

## **HIPAA PRIVACY REGULATIONS AND WORKERS' COMPENSATION**

The Health Insurance Portability and Accountability Act's (HIPAA's) privacy regulations went into effect April 14, 2003. These regulations limit the situations in which medical providers may release patient information, unless the information is necessary for the purpose of treatment, payment or health care operations.

The relevant HIPAA regulation is § 164.512 – *Uses and disclosures for which an authorization or opportunity to agree or object is not required*:

Standard: disclosure 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.

The Secretary of Health & Human Services has explained these rules more fully in the Preamble to the final privacy regulations (preamble: <http://www.hhs.gov/ocr/part2.html>.) A portion of which follows:

### Section 164.512(l)--Disclosures For Workers' Compensation

In the final rule, we include a new provision in this section that clarifies the ability of covered entities to disclose protected health information without authorization to comply with workers' compensation and similar programs established by law that provide benefits for work-related illnesses or injuries without regard to fault. Although most disclosures for workers' compensation would be permissible under other provisions of this rule, particularly the provisions that permit disclosures for payment and as required by law, we are aware of the significant variability among workers' compensation and similar laws, and include this provision to ensure that existing workers' compensation systems are not disrupted by this rule. We note that the minimum necessary standard applies to disclosures under this paragraph.

Under this provision, a covered entity may disclose protected health information regarding an individual to a party responsible for payment of workers' compensation benefits to the individual, and to an agency responsible for administering and /or adjudicating the individual's claim for workers' compensation benefits. For purposes of this paragraph, workers' compensation benefits include benefits under programs such as the Black Lung Benefits Act, the federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act, and the Energy Employees' Occupational Illness Compensation Program Act.

Since HIPAA defers to state law regarding disclosures relating to workers' compensation, it is important for claimants and medical providers to know what Virginia law requires for disclosure of patient information. For health care providers who render services to injured workers, Virginia Code Section 65.2-604 outlines requirements for furnishing reports for Virginia workers' compensation cases.

§ 65.2-604. Furnishing copy of medical report.

A. Any health care provider attending an injured employee shall, upon request of the injured employee, employer, insurer, or a certified rehabilitation provider

as provided in Article 2 (§ [54.1-3510](#) et seq.) of Chapter 35 of Title 54.1 providing services to the injured employee, or of any representative thereof, furnish a copy of any medical report to the injured employee, employer, insurer, or a certified rehabilitation provider as provided in Article 2 (§ [54.1-3510](#) et seq.) of Chapter 35 of Title 54.1 providing services to the injured employee, or to any representative thereof, or to each of them upon request for such medical report.

B. Whenever any health care provider attending an injured employee refers the employee or transfers responsibility for his care to another health care provider, the referring or transferring provider, upon receipt of a request therefor, shall promptly transfer or cause to be transferred to the new or succeeding provider, or to the employee or someone acting on behalf of the employee, copies of all diagnostic test results, x-ray photographs, and other medical records pertaining to the employee's injury for which further treatment is to be sought from the succeeding provider.

In the event of such referral or transfer, the succeeding provider, if given any such diagnostic test results, x-ray photographs and other medical records pertaining to the employee's injury which were performed or recorded within the preceding 60 days by a referring or transferring provider, shall not repeat any such diagnostic tests or procedures previously conducted without making a good faith attempt to use them unless there is a medical necessity to do so as certified by a qualified physician on behalf of the succeeding provider. If the succeeding health care provider violates the requirements of this paragraph, such succeeding provider shall not be entitled to compensation or reimbursement from the injured employee's employer or the employer's insurer for any repeated test or procedure not so certified to be medically necessary, nor may the succeeding provider require the employee to bear any cost associated with the repeated test or procedure which would have been the responsibility of the employer or his insurer but for the provisions of this subsection.

C. As used in this section, the term "health care provider" shall have the same meaning as set forth in § [8.01-581.1](#), except that state-operated facilities shall also be considered health care providers for the purposes of this section.

The Virginia Workers' Compensation Commission has interpreted this provision in several decisions. The Commission has held that the parties in a workers' compensation proceeding have the right to subpoena and review ALL medical documents which are, or may be, related to the claimant's condition, under the Virginia Workers' Compensation Act and the exception found in [Code § 32.1-127.1:03\(C\)](#). Additionally, [Code § 65.2-607\(A\)](#) provides a waiver of the physician/patient privilege in workers compensation cases. A more complete discussion of these issues can be found in the Commission's decision [Randall v. SHS International, Inc.](#), VWC File No. 214-26-37 (March 29, 2004). See also [Scarafino v. CVS Drugs](#), VWC File No. 206-30-17 (July 8, 2004)

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