

Lawyer slams costs for medical records

Even pharmacies charge varying amounts for prescription summaries

BY JUDY VAN RHIJN
For Law Times

A Mississauga, Ont., lawyer is challenging the Insurance Bureau of Canada to take action over the escalating cost of patients' medical records. Despite guidelines from the governing professional bodies, he believes these charges are going beyond the actual costs of production and becoming a source of revenue for various parts of the health industry.

Personal injury lawyer Roger Foisy recalls that at the beginning of his legal career, copies of patient records were provided for free or occasionally for a small administration fee of up to \$15. Now he finds that he's expected to pay substantial fees for clinical reports from health service providers.

"At times, we are paying \$50 for two pieces of paper from doctors or up to \$500 for 100 pieces of paper and now pharmacists are getting in on the act. I kid you not, we are paying \$75 to \$150 for a prescription summary that may be one piece of paper."

Foisy believes the providers are aware that lawyers seek reimbursement of the fee from the clients' insurers. "They say it's not

really the patient's money, but I see it as my clients' money even if at the end of the day it is reimbursed. Insurance companies end up charging higher premiums because the cost of litigation is more expensive. It must cost them hundreds of thousands of dollars a year in pharmacy records alone and it is the victims that pay at the end of the day."

The trend annoys Foisy all the more because he believes the clinical notes and records are really the patient's property. "The professionals have already been paid to write on them. There should be a small administrative fee to produce it."

The Ontario Medical Association provides guidelines that state that physicians are prohibited from charging a fee for providing copies of their medical records unless they first give the individual an estimate of the fee they'll be charging. They go on to state that there are two elements to the charge for providing a copy of medical records. First is the cost of the provision of the copy, for which the OMA recommends a charge of \$30 plus 25 cents per page for each one over 20 pages.

The second element deals with out-of-pocket disbursements incurred by the physi-



'Why are they allowing a free market on record production?' asks Roger Foisy.

cian such as charges for the retrieval of the medical record from storage, postage, courier fees, long-distance fax costs, and other expenses of a similar nature. Only where the physician must look over the records before providing copies is it proper to charge a professional fee for the review. The OMA recommends doing this at the usual hourly rate.

Foisy is very familiar with the OMA guidelines but says that in his experience, following them isn't the norm. "While there are

a number of doctors' offices which do follow the guidelines, there are far more that do not." He also notes that the OMA guidelines don't cover medical clinics that employ chiropractors, physiotherapists, and other regulated and non-regulated professionals. "This is where the vast majority of requests are going to," says Foisy. "There does not appear to be any consistency in record production costs from those sources."

According to Foisy, what has been most interesting and problematic for his clients are the records charges from pharmacies. "Over the course of the last three years, we have paid between \$30 and \$175 per request for pharmacy prescription summaries, which on average include one to five pages at most. You can't tell me that a one-page pharmacy prescription history with 10 prescriptions costs \$150. I'm tired of paying that on behalf of the client. It doesn't make any sense."

These high fees are at odds with the position taken by the Ontario Pharmacists' Association, which covers the matter in its suggested fee guide for uninsured clinical and professional pharmacy services under the category of consultant and ad-

visory services. That section recommends an hourly rate of \$135 per hour. A spokesperson for the association notes that a report of this type would take about 10 to 15 minutes. This would not only include copying but reviewing and collating the information to ensure that it's free of internal administrative transactions that aren't relevant to the patient file. The association recommends that pharmacists charge in 15-minute increments and therefore considers the appropriate fee to be around \$33.50 plus HST.

In response, Foisy is challenging the insurance bureau to lobby the government to restrict or regulate the cost of production of medical records. "If they are so interested in trying to save costs, why are they so easily paying these amounts?" he asks. "It's not that they shouldn't reimburse the client but that they should seek legislation on this."

Foisy suggests a cap of \$30 for the first 20 pages and 25 cents for each additional page. This is the rate recently adopted by the larger hospitals. "At present, it's a free-for-all out there. You never know what to expect."

Foisy notes that the insurance bureau has actively lobbied to contain costs in other areas. **LT**