

PRIVACY OF INJURED EMPLOYEE'S MEDICAL INFORMATION

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/workerscompensation.pdf>

Disclosures for Workers' Compensation Purposes: 45 CFR 164.512(l)

The HIPAA Privacy Rule does not apply to entities that are either workers' compensation insurers, workers' compensation administrative agencies, or **employers**, except to the extent they may otherwise be covered entities. However, these entities need access to the health information of individuals who are injured on the job or who have a work-related illness to process or adjudicate claims, or to coordinate care under workers' compensation systems. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by the Privacy Rule. The Privacy Rule recognizes the legitimate need of insurers and other entities involved in the workers' compensation systems to have access to individuals' health information as authorized by State or other law. Due to the significant variability among such laws, the **Privacy Rule permits disclosures of health information for workers' compensation purposes in a number of different ways.**

Disclosures Without Individual Authorization. The Privacy Rule permits covered entities to disclose protected health information to workers' compensation insurers, State administrators, employers, and other persons or entities involved in workers' compensation systems, without the individual's authorization:

- As authorized by and to the extent necessary to comply with laws relating to workers' compensation or similar programs established by law that provide benefits for work-related injuries or illness without regard to fault. This includes programs established by the Black Lung Benefits Act, the **Federal Employees' Compensation Act**, the Longshore and Harbor Workers' Compensation Act, and the Energy Employees' Occupational Illness Compensation Program Act. See 45 CFR 164.512(l).
- To the extent the disclosure is required by State or other law. The disclosure must comply with and be limited to what the law requires. See 45 CFR 164.512(a).
- For purposes of obtaining payment for any health care provided to the injured or ill worker. See 45 CFR 164.502(a)(1)(ii) and the definition of "payment" at 45 CFR 164.501.

Disclosures With Individual Authorization. In addition, covered entities may disclose protected health information to workers' compensation insurers and others involved in workers' compensation systems where the individual has provided his or her authorization for the release of the information to the entity. The authorization must contain the elements and otherwise meet the requirements specified at 45 CFR 164.508.

Minimum Necessary. Covered entities are required reasonably to limit the amount of protected health information disclosed under 45 CFR 164.512(l) to the minimum necessary to accomplish the workers' compensation purpose. Under this requirement, protected health information may be shared for such purposes to the full extent authorized by State or other law. In addition, covered entities are required reasonably to limit the amount of protected health information disclosed for payment purposes to the minimum necessary.

Covered entities are permitted to disclose the amount and types of protected health information that are necessary to obtain payment for health care provided to an injured or ill worker. Where a covered entity routinely makes disclosures for workers' compensation purposes under 45 CFR 164.512(l) or for payment purposes, the covered entity may develop standard protocols as part of

its minimum necessary policies and procedures that address the type and amount of protected health information to be disclosed for such purposes.

Where protected health information is requested by a State workers' compensation or other public official, covered entities are permitted to reasonably 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). Covered entities are not required to make a minimum necessary determination when disclosing protected health information as required by State or other law, or pursuant to the individual's authorization. See 45 CFR 164.502(b). The Department will actively monitor the effects of the Privacy Rule, and in particular, the minimum necessary standard, on the workers' compensation systems and consider proposing modifications, where appropriate, to ensure that the Rule does not have any unintended negative effects that disturb these systems.

<http://www.dol.gov/owcp/dfec/regs/compliance/DFECFolio/q-and-a.pdf>

A-15. Is the employer entitled to know what an employee's worker's compensation file contains?

Yes. While workers' compensation records are protected from release under the Privacy Act, the **employer** is considered a party to the claim. It may receive information in the employee's file under the "routine use" provision of the regulations under which the Privacy Act is administered. Such information includes medical reports. Employers are expected, however, to handle this information with care and to restrict access to those with a specific need to have it.

<http://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/CA-810.pdf>

1-5. Information and Records

Individual case files are protected under the Privacy Act of 1974 (5 U.S.C. 552a) and maintained in a system of records known as DOLGOVT

1. Only the employee, his or her representative (if any), and **authorized agency personnel** may routinely have access to a given file. Any of these parties may inspect the file at the district office which has custody. An appointment should be requested ahead of time. If it is not possible to travel to the district office, a copy of the case file may be provided. Employees and their representatives may have access to records, including medical reports, which OWCP has released to the agency. The records must be safeguarded in the same manner as other personnel material, and the agency must determine whether such information may properly be released in accordance with the regulations contained in 29 CFR parts 70 and 71. Use of the record must be consistent with the purpose for which the record was created; the record was created for the administration of FECA and payment of FECA benefits. As stated in OWCP's FECA regulations, while an employer may establish procedures for an injured employee or beneficiary to obtain documents, any decision issued in response to such a request must comply with OWCP's regulations and no employer may correct or amend records pertaining to OWCP claims.