



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 Punchbowl Street, Room 321
Honolulu, Hawaii 96813

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HAWAII WORKERS' COMPENSATION INFORMATION SHEET

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT ("HIPAA") PRIVACY RULES

How it affects Hawaii's workers compensation system.

Concerns have been raised about the impact the Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rules will have on the workers' compensation system here in Hawaii. While it remains to be seen what the impact will in fact be, the rules were adopted with the intent to keep intact the existing processes in workers' compensation matters. The Department therefore expects minimal, if any, changes in the way that workers' compensation cases will be handled.

HIPAA's Privacy Rule and Workers' Compensation

The HIPAA Rule, Section 164.512(l), states the following regarding disclosures for workers' compensation:

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 or illness without regard to fault.

This provision was included in response to an expressed concern "that the privacy regulation should not place additional restrictions" on existing workers' compensation release forms. The United States Department of Health and Human Services stated in the December 28, 2000 Federal Register at page 82596:

We agree. In the final rule, we have added a new provision, Section 164.512(l), that permits covered entities to make disclosures authorized under workers' compensation and similar laws.

In a subsequent discussion, the United States Department of Health and Human Services again emphasized that the Privacy Rules are not intended to disrupt the present workers' compensation system and made the following statement in the August 14, 2002 Federal Register at page 53198:

The Privacy Rule is not intended to disrupt existing workers' compensation systems as established by State law. In particular, the Rule is not intended to impede the flow of health information that is needed by employers, workers' compensation carriers, or State officials in order to process or adjudicate claims and/or coordinate care under the workers' compensation system. To this end, the Privacy Rule at Section 164.512(l) explicitly permits a covered entity to disclose protected health information as authorized by, and to the extent necessary to comply with, workers' compensation or other similar programs established by law that provide benefits for work-related injuries or illnesses without regard to fault. The minimum health information under Section 164.512(l) that is reasonably necessary for workers' compensation purposes and is intended to operate so as to permit information to be shared for such purposes to the full extent permitted by State or other law.

Additionally, where a State or other law requires a disclosure of protected health information for workers' compensation purposes, such disclosure is permitted under Section 164.512(a). A covered entity also is permitted to disclose protected health information to a workers' compensation insurer where the insurer has obtained the individual's authorization pursuant to Section 164.508 for the release of such information. The minimum necessary provisions do not apply to disclosures required by law or made pursuant to authorizations. See Section 164.502(b), as modified herein.

Further, the Department notes that a covered entity is permitted to disclose information to any person or entity as necessary to obtain payment for health care services. The minimum necessary provisions apply to such disclosures but permit the covered entity to disclose the amount and types of information that are necessary to obtain payment.

Privacy Rules Should Not Disrupt Exchange of Medical Information

It is therefore anticipated that the flow of information from the health care provider will continue in the same manner as pre-HIPAA Privacy Rules pursuant to Section 386-96, Hawaii Revised Statutes, and Rule Section 12-15-80 and the HIPAA Privacy Rule permitting disclosure for payment purposes. The Department of Labor and Industrial Relations' Rule, Section 12-15-80, outlines the information required in conjunction with payment requests. At minimum, it is expected that the provider will disclose the report documenting the service provided. In some instances, more than the report of services may be necessary for payment to be made. Those instances must be addressed on a case-by-case basis. As the Department of Health and Human Services acknowledged, "providers may disclose protected health information as necessary to obtain payment."

When additional medical records are desired or sought where the HIPAA Privacy Rules do not permit disclosure and where there is no State law expressly authorizing disclosure, the pre-HIPAA Privacy Rule practice of obtaining an authorization from the injured employee will continue. The authorization will have to comply with Section 164.508 of the Privacy Rules.

Finally, as is currently the practice, protected health information can also be obtained by way of subpoena. The HIPAA Privacy Rule, Section 164.512(e), permits covered entities to

disclose protected health care information pursuant to an administrative subpoena.

The foregoing does not represent legal advice and is provided for information only. Additional information is available at <http://www.hhs.gov/ocr/hipaa/>. Questions about particular situations and your obligations under the HIPAA Privacy Rules should be addressed to your attorney.

FREQUENTLY ASKED QUESTIONS

Release of Medical Information for Medical Workers' Compensation Purposes¹

1. Q: Won't the HIPAA Privacy Rule's minimum necessary standard impede the ability of workers' compensation insurers, State administrative agencies, and employers to obtain the health information needed to pay injured or ill workers the benefits guaranteed them under the State workers' compensation system?

A: No. The Privacy Rule is not intended to impede the flow of health information to those who need it to process or adjudicate claims, or coordinate care, for injured or ill workers under workers' compensation systems. The minimum necessary standard generally requires covered entities to make reasonable efforts to limit uses and disclosures of, as well as requests for, protected health information to the minimum necessary to accomplish the intended purpose. For disclosures of protected health information made for workers' compensation purposes under 45 CFR 164.512(I), the minimum necessary standard permits covered entities to disclose information to the full extent authorized by State or other law. In addition, where protected health information is requested by a State workers' compensation or other public official for such purposes, covered entities are permitted reasonably to rely on the official's representations that the information requested is the minimum necessary for the intended purpose. See 45 CFR 164.514(d)(3)(iii)(A).

For disclosures of protected health information for payment purposes, covered entities may disclose the type and amount of information necessary to receive payment for any health care provided to an injured or ill worker.

The minimum necessary standard does not apply to disclosures that are required by State or other law or made pursuant to the individual's authorization.

2. Q: Does an individual have a right under the HIPAA Privacy Rule to restrict the protected health information his or her health care provider discloses for workers' compensation purposes?

A: Individuals do not have a right under the Privacy Rule at 45 CFR 164.522(a) to request that a covered entity restrict a disclosure of protected health information about them for workers' compensation purposes when that disclosure is required by law or authorized by, and necessary to comply with, a workers' compensation or similar law. See 45 CFR 164.522(a) and 164.512(a) and (I).

¹ Q & As numbers 1-6 were provided by the U.S. Office of Civil Rights on December 3, 2002. Q & As numbers 7-10 addresses issues specifically relating to Hawaii's workers' compensation system.

3. Q: Does the HIPAA Privacy Rule permit a health care provider to disclose an injured or ill worker's protected health information without his or her authorization when requested for purposes of adjudicating the individual's workers' compensation claim?
- A: Covered entities are permitted to disclose protected health information for such purposes as authorized by, and to the extent necessary to comply with, workers' compensation law. See 45 CFR 164.512(l). In addition, the Privacy Rule generally permits covered entities to disclose protected health information in the course of any judicial or administrative proceeding in response to a court order, subpoena, or other lawful process. See 45 CFR 164.512(e).
4. Q: I am a health care provider and my State law says I have to provide a workers' compensation insurer, upon request, with an injured workers' records that relate to treatment or hospitalization for which compensation is being sought. Am I permitted to disclose the information required by my State law?
- A: Yes. The HIPAA Privacy Rule permits a covered entity to disclose protected health information as necessary to comply with State law. No minimum necessary determination is required. See 45 CFR 164.512(a) and 164.502(b).
5. Q: My State law says I may disclose records, relating to the treatment I provided to an injured worker, to a workers' compensation insurer for purposes of determining the amount of or entitlement to payment under the workers' compensation system. Am I allowed to share this information under the HIPAA Privacy Rule?
- A: Yes. A covered entity is permitted to disclose an individual's protected health information as necessary to comply with and to the full extent authorized by workers' compensation law. See 45 CFR 164.512 (l).
6. Q: My State law says I may provide information regarding an injured workers' previous condition, which is not directly related to the claim for compensation, to an employer or insurer if I obtain the workers' written release. Am I permitted to make this disclosure under the HIPAA Privacy Rule?
- A: A covered entity may disclose protected health information where the individual's written authorization has been obtained, consistent with the Privacy Rule's requirements at 45 CFR 164.508. Thus, a covered entity would be permitted to make the above disclosure if the individual signed such an authorization.
7. Q: What is the minimum necessary information a provider of health care services can release to the insurance carrier or employer for payment of bills?
- A: Minimum necessary information would include Physician's Report (WC-2) and related attachments related to medical care, services or supplies provided for the treatment or service of a specific work injury. At minimum, it is expected that the provider will disclose the report documenting the service provided. In some instances, more than the report of services may be necessary. Those instances must be addressed on a case-by-

case basis. As the Department of Health and Human Services acknowledged, “providers may disclose protected health information as necessary to obtain payment.”

8. Q: Section 386-96, HRS, requires that reports of an injury and treatment be on a form prescribed by the director (WC-2 - Physician’s Report). Are health care providers allowed to submit attachments and related documentation?

A: Yes. The Department routinely accepts, as part of the WC-2 form, attachments addressing the information requested on the WC-2 form and Rule Section 12-15-80.

9. Q: When can a covered entity release health information to a carrier or employer regarding the injured worker’s previous or subsequent condition, which is not directly related to a claim for compensation?

A: It is anticipated that where the HIPAA Privacy Rules do not permit disclosure and where there is no State law expressly authorizing disclosure, an authorization from the injured employee will be necessary. Alternatively, records can be disclosed upon receipt of a subpoena. See Section 164.512(e).

10. Q: What can an insurance carrier or employer do if a health care provider or hospital refuses to honor a subpoena requesting health information?

A: Hawaii Revised Statutes Section 371-6 and Hawaii Administrative Rule Section 12-10-66(c) require the party who desires to enforce the director’s subpoena to seek enforcement from a court of competent jurisdiction.