



Economic Impact Analysis Virginia Department of Planning and Budget

16 VAC 30-50 – Rules of the Virginia Workers’ Compensation Commission
Virginia Workers’ Compensation Commission
January 10, 2008

Summary of the Proposed Amendments to Regulation

The Workers’ Compensation Commission (Commission) proposes to make amendments to the rules regarding filing documents, medical records, and copying charges that include: (1) requiring a party that receives medical records relating to a claim to file with the Commission only those medical records related to an injured body part or disease at issue; (2) requiring a party to mail, postage pre-paid, all medical records filed with the Commission to the opposing party; (3) requiring a medical care provider to mail or, if agreed to by the requestor, make available for pick-up, medical records within 20 days after receipt of request; (4) disallowing medical care providers from requiring prepayment of copying charges; (5) requiring a treating health care provider to provide a party, upon request, an Attending Physician’s Report, or Commission Form 6, or equivalent, without charge; (6) disallowing a medical care provider from requiring a customized authorization; (7) deleting the provision that a medical care provider is entitled to a “reasonable fee” for preparation of a narrative report if the report requires significant professional research or preparation; (8) requiring copying charges for non-treating health care providers to be in accordance with §8.01-413 of the Code of Virginia; (9) allowing a treating health care provider to charge a copying charge of no more than \$.10 per page for the first 50 pages and \$.05 per page thereafter; (10) allowing a treating health care provider to charge a copying charge of no more than \$.25 per page if the record was microfilmed or imaged; (11) disallowing a treating health care provider from charging for copies of medical records of documentation submitted to a party for the purposes of obtaining payment of medical bills by that party; (12) allowing a treating health care provider to charge for the actual cost of mailing the medical records; and (13) allowing a treating health care provider to charge the actual cost of

reproducing an x-ray, electrocardiogram, or other special graphic medical record, provided such fee does not exceed \$8.00 per film.

Result of Analysis

The costs likely exceed the benefits for one or more proposed changes. The benefits exceed the costs for one or more other proposed changes.

Estimated Economic Impact

Under current regulation, the original or a legible copy of *all* medical records received by a party¹ relating to a claim must be filed immediately with the Workers Compensation Commission (Commission). Under the proposed regulation, the Commission adds that a party should not file medical records unrelated to an injured body part or disease at issue. This change is being made in order to reduce some of the filing (copying, mailing, etc.) burden on relevant parties and medical providers and because the Commission does not feel that it needs to receive medical records unrelated to the issue at hand. A benefit of this proposal is to reduce the filing required by the Commission; in some cases, the reduction in paperwork sent to the Commission as a result of this amendment could be significant (although in other cases, the paperwork might merely be reduced by a page or two). Another benefit is a decrease in the copying and shipping costs necessary to get the documentation to the Commission. A third benefit could be a reduction in the paperwork requested by the party from the medical care provider (which would save sorting, copying, and shipping costs). It is also possible, however, that the party will request all of the paperwork from the medical care provider and then sift through it to decide what to send on to the Commission. In the latter case, the amendment could introduce additional cost for the relevant party in the time and resources to decide what to send on to the Commission, although given that the party likely goes through all of the documentation anyway, this added cost is not likely to be significant. In sum, the benefits of this proposal outweigh the costs for the Commission and for the parties that request the paperwork from the medical providers. It is possible that medical care providers will also benefit from this amendment, although it is also possible that they will see neither benefit nor cost to this amendment. So, in sum, the benefits of this amendment outweigh the costs.

Under current regulation, a copy of all medical reports must be sent to the opposing party. Under the proposed amendment, only those medical records filed with the Commission must be sent to the opposing party, and, unless otherwise agreed to by the opposing party, the records must be mailed, postage pre-paid. One benefit of this amendment is the same savings in copying and shipping costs discussed in the last paragraph, since the party only has to send to the opposing party the medical records filed with the Commission. There should not be any cost or benefit to the requirement that records be mailed with postage pre-paid since this is common practice currently. Therefore, the benefits of this amendment should outweigh the costs.

Under the proposed regulations, copies of medical records shall be mailed to or, if agreed to by the requestor, made available for pick-up, within 20 days after receipt of request. In addition, medical care providers will not be allowed to require prepayment of copying charges. Both of these changes are being proposed to honor the intent of the Workers' Compensation Act, which is to get through the claims process in an efficient, timely manner. The Commission does not want to hold up a claim for the payment of copying charges. The benefit of the change in theory, then, is to keep the system moving. In practice, however, medical records are normally made available within 20 days and medical care providers do not usually require prepayment of copying charges, so the amendments will not impose much in costs or benefits for any Virginia individuals or businesses.

The proposed amendment includes language not in the current regulation that a treating health care provider shall provide a party, upon request, an Attending Physician's Report or Commission Form 6, or equivalent, without charge. The Attending Physician's Report, or Commission Form 6, is a one page form requesting basic patient information that can be completed in a few minutes. Generally, medical providers do not charge for these forms. Therefore, the amendment offers neither cost nor benefit. The proposed amendment also includes language that a medical provider may not require a customized authorization. This proposal should not impose cost or benefit either, since workers' compensation is not subject to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations that limit the situations in which medical providers may release patient information. The Commission feels

¹ "Party" is defined in 16 VAC30-50-50.A. as "...the claimant, injured employee, employer, insurer, Uninsured Employer's Fund and their attorneys"

that this clarification that medical providers cannot require a customized authorization benefits the system in ensuring a smooth, quick claims process. By clarifying the privacy requirements applicable to medical care providers, this amendment also benefits those providers.

The proposed amendment includes language that disallows a treating health care provider from charging for copies of medical records or other documentation submitted to a party for the purposes of obtaining payment of medical bills. It also includes language that allows a treating health care provider to charge for the actual cost of mailing the medical records. These additions are both codifications of current practice, and therefore should impose neither benefit nor cost.

Under current regulation, a medical care provider is entitled to a “reasonable” fee for preparation of a narrative report written in response to a request from a party, if the report requires significant professional research or preparation. Under the proposed regulation, no such stipulation would be made. According to the Commission, this change was made because the current wording is vague in terms of how much a medical care provider is entitled to, and the Commission feels that specifying an amount is inappropriate given that different narrative reports require different amounts of research and preparation. The Commission feels that this change will have little impact practically, since if a medical provider charged a fee for a narrative report, the Commission would probably agree to it. This change might, however, impose a cost on medical providers; because there will be no regulatory allowance for a “reasonable fee” for a narrative report, it is possible that the Commission could turn down the charge for a narrative report. In addition, if medical providers are not aware that they can get reimbursed for the cost of developing a narrative report, they might choose not to research and write the report, which could negatively affect the quality of the information available to the relevant parties. Although this amendment could lead to a benefit for employers or insurance companies in not having to pay for the narrative report, the cost of not having the information could very well outweigh the benefit of not having to pay for the report. On the other hand, if the current language provides the incentive to medical providers to charge more for the report than is necessary or efficient, or if it creates more work for the Commission in determining the “reasonableness” of the fee, the benefits of the change could outweigh the costs. In the end, however, since medical providers can charge a reasonable fee that must be approved by the Commission under current regulation, and will be able to charge a reasonable fee that must be approved by the Commission under the

proposed amendment (i.e., this amendment does not change anything in practice), the amendment is not likely to create either costs or benefits for the relevant parties.

Under current regulation, a medical care provider attending to an injured employee shall furnish a copy of required reports at no cost except for a “nominal” copying charge. Under the proposed amendment, a non-treating health care provider can charge in accordance with §8.01-413 of the Code of Virginia. A treating health care provider may charge not more than \$0.10 per page for the first 50 pages and \$0.05 per page for each page thereafter. In addition, a treating health care provider may charge \$0.25 for each page if the record was microfilmed or imaged and the actual cost of reproducing an x-ray, electrocardiogram, or other special graphic medical record, provided that such a fee shall not exceed \$8.00 per film.

According to the Commission and according to a representative of Smart Document Solutions (a company that handles much of the copying and document management in Virginia, and a member of the Association of Health Information Outsourcing Services), almost all medical providers currently charge in accordance with Code of Virginia §8.01-413. Therefore, the amendment for non-treating health care providers will not change any fees in practice. The copying charges in §8.01-413 are \$0.50 for each page up to 50 pages and \$0.25 per page for copies from paper or other hard copy generated from computerized or other electronic storage, or other photographic, mechanical, electronic, imaging, or chemical storage process, and \$1.00 per page for copies from microfilm or other micrographic process. In addition, §8.01-413 allows for a search and handling fee of \$10 or less.

The proposed changes to the copying charges allowed for treating health care providers, therefore, are a significant reduction in what medical providers now charge. According to the Commission, the major benefit of the amendment lies in the inclusion of the numbers, not in the numbers themselves. The Commission feels that clarifying “nominal charge” will smooth out the process, since everyone will know what the Commission considers to be a nominal fee and therefore the fee would never have to be litigated. In addition, keeping the fee at a truly nominal fee will keep with the Commission’s purpose to compensate injured workers without the hassle of expensive, lengthy litigation for any of the parties.

The Commission estimates that there are about 200,000 workplace accidents per year in Virginia and that about 50,000 of those accidents end up having medical records associated with

them.² While some of those cases might require only a few pages of documentation, some of the cases require boxes and boxes of documentation. The proposal to reduce the copying charges primarily benefits employers and insurance companies who request the records and foot the bill. Not only will they know ahead of time how much they need to pay, the actual charges represent a significant reduction in fees for them. Claimants' and claimants' attorneys also request documents from medical providers and foot the bill, but for two reasons this amendment is not likely to affect them as much as it will employers and insurance companies. First, a claimant normally has only one case, and the benefits of this amendment primarily arise when charges are reduced for a number of claims (e.g., \$30 might not be a significant savings, but $\$30 \times 25,000$ is a significant savings). Second, for statutory reasons, it is possible that this regulation will not affect the price that a patient pays for his own medical records.³

The amendment represents a significant cost to medical providers. Say, for example, that the average file consists of 100 pages of medical records that need to be copied and mailed to the requesting party. Medical providers currently charge, with some variation, \$0.50 per page for the first 50 pages and \$0.25 thereafter. Under the proposed amendment, providers will be able to charge \$0.10 per page for the first 50 pages and \$0.05 thereafter.⁴ So, this amendment will cost medical providers \$0.40 per page for the first 50 pages and \$0.20 thereafter. In our example, then, for each record, this amendment will cost the provider a total of \$30 per file.⁵ With 50,000 files, this is a total of \$1.5 million in Workers' Compensation cases annually that medical providers will lose.⁶ Much of the gain will accrue to insurance companies and employers.

² In 2006, for example, the Workers Compensation Commission created 47,341 new files on employee injuries.

³ Section §8.01-413 of the Code of Virginia states that "The provisions of this section governing fees that may be charged by a health care provider whose records are subpoenaed or requested pursuant to this section shall not apply in the case of any request by a patient for his own records, which shall be governed by subsection J of §32.1-127.1:03." Subsection J of §32.1-127.1:03 then states that "If an individual requests a copy of his health record from a health care entity, the health care entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and labor of copying the requested information, postage when the individual requests that such information be mailed, and preparation of an explanation or summary of such information as agreed to by the individual." Since the Code of Virginia supersedes the proposed regulation, even if the regulation becomes final, the regulation's effect on the copying charges paid by claimants' or claimants' attorneys is unclear.

⁴ For the sake of comparison, a representative from the Virginia Freedom of Information Act (FOIA) Council charges \$0.10/page no matter the number of pages copied.

⁵ Calculation: $(\$0.40 \times 50) + (\$0.20 \times 50) = \$30$

⁶ Note that this cost estimate for an average of 100 pages per file is high, since some of the files will be under 50 pages and for the files over 50 pages, parties will pay the higher rate only for the first 50 pages. For example, if there are three Workers' Compensation cases—one with a 25-page file, one with a 75-page file, and one with a 200-page file—this amendment will actually add $(\$0.40 \times 25) + (\$0.40 \times 50) + (\$0.20 \times 25) + (\$0.40 \times 50) + (\$0.20 \times 150) = \85 . Using

It is difficult to ascertain the copying charge that would recoup the costs of the copying for medical providers. Most medical providers outsource their copying out to companies like Smart Document Solutions. For clients like large hospitals, Smart Document Solutions employees staff the hospital medical records department full-time; in smaller clinics, Smart Document Solutions employees go into the clinic and reproduce copies as needed. According to the representative, it is difficult to include the cost of their internal infrastructure into the cost of reproducing medical records; however, when asked her reaction to the copying charges proposed by this amendment, the representative said that the company would go out of business in Virginia if copying charges were that low. According to that representative, even the copying charges in §8.01-413 are among the lowest in the country, as they have not been revised in over 12 years.

Furthermore, if the outsourced companies are unable/unwilling to complete the photocopying for Workers' Compensation cases, and medical providers cannot recoup their costs for providing medical records to relevant parties, the providers will have negative incentives to treat patients who seek Workers' Compensation for injuries on the job. This could have consequences for Virginia workers, who might not have the breadth of choice in their doctors. It is also possible that the cost of workers' compensation liability insurance will increase in order to create incentives for medical providers to participate. This could result in a cost to insurance companies and employers (if the cost is not passed onto employees) that could outweigh whatever benefits they have from reduced copying fees.

It seems, therefore, that although the benefits of putting in specific copying charges might outweigh the costs, for the particular charges chosen for this amendment, the costs likely outweigh the benefits.

Businesses and Entities Affected

All entities involved with the workers' compensation system will be affected. This includes employees, employers, insurers, attorneys, and medical providers. Virginia law requires every employer who regularly employs three or more full-time or part-time employees to purchase and maintain workers' compensation insurance. In addition, employers with fewer than

the "100 page average" calculation as made earlier, however, gives an added cost of $3 * [(\$0.40 * 50) + (\$0.20 * 50)] = \$90$

three employees may voluntarily come under the Workers' Compensation Act. The medical providers who will be most affected are emergency room providers, general practitioners (or family doctors and internists), orthopedic surgeons, and neurosurgeons, as these are the medical providers who treat the most common on-the-job injuries. Providers of occupational medicine practitioners will also be particularly affected. The Workers' Compensation Commission estimates that there are about 50,000 accidents per year that end up requiring medical records.

Localities Particularly Affected

All Virginia localities may have individuals or organizations that would be affected by these amendments.

Projected Impact on Employment

First, if companies like Smart Document Solutions decide not to do business with particular medical providers because of the copying charges proposed by this amendment, this amendment could affect the number of people that they employ in Virginia. Second, if many medical providers choose not to take Workers' Compensation cases because they cannot cover their costs, this could affect the quality of health care received by workers who are injured on the job, and therefore could affect their ability to go back to work, or to work effectively. Third, if employers or insurance companies end up having to compensate doctors in order to entice them to take Workers' Compensation cases, this could affect the profitability of the companies, and therefore, impact employment.

Effects on the Use and Value of Private Property

These amendments could reduce the value of companies like Smart Document Solutions by making it necessary for them to stop working for Virginia medical providers or to cover the costs of copying for Workers' Compensation cases in other ways. These amendments could reduce the value of certain medical practices by making it impossible for them to take Workers' Compensation cases, or by forcing them to lose money on Workers' Compensation cases. These amendments could also, indirectly, reduce the value of insurance companies or employer businesses by increasing the cost of workers' compensation insurance.

Small Businesses: Costs and Other Effects

Most of the medical providers and many of the employers that will be affected by these amendments are small businesses. Medical providers will be negatively impacted if they cannot cover their costs for workers' compensation cases. They will also be negatively impacted if they cannot cover their costs on worker's compensation cases and therefore choose not to take those cases and lose business. Small business employers will be negatively impacted if workers cannot get the best quality medical care (and therefore cannot go back to work, or be as effective at work) because doctors, clinics, or hospitals are unwilling to take workers' compensation cases. Small business employers could also be negatively impacted if the costs of insurance rise as a result of insurance companies needing to provide additional incentives to medical care providers to take workers' compensation cases.

Small Businesses: Alternative Method that Minimizes Adverse Impact

An alternative method that might minimize adverse impact on small businesses might be leaving the allowable copying charges as "nominal" or setting copying charges such that they are more likely to cover the direct and indirect costs of copying. For example, copying charges at the rates set out in §8.01-413 might be less impactful for small businesses.

Real Estate Development Costs

If the costs of trying to get doctors to take Workers' Compensation cases outweigh the benefits of lower copying charges, this amendment could increase employer costs of providing insurance (either if they self-insure, or if insurance companies pass on the cost increases). If there are real estate developers among those employers, it is possible that this amendment will raise real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to

be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.