

HIPAA Privacy Regulation and the Workers' Compensation System

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) adopted by Congress in 1996 was enacted to improve health insurance coverage in the U.S. Among other things, it allows for employees to move from one employer to another without losing coverage for preexisting conditions.

The workers' compensation system is an "excepted benefit" under the HIPAA privacy regulation. This means that workers' compensation carriers, such as the Montana State Fund (MSF), are exempt from all of the HIPAA privacy requirements. A covered entity may disclose a patient's health care information to MSF, without violating the HIPAA privacy rules. Thus, the HIPAA regulations will not impact or disrupt the way workers' compensation claims are administered or paid.

Health care providers and other covered entities are usually bound by a requirement under the HIPAA privacy regulation to limit disclosure of health information to the "minimum necessary." The "minimum necessary" standard does not, however, apply to health care providers or other covered entities when they disclose health information to a workers' compensation carrier under the following circumstances:

1. The disclosure of health information to the workers' compensation carrier is required by state law; or
2. The disclosure to a workers' compensation carrier is made pursuant to an authorization from the claimant/worker.

In the state of Montana, both conditions exist to exempt disclosures by health care providers from the "minimum necessary" standard. First, Montana law (MCA § 50-16-527(4)) requires the disclosure of certain types of health information for a workers' compensation claim. Under this law, health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery.

Second, Montana law requires that the worker authorize the disclosure of health information (MCA § 50-16-526). This requirement authorizes a physician or other health care provider to disclose or release information relevant to the claimant's condition to a workers' compensation insurance carrier.

Thus, HIPAA does not apply to the workers' compensation system. Moreover, the "minimum necessary" standard does not apply to health care providers or other covered entities when disclosing health information to an insurance carrier in compliance with Montana's workers' compensation laws. Under the Montana law described above, an injured employee's signed claim for benefits is deemed a written authorization to health care providers to provide relevant health care information to workers' compensation insurance carriers.