

HIPAA and Texas Workers' Compensation



Main Idea

System participants who make **protected health information (PHI)** disclosures to the Texas Workers' Compensation Commission are exempt from the HIPAA Privacy Rules with regard to those disclosures required by the Texas Workers' Compensation Act and Commission rules.

Although workers' compensation PHI disclosures are exempt from the Privacy Rule, we hope this handout will clarify when authorization is required after the Privacy Rule takes effect.

Under the **Health Insurance Portability and Accountability Act (HIPAA)**, covered entities (including health plans, health care clearinghouses, and most health care providers) are required to comply with three primary sets of rules— privacy, transactions and code sets (sometimes called electronic data interchange or EDI), and security.

The Privacy Rule permits covered entities to disclose PHI to workers' compensation insurers, state administrators, employers or other persons or entities involved in the workers' compensation system without the individual's authorization:



Deadlines

On **April 14, 2003**, new federal privacy regulations enacted under HIPAA become effective. Two days later, on **April 16**, covered entities must begin testing electronic transactions.

By **October 16, 2003**, all covered entities, including health plans, clearinghouses, and most providers, must be fully compliant with electronic transactions and code sets.

- 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 Code of Federal Regulations (C.F.R.) §164.512(l).
- To the extent that disclosure is required by state or other law. The disclosure must comply with and be limited to what the law requires. 45 C.F.R. §164.512(a).
- For the purpose of obtaining payment for any health care provided to an injured or ill employee. 45 C.F.R. §164.502(a)(1)(ii).

This document includes responses to some frequently asked questions about disclosures required by the Texas Workers' Compensation Act, Commission rules, and the new HIPAA privacy regulations.

Your Frequently Asked Questions



Q1: As a prospective employer, we sometimes request prior injury information from the Commission on an applicant. Are we required to obtain an authorization from the applicant as we have in the past?

A1: Yes. Authorization is required by the Texas Workers' Compensation Act.

Texas Labor Code §402.087(a) permits a prospective employer who has workers' compensation insurance coverage and completes a TWCC-156, "Prospective Employment Authorization and Certification" to obtain information on any prior injuries of an applicant for employment. This is only if the employer obtains written authorization from the applicant before making the request. Nothing in the HIPAA Privacy Rule changes this requirement.



Q2: Under the new HIPAA regulations, can a doctor's office send supporting documentation (medical records) with our bills to the insurance carrier without a special authorization from the injured employee/patient?

A2: Yes. Continue to follow Commission Rule 133.1(a)(i-iv) regarding submission of medical bills.

The HIPAA Privacy Rule permits covered entities to disclose PHI to workers' compensation insurers, state administrators, employers or other persons or entities involved in the workers' compensation system without the injured employee's authorization "[a]s 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).



Q3: A treating doctor is required to send records to the designated doctor within 10 days of a written request. Do treating doctors still follow this procedure or will we need a special authorization under the HIPAA regulations?

A3: A special authorization under HIPAA is not required. See 45 C.F.R. 164.512(l). Texas Labor Code §408.0041(c) states the treating doctor and the insurance carrier are both responsible for sending to the designated doctor all of the injured employee's medical records relating to the issue to be evaluated. It also states that the treating doctor and the carrier may send the records without a signed release from the employee.



Q4: When the injured employee requests a change in treating doctors, they complete a TWCC-53. Does the TWCC-53, when signed by the injured employee and approved by the Commission, authorize the release of pertinent medical records from the former treating doctor to the new treating doctor?

A4: Yes, the TWCC-53 when signed by the injured employee, provides a release for the exchange of records from the old treating doctor to the new approved treating doctor.



Q5: I am a radiologist and have patients (injured employees) referred to me by treating doctors. Can I forward narrative medical reports to the carrier and the injured employee within 10 days after the exam without an authorization?

A5: Yes. Continue to forward narrative medical reports to the carrier and the injured employee in compliance with Commission Rule 133.104.


The HIPAA Privacy Rule permits health care providers to disclose PHI to workers' compensation insurers without authorization from the patient "as authorized and to the extent necessary to comply with laws relating to workers' compensation." 45 C.F.R. §164.512(l).




Q6: I am a physical therapist who sends medical records (SOAP notes) to the carrier and treating doctor every 30 days. Under the HIPAA regulations, can I still do this without an authorization?

A6: Yes. Pursuant to Rule 133.105(a), the physical or occupational therapist shall submit to the carrier and the injured employee, or the injured employee's representative, a copy of a clinical summary report at intervals of every 30 days.


Again, the HIPAA Privacy Rule permits health care providers to disclose PHI to workers' compensation insurers without written authorization from the patient "as authorized and to the extent necessary to comply with laws relating to workers' compensation." 45 C.F.R. §164.512(l).

 **Q7:** Does the injured employee have the right to restrict the protected health information disclosed for workers' compensation purposes?


A7: No. Individuals do not have the right to restrict the disclosure of protected health information when disclosure is required by the Texas Workers' Compensation Act or Commission Rules. 45 CFR §§164.522(a) and 164.512(l).

 **Q8:** Does HIPAA change the way the TWCC-73 or the TWCC-69 is completed and distributed?

A8: No. Follow the same instructions for either form as published on our website, <http://www.twcc.state.tx.us> under "Laws, Rules and Forms."

 **Q9:** Will our doctor's office be required to bill workers' compensation carriers electronically using the HIPAA electronic standards format (837) by October of this year?

A9: No. Workers' compensation carriers are not "covered entities" subject to the HIPAA electronic transfer regulations. In the near future, however, the Commission hopes to promote the HIPAA electronic standards to be consistent with the rest of the health care industry.

 **Q10:** If I have further questions, should I call the Commission?

A10: System participants may contact the Commission at (512) 804-4800 for assistance. However, the Commission does not provide legal advice regarding HIPAA compliance. If you have questions about compliance with HIPAA, the Commission encourages you to consult independent legal counsel.