

Opinion No. 2010-095

October 11, 2010

The Honorable Andrea Lea
State Representative
Post Office Box 1342
Russellville, Arkansas 72811

Dear Representative Lea:

I am writing in response to your request for my opinion on the following question:

Given that Ark. Code Ann. § 16-46-106 does not authorize the charging of sales tax, may a health care facility in the State of Arkansas, or any entity which maintains the medical records for an Arkansas health care facility, nonetheless charge sales tax to a patient or a patient's attorney who requests copies of the patient's own medical records?

RESPONSE

In my opinion, the answer to this question is "no."

Section 16-46-106 of the Arkansas Code (Supp. 2009) provides in pertinent part:

(a)(1) In contemplation of, preparation for, or use in any legal proceeding, any person who is or has been a patient of a doctor, hospital, ambulance provider, medical health care provider, or other medical institution shall be entitled to obtain access, personally or by and through his or her attorney, to the information in his or her medical records, upon request and with written patient authorization, and shall be furnished copies of all medical records pertaining to his or her case upon the tender of the expense of such copy or copies.

(2) Cost of each photocopy, excluding X rays, shall not exceed fifty cents (.50¢) per page for the first twenty-five (25) pages and twenty-five cents (.25¢) for each additional page. A labor charge not exceeding fifteen dollars (\$15.00) may be added for each request for medical records under subdivision (a)(1) of this section, and the actual cost of any required postage may also be charged.

(3) Provided, however, in the alternative to the labor charge described in subdivision (a)(2) of this section, a reasonable retrieval fee for stored records of a hospital, a physician's office, or an ambulance provider may be added to the photocopy charges, only if the requested records are stored at a location other than the location of the hospital, physician's office, or ambulance provider.

(4) Provided, further, this section shall not prohibit reasonable fees for narrative medical reports or medical review when performed by the physician or medical institution subject to the request, but only if a narrative medical report or medical review is requested by the person or entity requesting the records.

This statute is unequivocal in capping the amount that can be charged for providing a patient with a copy of his medical records in “contemplation of, preparation for, or use in any legal proceeding.” A.C.A. §16-46-106(a)(1). The statute itemizes in detail the specific costs a health-care provider may charge a patient for supplying the records. At no point does the statute suggest that a health-care provider may charge a sales tax for supplying such records. I should further note that a sales tax requires express state authorization, A.C.A. §§ 14-14-806 and 14-43-606 (Repl. 1998) – a requirement apparently not met in this case. *See also* Ark. Op. Att’y Gen. 2008-036 (discussing in detail the restrictions on the imposition of sales taxes).

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General