



# *HIPAA - Overview*

## **HR ALERT**

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### **What is HIPAA?**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted by the U.S. Congress in 1996. HIPAA amended the Employee Retirement Income Security Act to establish national standards meant to ensure privacy in electronic health care transactions. The legislation, which is enforced by the Department of Health and Human Services (HHS), affects health care providers, health plans and private physicians.

### **HHS Releases Privacy Rule Fact Sheet**

April 14, 2003 - The Department of Health and Human Services (HHS) released a privacy rule fact sheet entitled [Protecting the Privacy of Patients' Health Information](#). The fact sheet discusses the key provisions of the new standards and also the steps health plans and providers must take to protect patient privacy.

### **HIPAA and Workers' Compensation – Questions & Answers**

The following questions and answers come from the U.S. Department of Health and Human Services, Office for Civil Rights, "Your Frequently Asked Questions on Privacy."

- 1. Will the Privacy Rule impede the disclosures needed to pay workers' compensation claims? 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 State workers' compensation system?**

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(l), 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. May I make disclosures concerning workers' compensation if it is permitted under State law? 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?**

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).

**3. May I make a disclosure concerning workers' compensation if State law requires it? 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 related to treatment or hospitalization for which compensation is being sought. Am I permitted to disclose the information required by my State law?**

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).

**4. May I disclose the information that is needed to adjudicate a workers' compensation claim? 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?**

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).

**5. Can a person restrict the information that can be disclosed for workers' compensation purposes? 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?**

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 (l).

**6. If my State law permits a disclosure with a workers' written release, would the Privacy Rule require more? 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 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. What types of insurance are NOT covered under HIPAA? Are the following types of insurance covered under HIPAA: long/short term disability; workers' compensation; automobile liability that includes coverage for medical payments?**

No, the listed types of policies are not health plans. The HIPAA Administrative Simplification regulations specifically exclude from the definition of a "health plan" any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits, which are listed in section 2791(c)(1) of the Public Health Service Act, 42 U.S.C. 300gg-91(c)(1). See 45 CFR 160.103. As described in the statute, excepted benefits are one or more (or any combination thereof) of the following policies, plans or programs:

- Coverage only for accident, or disability income insurance, or any combination thereof.
- Coverage issued as a supplement to liability insurance.
- Liability insurance, including general liability insurance and automobile liability insurance.
- Workers' compensation or similar insurance.
- Automobile medical payment insurance.
- Credit-only insurance.
- Coverage for on-site medical clinics
- Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

**Note: Please refer to the original document to ensure accuracy.**

### **HIPAA and the Military**

Certain laws protect employees' rights to continue health coverage under an employment-based group health plan if they are called to active military duty. The Health Insurance Portability and Accountability Act (HIPAA) may give an employee and family rights to enroll in other group health plan coverage if it is available (for example, if your spouse's employer sponsors a group health plan). To qualify, you must request enrollment in the other plan within 30 days of losing eligibility for coverage under your employer's plan.

### **HIPAA Privacy Rule Guidance**

The Department of Health and Human Services (HHS) has published a guidance manual that explains and answers questions about key elements of the requirements of the HIPAA Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule). The Department of Health and Human Services (HHS) published the Privacy Rule on December 28, 2000, and adopted modifications of the Rule on August 14, 2002. The Privacy Rule provides the first comprehensive Federal protection for the privacy of health information. The guidance provides a brief explanation of the segment, followed by "Frequently Asked Questions" about that provision.

### **HIPAA Deadline Looming – April 14, 2003**

Although the HIPAA's Privacy Rule does not directly cover employers, an employer who sponsors a group health plan will probably be affected by the April 14, 2003 deadline. By that deadline, "large plans" (more than \$5 million in annual receipts) will have to comply with the requirements for the HIPAA Privacy Rule. "Small plans" (\$5 million or less in annual receipts) will have an additional year to comply until April 14, 2004. Those employers who sponsor group health plans, as well as those who operate on-site medical clinics and/or EAPs would be prudent to start considering the requirements. Affected employers should conduct assessments of their health plans and also begin to identify "business associates" who receive protected health information ("PHI") from or on behalf of the plan.

### **HHS Announces Patient Privacy Standards**

August 9, 2002 – The U.S. Department of Health and Human Services (HHS) announced that they have issued the first-ever comprehensive federal regulation that gives patients immense protections over the privacy of their medical records. In 1996, as part of HIPAA, Congress recognized the need for national patient privacy standards and set a three-year deadline for it to enact such protections. HIPAA also required that, if Congress did not meet this deadline, the (HHS) was to adopt health information privacy protections through regulation. Since Congress did not set the standards, HHS assumed the role.

HHS Secretary Tommy G. Thompson states, "The rule protects the confidentiality of Americans' medical records without creating new barriers to receiving quality care."

The federal privacy rule empowers patients by:

- Guaranteeing them access to their medical records;

- Giving them more control over how their protected health information is used and disclosed;
- Providing them a method of recourse if their medical privacy is violated;
- Protecting their medical records and personal health information maintained by certain health care providers, health plans, hospitals, etc.

As required by Congress in HIPAA, the Privacy Rule covers:

- Health plans
- Health plan clearinghouses
- Health care providers who conduct certain financial and administrative transactions electronically.

The HIPAA Privacy Rule does NOT cover:

- Automobile medical payment insurance
- Liability insurance
- Coverage issued as a supplement to liability insurance
- Coverage only for accident, or disability income insurance, or any combination thereof
- Credit-only insurance
- Workers' compensation
- Coverage for on-site medical clinics
- Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

Most covered entities will have until April 14, 2003, to comply with the new patient privacy rule.

### **HIPAA Privacy Rule and Workers' Compensation**

The Department of Health and Human Services (HHS) recognizes the fact that workers' compensation agencies and insurers need access to the health information of individuals who are injured on the job or who have work-related illnesses in order to process claims or coordinate care. The Privacy Rule permits disclosures of health information for workers' compensation purposes in a number of different ways.

#### Disclosures Without Individual Authorization

- As authorized by and to the extent necessary to comply with laws relating to workers' compensation or similar programs
- To the extent the disclosure is required by State or other law
- For purposes of obtaining payment for any health care provided

#### Disclosures With Individual Authorization

- Covered entities may disclose protected health information to workers' compensation systems where the individual has provided his or her authorization

#### Minimum Necessary

- Covered entities are required reasonably to limit the amount of protected health information disclosed to the minimum necessary to accomplish the workers' compensation purpose

### **Covered Entity or Not?**

Should an employer be confused as to whether or not they are subject to HIPAA standards, there is help. The Centers for Medicare and Medicaid Services (CMS) have produced detailed flowcharts to help determine whether an entity is a "covered entity" under HIPAA. Copies of these flowcharts are available in .pdf format in the HRALERT section of our website at [www.aethr.com](http://www.aethr.com).

### **Other Relevant Documents Available in the HRALERT section of [WWW.AETHR.COM](http://WWW.AETHR.COM):**

- [HIPAA Covered Entity Flowcharts](#) – September 27, 2002
- [HIPAA Questions and Answers](#) - Brochure (97 pages)
- [HIPAA Press Release](#) – August 9, 2002
- [HIPAA Final Rule](#) – August 14, 2002 (93 pages)
- [HIPAA Privacy Rule Guidance – December 3, 2002 \(123 pages\)](#)

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**Updated/Revised: May 6, 2003**

### **PLEASE NOTE**

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