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Information Only

To: Member CEOs (CC's Below):

QUICK SUMMARY

- This Advisory outlines the MHA calculation to derive the U.S. consumer price index for medical care services, which is then used to determine medical record copying fees. ■

MEDICAL RECORD COPYING FEE 2011 UPDATE

Chapter 135 of the Acts of 2003 amended the state's medical record copying fee requirements for hospitals and individual healthcare providers. (Please see Advisory A-1, dated January 9, 2004, which outlines the provisions of the law.) **Under the law, providers may increase the applicable fees based on the U.S. consumer price index (CPI) for medical care services in effect as of October 1, 2011.**

Using the change in the consumer price index for medical care services as of September 15, 2011, MHA has calculated the U.S. CPI for medical care services to be 3.11%. Therefore effective October 1, 2011, the maximum rate that providers may charge for medical records is as follows:

- a. \$19.84 base charge for the clerical and other administrative expenses related to complying with the request for making a copy of the record;
- b. \$0.67 per-page charge for the first 100 pages copied; and
- c. \$0.35 per-page charge for each page in excess of 100 pages.

Please note that under the specific state law provisions, a provider is also allowed to charge an additional fee to cover the actual cost of postage (regular or priority/next day mailing) and preparation of an explanation/summary of the hospital or clinic medical record if so requested. However, a separate/additional handling charge is prohibited if the entity is charging the base fee as well.

Providers should also be aware that fees must be waived for any request from a patient for a record that will be used for claims, eligibility reviews, or other administrative reviews being conducted by the Medicare, MassHealth, or other public assistance programs (e.g., Health Safety Net, Children's Medical Security Plan, Healthy Start, Food Stamps, etc.). For any request made by a patient, the Federal HIPAA guidance provides that a covered entity may not charge a base fee for making copies of the medical record for that patient.

Requests from any other party that is not the patient (e.g., lawyers looking for information on lawsuits or other legal actions) may be charged the base fee for administrative expenses. While the federal Department of Health and Human Services has not indicated whether the Massachusetts copying fee law related to the administrative base fee is specifically preempted by the HIPAA provisions, we believe that HIPAA preempts the state law regarding the base charge in the specific situation listed above, and that providers should only charge the per-page fee.

While the law essentially sets forth the level at which the fees may be set, fees may be lower than the base charges but cannot be higher. Providers should also ensure that their negotiated contracts with health insurers, vendors, and other third-party entities regarding the rates for copies of medical records are reflective of this updated rate as allowed under state law.

MHA also encourages providers to consider waiving or discounting rates applicable to requests for medical records from indigent patients, as indigence is determined using the hospital's credit and collection policy. Given that the law only establishes a maximum charge for copying, we encourage providers to develop waiver and discounting policies based on the financial condition of patients requesting copies, or the financial hardship caused by paying the fee based on the amount of copies requested.

Finally, MHA has heard in the past that a few insurers complained that the percentage calculated by MHA is too high and not reflective of the correct consumer price index for medical care services. MHA uses the 12-month average of the current year compared to the same 12-month average of the previous year to determine the CPI increase. This is the same method that the federal Centers for Medicare and Medicaid Services, Blue Cross Blue Shield of Massachusetts, and the commonwealth itself uses in calculating their annual inflationary updates.

The difference being that the other entities look at several state- or local-specific factors to determine their rates. The Massachusetts law related to medical record copying fees only looks at the national medical services component of the CPI. The data we use for the Inflation Factor under the state law is the U.S. All Urban CPI for Medical Care Services produced monthly by the U.S. Bureau of Labor Statistics (BLS). We use the total of the BLS Indices for the 12 months of the FYE 9/30/2011 divided by the same for the 12 months of the FYE 9/30/2010. For 2011, we used the 11 months of the FYE 9/30/2011 (October 2010 through August 2011) as compared to the same 11-month period (October 2009 through August 2010). We also include in this calculation the BLS estimated September markup over August to provide the full 12-month calculation.

Should you have any questions about this Advisory, please e-mail MHA's Vice President, Legal and Regulatory Affairs **Anuj Goel** at agoel@mhalink.org. ■

CC:

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