

LETTER OPINION
2000-L-135

July 19, 2000

Honorable Ralph Kilzer
State Senator, District 47
2040 N Grandview Ln
Bismarck, ND 58503-0845

Dear Senator Kilzer:

Thank you for your letter requesting an opinion on the effect of N.D.C.C. § 23-12-14 on the ability of a medical provider to charge an insurance company for copies of records.

N.D.C.C. § 23-12-14, enacted by the 1999 Legislative Assembly, provides:

1. As used in this section, "medical provider" means a licensed individual or licensed facility providing health care services. This section applies to every medical provider unless expressly provided otherwise by law. Upon the written request of a medical provider's patient or any person authorized by a patient, the medical provider shall:
 - a. Provide a free copy of a patient's medical records to a medical provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical care to another medical provider for the continuation of medical treatment.
 - b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any

Honorable Ralph Kilzer
July 19, 2000
Page 2

administrative fee, retrieval fee, and postage expense.

2. A written medical records release must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient.

Subdivision 1(a) of this law requires a medical provider to provide a free copy of a patient's medical records to another medical provider if the records are requested for the purpose of transferring that patient's medical care to that other medical provider for the continuation of medical treatment. Subdivision 1(b) requires that upon the request of any person authorized by a patient, a medical provider shall provide a copy of a patient's medical records requested for any purpose other than the continuation of care as provided in subdivision 1(a), for the maximum charge indicated. Thus, if a patient authorizes the patient's insurer to obtain a copy of the patient's medical records from a medical provider for any purpose, this law authorizes a medical provider to charge the maximum amount indicated in subdivision 1(b).¹

You ask the following questions:

1. Assuming a patient appropriately authorizes the release of medical information, does section 23-12-14 authorize a medical provider on and after August 1, 1999, to charge Blue Cross Blue Shield of North Dakota or other insurance company for copying medical records for the insurance company for purposes of processing a medical insurance claim or for other purposes? If so, is the insurance company obligated to make payment for the charge?
2. If section 23-12-14 applies to an insurance company under question 1 above, can the statutory obligation to make payment for copying medical records be modified by contract between the medical provider and the insurance company or must there be a specific statutory exception provided by law?

N.D.C.C. § 23-12-14 specifies a maximum amount a medical provider may charge an insurance company for copies of medical records; it does not

¹ See also N.D.C.C. § 43-17-31(20) which states that disciplinary action may be imposed against a physician if the physician fails to supply copies of a patient's medical records to a patient's representative, and that the physician may assess a reasonable charge for supplying copies of medical records.

Honorable Ralph Kilzer
July 19, 2000
Page 3

establish a minimum amount. Thus, a medical provider can agree to charge less than the maximum, or charge nothing. It is up to the medical provider to decide how much it will charge. If an agreement between the medical provider and the insurance company specifies that no charge for copies will be made or specifies a charge below the maximum allowed by N.D.C.C. § 23-12-14, that agreement would continue to apply between the parties until it is terminated or amended. The legislative history you quote in your letter indicates an awareness that sharing copies with an insurer can be a "contractual issue." If a medical provider has not agreed otherwise with the insurance company, the medical provider may charge any amount within the maximum amount allowed by N.D.C.C. § 23-12-14 and the insurance company will be obligated to pay the amount charged in order to obtain the records.

If medical providers want to ensure that they receive a minimum amount for providing copies to insurance companies, the law can be amended to state a minimum charge that must be paid by insurance companies. If the law was amended to provide a minimum charge, any agreement to pay less than the minimum would violate the statute.

Sincerely,

Heidi Heitkamp
Attorney General

las/vkk