



Release of Medical Records and Patient Privacy In Workers' Compensation

Many providers and records administrators have concerns that HIPAA prevents full compliance with Washington State's workers' compensation laws. You can easily comply with both.

The Health Information Portability and Accountability Act of 1996 (HIPAA) and Washington State Law (Title 51 RCW)

HIPAA says you must protect your patients' personal health information (PHI). Washington State law says you must release medical information needed to manage a work related injury or accident claim.

You can comply with both because the HIPAA Privacy Rule allows you to release records to insurers and others involved in workers' compensation in order to comply with State law:

"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." (45 CFR 164.512 (I))

Washington State Law describes what information you must release and when you must release it:

". . . 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 this title 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." (RCW 51.36.060)

What Records Are Relevant?

Workers' compensation involves more than just the conditions covered on a claim. Timeloss compensation, vocational services, and payment for permanent partial or permanent total impairment benefits may depend on the presence of pre-existing conditions and whether or not these conditions are related to the covered injury. Medically sensitive information (HIV status, mental health conditions, etc.) may also be necessary for the claim to be appropriately managed or litigated.

The entire medical record may be relevant and necessary to manage a workers' compensation claim. Because workers sign a medical release on the report of accident, an additional authorization is not required to release information to L&I, the self-insurer, the self-insurer's claim representative, or any of these parties' legal counsel.

Determining Relevance of Medical Records

Washington State law says that L&I decides the relevance of records to a claim. (RCW 51.36.060)

If you feel the requested records are not relevant to the claim, contact the requestor. If you cannot reach an agreement, the L&I claims manager or adjudicator assigned to the claim in question will make the final decision on relevance. The claims manager or adjudicator will tell you of the decision. **You must immediately provide to the department, self-insurer or their representative all records deemed relevant by L&I. You will not incur any legal liability for releasing records L&I has deemed relevant.**

L&I Protects Patient Confidentiality

L&I and self-insurers who receive your patients' information must also protect the confidentiality of the information received. L&I takes this obligation seriously and carefully protects the confidentiality of millions of records in its possession. The public cannot view or inspect worker records. To view a worker's records, an individual must have a specific written release from the worker, be a public employee performing official duties, or be a designee of the employer, with or without written release (RCW 51.28.070).

Billing for Copies of Requested Medical Records

Providers may bill for copies of requested medical records using HCPCS code S9982 and will receive payment at the per page rate set in the Medical Aid Rules and Fee Schedules. Payment for S9982 includes copying costs and postage. S9982 is not payable for copies of medical records required to support billing or to commercial copy centers or printers who reproduce records for providers. Only providers who have provided health care or vocational services to the worker may bill S9982.

The insurer will pay for requested copies regardless of whether the provider is currently treating the worker or has treated the worker at some time in the past, including prior to the injury. The department is prohibited from prepayment for any services.

Summary

HIPAA permits you to provide records for workers' compensation claims and cases when state law requires it. Washington State law says you must promptly provide these records when requested by the Department of Labor and Industries, by a self-insured employer, or by claims or legal representatives of either.

When a provider fails to provide medical records when requested, it causes needless delay in the management of injured workers' claims, and can result in unnecessary hardship on the workers and their families.

If you have additional questions regarding the how HIPAA affects your legal obligation to provide records under Washington State law, please contact your legal counsel.

Resources:

1. HIPAA Privacy Rule [45 CFR 164.512]
2. OCR HIPAA Privacy, Revised April 3, 2003, Disclosures for Workers' Compensation Purposes [45 CFR 164.512(l)]
3. OCR HIPAA Privacy, Revised April 4, 2003, Minimum Necessary [45 CFR 164.502(b), 164.514(d)]
4. Federal Register, December 28, 2000, Volume 65, Number 250, pp 82708, Section 164.512(l) – Disclosures for Workers' Compensation
5. Industrial Insurance Laws of the State of Washington (Title 51) administered by the Department of Labor and Industries