



HIPAA rules allow medical providers to comply with relevant records requests from self-insured employers, to learn more visit: <https://lni.wa.gov/claims/for-medical-providers/hipaa-and-lni>

Release of Medical Records and Patient Privacy in Workers' Compensation

Many providers and records administrators are concerned that releasing medical records as required by Washington's workers' compensation law violates their obligations under HIPAA, but this is incorrect. You can comply with both laws.

Washington State workers' compensation law requires you to promptly provide records relevant to workers' compensation claims when requested under RCW 51.36.060:

[A]ll 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.

The HIPAA Privacy Rule allows you to comply with RCW 51.36.060. Specifically, this HIPAA rule allows you to release protected health information as required by workers' compensation laws:

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. 45 CFR 164.512(l).

HIPAA also exempts you from the "minimum necessary" requirement in order to comply with the workers' compensation disclosure law. 45 CFR 164.502(b) (minimum necessary requirement), 45 CFR §164.502(b)(2)(v) (rule that minimum necessary requirement does not apply to uses or disclosures that are required by law). That means that when L&I or a self-insurer requests medical records under RCW 51.36.060, then you must provide all protected health information in your possession or control that is relevant to the workers' compensation claim.

Resolving disagreements on relevancy of records to release

When making records requests under RCW 51.36.060, requesters should have a reasonable scope to their request that is related to your patient's workers' compensation claim. For example, a request for a patient's entire medical record in your possession may be overly broad.

However, you may receive requests for personal health information that appears unrelated to your patient's claim, but is actually relevant. For example, a self-insurer may cover treatment for a condition that is unrelated to your patient's workplace injury if the condition is retarding the

patient's recovery. Your patient's medical history before the workplace injury may also be relevant if the patient contends that a new condition is related to, or has been aggravated by, the workplace injury.

L&I can intervene to resolve disputes about what records are "relevant" to the workplace injury. RCW 51.32.190, RCW 51.36.060. However, if you and the requester disagree about what records are "relevant," first try to resolve the dispute with the requester. If you cannot agree, you can then contact the assigned L&I claims manager to make a decision.

A worker's authorization is not required for you to release records

You do not need to get the worker's authorization to release records to L&I or a self-insurer because HIPAA exempts workers' compensation programs from the Privacy Rule authorization requirement. 45 CFR § 164.512(l). HIPAA also allows you to disclose a patient's personal health information to an employer regarding work-related illnesses or injuries without the patient's written authorization. 45 CFR § 164.512(b)(v)(B).

L&I protects the confidentiality of medical records in its possession

L&I and self-insurers must keep information in workers' claim files and records confidential. Members of the public cannot view or inspect worker records, with limited exceptions. For information on who may view a worker's records and under what circumstances, see RCW 51.28.070.

Billing for copies of requested medical records

Providers who have provided health care or vocational services 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 includes copying costs and postage. Providers may use HCPCS code S9981 for copies of requested records sent by CD/DVD. S9981 and S9982 are not payable for copies of records to support billing or to commercial copy centers or printers.

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

More Resources:

1. HIPAA Privacy Rule Exceptions and L&I, Department of Labor & Industries, <https://www.lni.wa.gov/ClaimsIns/Providers/Claims/HIPAA/default.asp>
2. Disclosures for Workers' Compensation Purposes, Federal Register, December 28, 2000, Volume 65, Number 250, page 82708, Section 164.512(1), available at https://aspe.hhs.gov/system/files/pdf/132961/PvcFR05_1.pdf.
3. Industrial Insurance Laws of the State of Washington, Title 51 RCW.