

1 July 2024

Determining fees under the *Health Records Act 2001* (HR Act)

Requests by individuals for access to their health information or for their health information to be made available to another health service provider

The Health Complaints Commissioner (**HCC**) handles complaints about the management of health information under the HR Act which includes access to health information. The HR Act establishes Health Privacy Principles (**HPPs**) that apply to health information collected and handled in Victoria. The HCC also has a role to advise the public about the operation of the HR Act.

The HCC has published this information to assist members of the public and organisations in understanding how fees are calculated under the [Health Records Regulations 2023](#), in particular where records are provided in electronic format. This information reflects the HCC's interpretation of the calculation of fees set out in the regulations.

Relevant provisions and applicable fees

This document outlines the fees that apply in relation to:

- access requests made by individuals, their authorised representative or their legal representative for health information, and
- requests for records to be made available to another health service provider (also referred to as 'transfer of records').

Access requests by individuals (or their representative) and applicable fees

The HR Act gives individuals a right of access to their personal health information held by any organisation in the private sector in Victoria, in accordance with HPP 6.

HPP 6 obliges those who hold health information about a person to give them access to their health information on request, subject to certain exceptions and the payment of fees. A person's lawyer is able to make an access request on their behalf.

The HR Act requires an organisation to respond to a request for access not later than 45 days from the date it received the request. Once the individual is notified in writing of the fee that will be charged, access must be provided within 7 days of payment of the fee.

The **maximum fee** an organisation is permitted to charge for providing a **copy** of a person's health information **to that person** is a total of the following (these amounts do not include GST):

| | | |
|----|--|--|
| a) | If a copy is in the form of black and white A4 pages: | 20 cents per page |
| b) | If a copy is in a form other than a black and white A4 page: | The organisation's reasonable costs incurred in providing the copy |
| c) | The organisation's reasonable costs incurred in assessing and collating the health information: | Not exceeding 2.5 fee units i.e. \$40.80 |
| d) | If the health information is contained in a document not stored at the organisation's usual place of business: | 1.2 fee units i.e. \$19.60 |
| e) | Where a person requests the information to be posted to them instead of collecting it in person | The actual costs of postage |

The [Health Records Regulations 2023](#) which set out these fees were updated on 1 July 2024 and the details set out in this document reflect the rates from 1 July 2024 to 30 June 2025. The fee caps are expressed in 'fee units', the value of which is determined each year by the Treasurer under the Monetary Units Act 2004. Information about the regulations published by the Department of Health is available on the Department's [Health Records Regulations 2023 page](#).

Health records provided in hard copy in response to an access request

Ordinarily, when providing records in hard copy, an organisation will usually charge the following maximum fees (not including GST) in accordance with the regulations:

- the **fee to assess and collate** health records for providing the person a copy (\$40.80), and
- 20 cents per page, and
- the actual cost of secure postage, such as registered post (or the cost of a courier if the individual has requested the information be couriered).

It is the HCC's position that where the records are provided in hard copy, an organisation can charge 20 cents per piece of paper, whether or not it is printed single or double sided. The HCC encourages organisations who are providing records in hard copy to print double sided, which has the benefits of saving paper and reducing costs for consumers.

Making health information available to another health service provider

HPP 11 of the HR Act gives an individual the right to have their health information made available to another health service provider, subject to the payment of any fee. The request must be complied with as soon as practicable and the HCC considers 30 days to be a reasonable time.

If an individual asks an organisation to make their health information available to another health service provider, the organisation must provide either a **copy** or a **written summary** of the individual's health information to the other health service provider. The request can be made by the individual or by the other health service provider with the individual's authority.

The **maximum fee** an organisation is permitted to charge for providing a **copy** of health information to **another health service provider** is a total of the following (these amounts do not include GST):

| | | |
|----|--|--|
| a) | If a copy is in the form of black and white A4 pages: | 20 cents per page <u>if there are at least 20 pages</u> |
| b) | If a copy is at least 20 pages and is in a form other than a black and white A4 page (eg. in electronic format): | The organisation's reasonable costs incurred in providing the copy |
| c) | Where hard copy records or USB are posted | The actual costs of postage |

The maximum fee an organisation is permitted to charge for providing a **summary** of health information to **another health service provider** (if a summary does not already exist) is a total of the following:

The greater of the organisation's usual consultation fee or 2.9 fee units per quarter hour (i.e. \$47.40), up to 9.4 fee units (i.e. \$153.50), where the time taken to prepare the summary is at least 30 minutes. (These amounts do not include GST).

Transferring either a copy of health records or a written summary to another health service provider

The HR Act does not state whose choice it is whether to provide a copy or a summary to the health service provider. In most cases, a health service provider will seek that a full copy of the records be transferred to them, in order to facilitate continuity of patient care. If the organisation instead wishes to provide a summary of the health information and not a copy to the other health service provider, the individual is not able to compel the organisation to transfer a copy. In this situation, the organisation should explain, in advance, that they are transferring a summary of the health information instead of a copy. This way, the individual has a choice to not proceed with the transfer request and instead seek a complete copy of the records through a separate access request.

Providing records in electronic format to the individual or another health service provider (e.g. by USB drive or secure email)

When providing records to an individual in electronic format, organisations can charge a **fee to assess and collate** the health records for providing the person a copy (up to a maximum of \$40.80). (This fee cannot be charged if the records are being made available to another health service provider). This fee covers all work undertaken by organisations in assessing the health information of the individual to determine:

- (1) if the organisation holds information that is responsive to the access request, and
- (2) whether a mandatory or discretionary reason to refuse access applies.

In addition, when providing records in electronic format to the individual on a secure USB drive or by secure email, the organisation can charge in accordance with (b) in the above tables, i.e. **the organisation's reasonable costs incurred in providing the copy**. In the case of making records available in electronic format to another provider, this fee can only be charged if there are 20 or more pages of records when printed. In this context:

- 'Reasonable costs' include reasonable **staff time**, cost of the USB and postage.
- 'Staff time' includes preparing and transferring the data to the USB or converting or exporting the health information into a usable format, labelling the USB and envelope and taking the envelope to the post office for registered post.

In considering what might be the **reasonable costs for staff time** incurred by an organisation in providing an electronic copy of the records, it is the HCC's view that the fee for time spent in supervising inspection or viewing of records set out at Items 1 and 2 (Schedule 1) of the regulations, would be an appropriate fee to apply in calculating staff time. The maximum fee is 1.2 fee units (currently equal to \$19.60 plus GST) per half hour (*to be calculated in increments of quarter hours or parts thereof*). This is a function performed by administrative staff when an individual asks to inspect their health records.

When transferring health records in electronic format to another health service provider, the HCC considers it reasonable that the format be compatible with the medical records software used by the receiving health service provider, if possible. This way, the records can be integrated into the health service provider's existing records system.

Please note the fees referred to above are **maximum** fees and an organisation can choose to charge no fees at all.

Health Complaints Commissioner
1 July 2024