

Receiving and Protecting Employee Health Data

Counties are subject to state medical privacy laws that are even more stringent than HIPAA's and must follow the authorization requirements of those laws. The healthcare plan sponsors are covered by HIPAA's privacy rules. As a result, they are permitted to release personal medical information only under limited circumstances and generally only when the individual involved gives permission. CHP follows these requirements in releasing medical information to third parties. Counties should ensure that authorization forms are available and used whenever a benefit issue requires them, such as workers' compensation, ADA accommodations, FMLA reviews, or requests for modified duty, whether or not in conjunction with workers' compensation claims.

The privacy rules require a valid authorization written in plain language that contains the following:

1. A description of the specific protected health information to be used or disclosed;
2. The identity of any person or class of persons who will use, disclose or receive the protected health information;
3. A description of each purpose of the use or disclosure;
4. An outline of the individual's right to revoke authorization in writing and an explanation of how that is done;
5. A statement that the disclosed protected health information may be subject to re-disclosure by the person receiving the information and that privacy protection, therefore, may be lost;
6. The individual's signature (or a personal

representative's and a statement of that representative's authority to act for the individual) signature and date;

7. A statement that treatment, payment enrollment or eligibility for benefits may not be conditioned on obtaining the authorization to the extent the privacy rules prohibit the imposition of the condition (45 CFR §164.502).

The authorization permits the use and disclosure of protected health information both by the covered entity requesting the authorization and a third party. The terms must be specific for use other than for treatment, payment or health care operations.

What This Means For Counties

If an employee has his or her health care provider complete the FMLA medical certification form and personally gives that to the employee, the HIPAA privacy rules do not interfere with the disclosure of the protected medical information. The rule is only implicated if the employee has the healthcare provider send the form directly to the employer. The most efficient way to obtain the necessary information to determine whether an employee is entitled to FMLA leave is for the employee to provide it directly to the employer by turning in a completed medical certification form. An employee can always provide his or her own protected health information to anyone he or she chooses.

For more information, contact CTSI at 303-861-0507.