

## **Release of Medical Information**

In an effort to remain compliant with the Health Insurance Portability and Accountability Act (HIPAA), Health Care Providers (HCPs) continue to express concerns and have questions about releasing protected health information (1) when submitting bills and requests for medical dispute resolution, and (2) in connection with the DWC-73 Work Status Report to the employer. The following information may be helpful to HCPs and other system participants with similar questions. HIPAA permits health care providers who treat injured workers and are “covered entities” to disclose protected health information (PHI) to workers’ compensation insurers, State administrators, employers or other persons or entities involved in the workers’ compensation system without the individual’s authorization:

- As authorized 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. 45 C.F.R. §164.512(l).
- To the extent state or other law requires disclosure. The disclosure must comply with and be limited to what the law requires. 45 C.F.R. §164.512(a).
- For purposes of obtaining payment for any health care provided to an injured or ill worker. 45 C.F.R. §164.502(a)(1)(ii).

### **Billing.**

In addition to 45 C.F.R §164.502(a)(1)(ii), Texas state law specifically authorizes a HCP to release PHI for the purposes of billing. Section 408.025 (d) of the Texas Workers’ Compensation Act states, “A health care provider may disclose to the insurance carrier of an affected employer records relating to the diagnosis or treatment of the injured worker without the authorization of the injured worker to determine the amount of payment or the entitlement to payment.” DWC encourages HCPs to provide the necessary PHI information with their bills to prevent incorrect coding and billing, improper reimbursement, and unnecessary disputes.

### **Medical Dispute Resolution.**

HCPs are permitted to disclose PHI for the purpose of medical dispute resolution because such disclosure is required by DWC rule. Pursuant to Texas Labor Code §408.025, system participants are required to disclose to the Commission an injured worker’s PHI that is necessary to process or adjudicate claims, or to coordinate care under the workers’ compensation system.

### **DWC-73 Work Status Report.**

A work status report is required at certain times pursuant to Rules 126.6(f), 129.5 and 130.110. The DWC-73 provides limited, but generally sufficient, medical information

from the doctor to the employer in a manner that will assist doctors and employers in complying with the various laws concerning release of information, while protecting the injured worker's medical privacy. The DWC-73 is designed to provide work status and activity restrictions (Parts II and III), prescription medication information (block 20), high-level diagnosis information (block 21), and expected future medical care information (block 22) in a manner that is suitable with both HIPPA and OSHA requirements.

### **Work Assignments.**

An employer is responsible for making appropriate employment decisions and work assignments for their employees and for paying their employees correctly. The employer is entitled to work restrictions that impact the ability to perform certain duties safely and time and attendance information that may affect the injured workers' pay. Examples of this information include lifting restrictions, prescription medication that would impair the ability of the worker to operate machinery, and time away from work for medical appointments. OSHA Compliance. Pursuant to 45 C.F.R §164.512(b)(v), HIPAA permits a HCP to disclose an injured worker's PHI to his or her employer so the employer can comply with it's obligations under OSHA if the HCP provides the injured worker with written notice of the disclosure. The employer needs limited medical information that will allow the employer to comply with federal (OSHA) and state requirements concerning reporting work-related injuries. According to 29 C.F.R. §1904, employers are required to record work-related injuries or illnesses on the OSHA form 301, Injury and Illness Report, that result in one or more of the following: death, days absent from work, restricted work duties or transfer to another job, medical treatment beyond first aid, loss of consciousness, or diagnosis of a significant injury/illness by a physician or other licensed health care professional. For example, the employer does not need to know what medication was prescribed, but "yes" a prescription was written as the result of the work-related injury or illness as indicated in block 20 of the DWC-73.

### **DWC Privacy Provisions.**

The Texas Workers' Compensation Act requires the Division to maintain the confidentiality of an injured worker's claim file, including information that could be used to identify an injured worker, with certain exceptions. See Texas Labor Code §§402.083-402.085, 402.092, and 411.034. DWC is committed to protecting each injured worker's medical privacy.

For more information concerning HIPAA and the disclosure of workers' compensation information, please see Advisory 2003-05, Clarification on the HIPAA Privacy Rule and Disclosures to the DWC, effective May 6, 2003.