fees authorized by state law: "[i]f such per page costs include the cost of retrieving or handling the information, such costs are not acceptable under this Rule."

xii In the comments to the adoption of 45 C.F.R. §164.524(c) found at 65 F.R. 82557 (December 28, 2000), HHS states that: "[w]e do not intend to affect the fees that covered entities charge for providing protected health information to anyone other than the individual." Moreover, in response to concerns expressed in the comments to the proposed adoption of 45 C.F.R. §164.524(c)(4) found at 67 F.R. 53254 (August 14, 2002) that individuals and entities other than patients and their "personal representatives" (such as payors, attorneys and other entities that have an individual's authorization) would try to claim the limited copying fees provided for patients and their "personal representatives" in the regulation, HHS stated that:

The Department clarifies that the Rule, at §164.524(c)(4), limits only the fees that may be charged to individuals, or to their personal representatives in accordance with §164.502(g), when the request is to obtain a copy of protected health information about the individual in accordance with the right of access. The fee limitations in §164.524(c)(4) do not apply to any other permissible disclosure by the covered entity, including disclosures that are permitted for treatment, payment or health care operations, disclosures that are based on an individual's authorization that is valid under §164.508, or other disclosures permitted without the individual's authorization as specified in §164.512.

xiii Under the statutory provisions of HIPAA found at 42 U.S.C.A. §1320d-7(a)(1) and the HIPAA privacy regulations found at 45 C.F.R. §160.203, HIPAA and its privacy regulations supercede any contrary provision of state law, unless the contrary state law relates to the privacy of individually identifiable health information and is "more stringent" than HIPAA's requirements.

xiv In the comments to the adoption of 45 C.F.R. §164.524(c) found at 65 F.R. 82557 (December 28, 2000), HHS states that:

If the individual requests a copy of protected health information, a covered entity may charge a reasonable cost-based fee for the copying, including the labor and supply costs of copying . . . If the individual requests the information to be mailed, the fee may include the cost of postage. Fees for copying and postage provided under state law, but not for other costs excluded under this rule, are presumed reasonable.

Frank Ciesla and Patrick Convery are shareholders in the law firm of Giordano, Halleran & Ciesla, P.C., located in Middletown, New Jersey. They each have represented numerous health care facilities and individual health care providers with respect to many difference aspects of health law, including, but not limited to, litigation and regulatory matters involving state and federal governmental agencies.