

Authorizations usually required to release employee health information to employers

Under the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA), an employer must obtain a signed authorization from an employee to use protected health information about that employee for purposes other than treatment, payment or health plan operations.

The U.S. Department of Health and Human Services states that an authorization must specify a number of elements, including a description of the protected health information to be used and disclosed, the person authorized to make the use or disclosure, the person to whom the covered entity may make the disclosure, an expiration date, and in some cases, the purpose for which the information may be disclosed or used.

Employers, however, do not need to get an authorization form signed for every situation involving health related information. For example, employers do not need to get an authorization if they request the information directly from the employee instead of from the health care provider or the health plan. Furthermore, most actions involving workers compensation claims do not require authorizations.

Authorizations are required when it is impractical or impossible to obtain information directly from the employee. For example, a human resources representative should get an authorization from an employee so that he or she can contact the health plan to help resolve a claim for the employee. An authorization is also necessary to get the results from a medical examination after the employer has sent an employee to

a medical provider for a second opinion, as permitted under the Family and Medical Leave Act (FMLA).

An employer also does not need an authorization when the information is considered an employment record rather than a health care record, and is therefore not covered under HIPAA. However, the employer's policies manual must clearly define what health information is required for specific employment records.

For example, an employer may request a note from the employee's health care provider to verify an absence, as specified in the employer's absence policies. Furthermore, when an employee requests leave under the FMLA, the employer may require the employee to complete a Certification of Health Care Provider, which is considered an employment record. Similarly, when an employee requests an accommodation for a disability under the Americans with Disabilities Act (ADA), the employer may require an employee to provide documentation of that disability from their health care provider.

When employers request health information as employment records, they must take care to maintain those employment records separately from any protected health information records that are covered by HIPAA. Also, an employer should not request any more information than is necessary for the particular circumstance.

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