

Workers' Compensation Information Sheet



HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

How it affects Nevada's workers' compensation insurance coverage.

The Health Insurance Portability and Accountability Act (HIPAA) was signed into federal law in August 1996 - effective April 14, 2003. The law provides many challenges (especially to health care providers) for implementation of health information privacy rights. We recognize health care providers are subject to the provisions of the HIPAA Privacy Rule. Applying these rules can be confusing when complying with federal law regarding patient's health information and complying with Nevada requirements for release of information regarding workers' compensation. The information presented here should clarify that treating and coordinating information regarding Nevada's injured employees can still be done while complying with HIPAA provisions.

HIPAA's Privacy Rule and workers' compensation:

The Privacy Rule contains important exceptions for health care providers when treating patients under certain programs—including workers' compensation. There has been much discussion over what effects there are on the individual State's workers' compensation systems due to the new privacy requirements. Health and Human Services (HHS) has commented several times on their intent not to impede with the timely application of State workers' compensation laws. Nevertheless, some believe there will be an initial detrimental effect on release of workers' compensation information by health care providers due to an attempt to err on the side of caution in this area. The bottom line is, there should be no major effect on release and timeliness in provision of workers' compensation related health care information, concerning an injured employee.

As (HHS) states in clarification to questions regarding workers' compensation:

“To assure that workers' compensations 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 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. We also note that where a state or other law requires a use or disclosure of protected health information under a workers' compensation or similar scheme, the disclosure would be permitted under Sec. 164.512(a). (Federal Register: December 28, 2000 (Volume 65, Number 250, pp 82708-09))”

45 CFR Sec. 164.512 states regarding workers' compensation:

“Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.....

....(a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.....

....(l) Standard: 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.”

Injured employee authorizations are not required for health care providers to release treatment information related to the injury.

As seen previously, the HIPAA Privacy Rule exempts workers' compensation from the authorization requirement. In addition, when an injured employee files a Nevada workers' compensation Form C-4, Employee's Claim for Compensation/Report of Initial Treatment, the injured employee is agreeing to the release of appropriate information concerning the injury (medical or other) or disease, to any doctor or chiropractor, hospital, medical service organization, insurance company, or other institution or organization. The exceptions noted are diagnosis, treatment or counseling concerning Aids, psychological conditions, alcohol or controlled substances.

Nevada State Law requires the submittal of health information to insurers of workers' compensation when required or requested.

HIPAA does not overrule any State law requiring the disclosure of health care information for workers' compensation. A health care provider is required to provide this information to private insurance carriers, self-insured employers, associations of self-insured employers, third party administrators and the Division of Industrial Relations (DIR) when required or requested. Nevada State law covering this requirement can be found in various locations throughout NRS 616C and 617. Although not all inclusive, specific examples of those references are in:

NRS 616C.020 Claim for compensation: Requirements for injured employee, his dependent or his representative to file claim; form.

NRS 616C.040 Claim for compensation: Duty of treating physician or chiropractor to file; electronic filing; form and contents; duty to maintain supply of forms; penalty.

NRS 616C.130 Insurer's payment to physician or chiropractor attending injured employee conditioned upon receipt of itemized statement and certificate.

NRS 616C.136 Action by insurer on bill from provider of health care; payment of interest; request for additional information; compliance with requirements.

NRS 616C.140 Medical examination of claimant; effect of refusal to submit to examination; communications not privileged.

NRS 616C.177 Medical records concerning preexisting condition: Authority of insurer to request records; injured employee required to release records under certain circumstances.

NRS 616C.490 Permanent partial disability: Compensation.

NRS 616C.555 Plan for program of vocational rehabilitation.

NRS 617.352 Claim for compensation: Duty of treating physician or chiropractor to file; electronic filing; form and contents; duty to maintain supply of forms; penalty.

NRS 617.357 Claims regarding diseases of heart or lungs, infectious diseases or cancer: Reports by insurers to administrator; public reports by administrator.

HIPAA's "minimum necessary" standard does not apply to Nevada workers' compensation.

HIPAA's "minimum necessary" standard does not apply to any information you are required to provide by law (45 CFR 164.502(b)(2)(v)). What this means to health care providers is they must send unedited medical reports as requested to the workers' compensation insurer or the DIR. **These requests may not appear to be related to the injury.** However, the injured employee may contend a new condition is related to or made worse by the industrial injury. The insurer is responsible for determining whether a relationship exists between either previous or subsequent conditions and the current injury.

HIPAA allows release of health information to an employer.

Release of information to an employer is authorized by HIPAA without the injured employee's consent if the information disclosed deals with a work-related injury or illness, workplace-related medical surveillance, or a return-to work examination (45 CFR 164.512(b)(v)(A)(B)). Employers are required to maintain these medical records to satisfy their obligations for workplace safety under OSHA.

Health care providers' Privacy Notices should address disclosure to insurers, and the DIR.

HIPAA requires health care providers to develop a privacy notice for their patients (CFR 45 164.520). This notice must advise their patients of their legal duties under HIPAA. As well as how they may use and disclose health care information. Nevada health care providers may want to consider addressing the following areas in their Privacy Notices:

That release of health care information for workers' compensation purposes is an exception to the HIPAA guidance and that the health care provider can release that information as required by State Law. You may want to include those instances where release of information to an insurer, employer, or the DIR is appropriate under Nevada State Law and when injured employees may not object to these disclosures.

Summary:

From the above discussion, it is clear the HHS did not and does not intend HIPAA to impede the prompt and efficient provision of workers' compensation insurance coverage. On the contrary, if, when effective, the HIPAA guidance causes "unintended negative effects" on workers' compensation, HHS will modify the guidance to clarify disclosure for workers' compensation purposes.

A useful web site for further research on HIPAA is:

<http://www.hhs.gov/ocr/hipaa/>

The HHS Office of Civil Rights is the agency that is responsible for enforcement of the HIPAA Privacy Rule. This site provides numerous links for reference, answers to questions regarding the Privacy Rule, news releases, and provisions for asking questions about HIPAA. It also has links to the entire HIPAA text (Standards for Privacy of Individually Identifiable Health Information, 45 CFR 160 and 164) in pdf. format.

The following excerpt should further summarize the issues around HIPAA and workers' compensation laws and whether State workers' compensation systems are truly exceptions to the Privacy Rule. In response to these issues, the Privacy Rule was amended (Aug. 2002) to include a more explicit safe harbor for workers' compensation. HHS stated in the Federal Register: August 14, 2002 (Volume 67, Number 157):

"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 Sec. 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 necessary standard permits covered entities to disclose any protected health information under Sec. 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 Sec. 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 Sec. 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 Sec. 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.

The Department also notes that because the disclosures described above are permitted by the Privacy Rule, there is no potential for conflict with State workers' compensation laws, and, thus, no possibility of preemption of such laws by the Privacy Rule.

The Department's review of certain States workers' compensation laws demonstrates that many of these laws address the issue of the scope of information that is available to carriers and employers. The Privacy Rule's minimum necessary standard will not create an obstacle to the type and amount of information that currently is provided to employers, workers' compensation carriers, and State administrative agencies under these State laws. In many cases, the minimum necessary standard will not apply to disclosures made pursuant to such laws. In other cases, the minimum necessary standard applies, but permits disclosures to the full extent authorized by the workers' compensation laws. For example, Texas workers' compensation law requires a health care provider, upon the request of the injured employee or insurance carrier, to furnish records relating to the treatment or hospitalization for which compensation is being sought. Since such disclosure is required by law, it also is permissible under the Privacy Rule at Sec. 164.512(a) and exempt from the minimum necessary standard. The Texas law further provides that a health care provider is permitted to disclose to the insurance carrier records relating to the diagnosis or treatment of the injured employee without the authorization of the injured employee to determine the amount of payment or the entitlement to payment. Since the disclosure only is permitted and not required by Texas law, the provisions at Sec. 164.512(l) would govern to permit such disclosure. In this case, the minimum necessary standard would apply to the disclosure but would allow for information to be disclosed as authorized by the statute, that is, as necessary to "determine the amount of payment or the entitlement to payment."

As another example, under Louisiana workers' compensation law, a health care provider who has treated an employee related to a workers' compensation claim is required to release any requested medical information and records relative to the employee's injury to the employer or the workers' compensation insurer. Again, since such disclosure is required by law, it is permissible under the Privacy Rule at Sec. 164.512(a) and exempt from the minimum necessary standard. The Louisiana law further provides that any information relative to any other treatment or condition shall be available to the employer or workers' compensation insurer through a written release by the claimant. Such disclosure also would be permissible and exempt from the minimum necessary standard under the Privacy Rule if the individual's written authorization is obtained consistent with the requirements of Sec. 164.508.

The Department understands concerns about the potential chilling effect of the Privacy Rule on the workers' compensation system. Therefore, as the Privacy Rule is implemented, the Department will actively monitor the effects of the Rule on this industry to assure that the Privacy Rule does not have any unintended negative effects that disturb the existing workers' compensation systems. If the Department finds that, despite the above clarification of intent, the Privacy Rule is being misused and misapplied to interfere with the smooth operation of the workers' compensation systems, it will consider proposing modifications to the Rule to clarify the application of the minimum necessary standard to disclosures for workers' compensation purposes."