

May 10, 2007

To: Workers Compensation Medical Providers and Records Custodians  
From: Jean M. Vanek, Self Insurance Program Manager  
Re: **Medical Records Release and Patient Privacy**

You have refused a request for medical records, citing concerns raised by the Health Information Portability and Accountability Act of 1996 (HIPAA). Health care providers are understandably concerned about the impact of HIPAA on the provision of records to employers, the Department of Labor and Industries, and others involved in the workers compensation system.

The Department, and the 385 self-insured employers responsible for administering the workers compensation claims of their employees, take very seriously our obligation to protect the privacy of workers' medical records. This memo clarifies how we balance that obligation with our primary mission to provide sure and certain relief to injured and ill workers in Washington State. It further outlines your responsibilities as medical providers and records administrators within the industrial insurance system.

### **Legal Parameters**

The rules adopted under HIPAA, as well as guidance published by the federal Department of Health and Human Services, clearly indicate that **HIPAA has not altered your obligation under state law to provide records related to workers' compensation. Moreover, health professionals are not required to seek or obtain patient consent or authorization before providing such records.**

Specifically, 45 CFR 512 (l) provides that **"A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries without regard to fault."**

Guidance published by the Department of Health and Human Services (HHS) confirms federal intentions with respect to the use of personal health information (PHI) in state workers' compensation systems: "To assure that workers' compensation systems are not disrupted, we have added a new provision to the final rule. The new Sec. 164.512 (l) **permits covered entities to disclose PHI as authorized by and to the extent necessary to comply with workers' compensation** or other similar programs established by the law that provide benefits for work-related injuries or illnesses without regard to fault . . ." [HHS Statement, Federal Register: December 28, 2000 (Volume 65, Number 250, pp 82708-09)]

The state law of Washington, at RCW 51.36.060, establishes mandatory requirements with respect to the provision of records: **". . . all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under (Title 51) shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request . . ."**

### **Protecting Patient Confidentiality**

With this broad authority comes the obligation to protect the confidentiality of the information obtained. The Department takes this obligation very seriously and rigorously protects the confidentiality of millions of records in its possession. RCW 51.28.070 limits access to the information obtained to physicians, workers, employers and public employees performing official duties. **Individuals with specific written releases from the worker, and designees of the employer, with or without written release, are also permitted to review records.**

### **Self Insured Employers' Role**

Self-insured employers are subject to title 51 RCW, and must comply with the Title and the rules of the Department. They are limited in their authority and subject to oversight by the Department. **Because self-insured employers have an obligation to ensure that their workers receive the benefits to which they are entitled, self-insured employers must have unhindered access to information. That access is expressly mandated in RCW 51.36.060.**

### **What Records May Be Deemed Relevant?**

The nature of workers compensation involves much more than simply the conditions contended on a particular claim. The provision of timeloss compensation, vocational services, and payment for permanent partial or permanent total disability may depend on the existence of pre-existing conditions, whether or not these conditions are industrially related. In such cases, **a worker's entire medical record may be relevant and necessary for the adjudication of their workers compensation claim.**

### **Determining Relevance of Medical Records**

The legislature has given the Department of Labor & Industries broad power to obtain and review medical records. RCW 51.36.060 reads in part: "Physicians examining or attending injured workers . . . shall make such reports as may be requested by the department or self insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care . . . relevant to the particular injury IN THE OPINION OF THE DEPARTMENT. (Emphasis added) [Such records] shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information."

Clearly the legislative intent is that the Department determines the relevance of records.

**Failure to provide medical records when requested, and as requested, causes needless delay in the adjudication of injured workers' claims, and can result in unnecessary hardship on the workers and their families.**

### **Disputes over Relevance of Records**

**Determination of relevance is a discretionary responsibility reserved to the Department.**

Should a medical provider feel that records being requested by a self-insured employer, or by that employer's third party administrator (TPA), are not relevant to the claim being adjudicated, the medical provider should contact Labor & Industries Self Insurance Program at (360) 902-6901. The Department adjudicator assigned to the claim in question will make the final determination on relevance, and will advise both the employer and the medical provider of that determination. **All records deemed relevant by the Department must be made immediately available to the self-insured employer or their TPA.**

### **Summary**

HIPAA permits you to provide records in connection with workers' compensation claims and cases. State law mandates that you promptly provide these records when requested by the Department of Labor and Industries, by a self-insured employer, or by that employer's designee.

Pursuant to RCW 51.36.060 cited above, I am again requesting that you provide the records initially requested. Should you have any further questions regarding the interplay of HIPAA with your legal obligation to provide these records under Title 51 RCW, please consult with your legal counsel.