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Providers Risk Class Action Lawsuits for Overcharging Patients for Copies of Medical Records

Plaintiffs' attorneys are devising new ways to sue for technical offenses. At times, these attorneys create reasons to sue even before any client has come to them looking for help. Their latest target is the health care industry. If you are a health care provider that charges patients to obtain copies of their medical records, you could be at risk.

A complicated Wisconsin statute governs how and when health care providers can charge for their work in assembling and certifying copies of medical records when requested to do so. Health care providers are generally allowed to charge for the copies as well as separate fees for retrieving the documents and, if requested, for certifying them. Those additional fees can amount to approximately $28 per request. But the allowable charges differ, depending on who is seeking the records. If a patient or "person authorized by the patient" requests the records, no charges for retrieval or certification fees are allowed.

Although it is generally understood in the health care industry that only the patient or someone able to make health care decisions for the patient can avoid the extra fees, the Wisconsin Supreme Court recently decided that "person authorized by the patient" means anyone armed with a HIPAA release, even a patient's attorney representing that person in a lawsuit where the records were requested. As a result, plaintiffs' attorneys have now filed several state-wide class actions against Wisconsin health care providers who are alleged to have charged lawyers certification and retrieval fees.

No one would sue on their own to recover $28, but when there are perhaps thousands of potential class members, the damages quickly escalate. And, as you might suspect, the lawyers bringing these claims seek fees for themselves that far exceed any payments that their clients might obtain. In a voluntary settlement recently negotiated by a defense firm, the attorneys representing the class were paid $8 million.

If your company works in this field, we can evaluate and help adjust your processes to avoid such claims. And, if necessary, we can use our experience defending several similar cases to help you potentially defeat a lawsuit or resolve it on very favorable terms.

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First, charges issued in good faith do not violate the statute, so it is important to prove that your company's actions were in good faith. Several Wisconsin Appellate Court and Wisconsin Supreme Court judges agreed with the industry that the statute allowed for charges to be made to lawyers possessing only HIPAA releases.

Second, by establishing that Plaintiff's counsel knew the charges might have been improper, it can be proved that they waived any claims if they voluntarily paid those charges without protest. A federal court judge in the Eastern District of Wisconsin recently held that one of these class action plaintiffs waived her claim because she (and her attorney) litigated the same claim in a prior case against a different defendant before paying the fee charged by the health care provider in the current case. The claim was waived because they voluntarily paid the fees despite knowing that it was not necessary.

Finally, these cases can also be defended on statute of limitations grounds. The Wisconsin Supreme Court decision was issued on May 4, 2017. Plaintiffs claim that a six-year statute of limitations period applies. Although not yet decided by any of the courts handling these claims, a two-year statute of limitation should limit Plaintiffs' claims. If your company stopped charging attorneys certification and retrieval fees in May 2017, all lawsuits should now be barred by the two-year statute of limitations.

If you have questions about how to avoid or defend these cases, please contact Al Schlinsog or your Reinhart attorney. Our Class Action Team is currently litigating these and other class actions and can assist you immediately with no learning curve in this complicated area.

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