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Federal exclusions from state workers' compensation coverage

**Legislative report to the chairpersons of the
House and Senate Committees with jurisdiction over
workers' compensation issues**



December 14, 2007

Purpose

During the 2007-2008 legislative session, HF1865/SF 1787 was enacted. This bill requires the Department of Labor and Industry (DLI) to submit a report by March 1, 2008, detailing the department's dissemination of information regarding federal exclusions for providing medical information.

Overview

At the Workers' Compensation Advisory Council (WCAC) meeting March 7, 2007, various union members representing railroad workers brought forth a bill proposal. The employees of railroads carrying interstate commerce are covered by the Federal Employers' Liability Act (FELA). The FELA system is a tort liability statute that provides no money to the employee unless he or she can show negligence on the part of the employer.

A tradeoff within the state of Minnesota workers' compensation program is that in return for an injured employee getting specific payment, the injured employee's medical record is available to the employer. Within FELA, an employer has no right to access employee medical records without the employee's signed release.

It is the opinion of the union members that most health care providers in Minnesota appear unaware of the differences between the state of Minnesota workers' compensation system and FELA medical record provisions. Therefore, the department was requested to disseminate information about the differences.

Actions

DLI disseminated information in the following manner.

1. An informational brochure was developed about the release of workers' compensation medical records (see attached).
2. An article was written and placed in the agency's quarterly workers' compensation newsletter.
3. DLI staff members responsible for providing workers' compensation advice were educated about the differences.
4. An informational bulletin was sent to DLI's e-mail notification list for insurance adjusters (1,330) and for medical providers (1,307).
5. The informational bulletin was later updated and sent to the same e-mail lists as a result of statutory changes to the Minnesota Health Records Act.

Conclusion

The Department of Labor and Industry disseminated the information requested of it in HF 1865/SF 1787 in written, verbal and electronic formats.



Disclaimer: This information relates only to the release of workers' compensation medical records under the Minnesota workers' compensation law and other laws. This document is a reference tool only and should not be construed as offering or providing legal advice. While the Department of Labor and Industry has made a good-faith effort to provide accurate and useful information, it makes no representation and accepts no liability for any reliance on the completeness or accuracy of this information. This information is not intended to take the place of the written law or legal advice. Because this document contains only a summary of some of the relevant provisions, readers are encouraged to read the referenced Health Insurance Portability and Accountability (HIPAA) rules, [Minnesota Statutes §§ 176.138 and 144.291 to 144.298](#), the Federal Employers' Liability Act (FELA) and any other applicable workers' compensation law.

Release of workers' compensation medical records under Minnesota and federal workers' compensation programs

Introduction

The following questions and answers are intended to clarify the appropriate application of the Minnesota workers' compensation law as it relates to the release of medical records of injured employees covered by other state or federal workers' compensation systems

Q. What injuries are covered by the Minnesota workers' compensation law?

A. Generally, an employee is entitled to workers' compensation benefits under the Minnesota workers' compensation law if the injury or occupational disease arises out of and in the course of employment in Minnesota. However, there are exceptions, as specified in [Minnesota Statutes § 176.041](#). Some employees are covered by the Minnesota workers' compensation law even if they are injured outside of Minnesota, while others may not be covered even if they are injured in Minnesota.¹ For example, [Minn. Stat. § 176.041, subd. 1\(a\)](#) states the Minnesota workers' compensation law does not apply to "a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act (FELA), United States Code, title 45, sections 51 to 60, or other comparable law." This means the Minnesota workers' compensation law does not apply to a railroad worker who is injured in Minnesota but whose injury is covered by FELA.

Q. May workers' compensation medical data be released under Minnesota law without an injured workers' authorization?

A. [Minnesota Statutes § 144.291 to 144.298](#) (the Minnesota Health Records Act) is the general law governing release of medical records in Minnesota.² Section 144.293, subd. 2 of that Act permits records to be released without the patient's consent if specifically authorized by law. [Minnesota Statutes § 176.138](#) specifically authorizes a health care provider to release, without the employee's authorization, medical data that is directly related to a current claim for workers' compensation to the Minnesota Department of Labor and Industry (DLI) and to the employer and the workers' compensation payer that are parties to the claim.³ This medical data may only be released to others if authorized by the employee, employer or insurer for that claim. Medical data that is not directly related to a current claim for Minnesota workers' compensation may not be released unless authorized by the employee.

Q. Does the Minnesota workers' compensation act permit the release of medical data related to a claim or injury of an employee covered by other state or federal laws governing work-related injuries, such as the Federal Employers' Liability Act or the Federal Employees' Compensation Act?

A. No. The Minnesota workers' compensation medical record provision, [Minn. Stat. § 176.138](#), applies only to claims governed by Minnesota workers' compensation law. It does not apply to or authorize release of medical records for claims under other laws.

¹ See, [Minn. Stat. § 176.041, subd. 1, 2, 3, 4, 5a and 5b](#).

² See [2007 Laws of Minnesota, Chapter 147, Art. 10, Secs. 2-9](#). This act governs: patient access to health records; patient consent to release health records; circumstances under which health records may be released without patient consent; withholding health records; release of independent medical examination and mental health records; use of record locator services; notice of rights; costs of copies; warranties regarding consents, requests and disclosures; and the consequences of violating the statute.

³ Release of records without patient authorization must be documented in the health record, [Minn. Stat. § 144.293, subd. 9](#). Notice of the request or release of data must be given to the employee according to [Minn. Stat. § 176.138](#).

Q. Does HIPAA permit the release of Minnesota workers' compensation medical records without the employee's authorization within the parameters of Minn. Stat. § 176.138?

A. Yes. The HIPAA regulations, at [45 CFR 164.512 \(I\)](#), permit a health care provider to disclose protected health information without the authorization of the injured worker "as authorized by and to the extent necessary to comply with workers' compensation laws that provide benefits for work-related injuries or illness without regard to fault." The disclosure of Minnesota workers' compensation medical data authorized by [Minn. Stat. § 176.138](#) is permitted by this HIPAA regulation. More information about the disclosure of workers' compensation medical data under HIPAA and Minnesota law is available at www.doli.state.mn.us/hipaa.html. The federal Office of Civil Rights (OCR), which enforces the HIPAA law, includes detailed information and frequently asked questions about the HIPAA regulations and the workers' compensation exemption at www.hhs.gov/ocr/hipaa/assist.html.



Q. Does the HIPAA workers' compensation exemption permit the release of medical records without employee authorization under other state or federal workers' compensation laws?

A. It depends on the state or federal law that applies to the employee's claim. The HIPAA workers' compensation exemption noted above permits the release of medical data related to the injury without the employee's authorization only if the state or federal law authorizes the release and only if the state or federal law provides benefits for work-related injuries without regard to fault. In *Guidance Explaining Significant Aspects of the Privacy*

Rule, OCR lists several federal workers' compensation programs that provide benefits for work-related injuries without regard to fault.⁴ This OCR guidance does not include FELA or the Jones Act, which are fault-based systems, in the list of no-fault workers' compensation programs. The OCR workers' compensation guidance is available online at www.hhs.gov/ocr/hipaa/guidelines/workerscompensation.pdf.

Conclusion and additional resources

Before releasing medical data related to a claimed work injury without the employee's authorization, health care providers will first need to verify the applicable state or federal workers' compensation program for the claim and the law that authorizes or restricts the release of the data. The provider will then be better able to evaluate whether the release is permitted by the Minnesota Health Records Act, [Minn. Stat. § 176.138](#), the HIPAA regulations and/or other applicable laws.⁵

Health care providers and others with questions about the release of medical data under FELA, other state or federal workers' compensation programs, or HIPAA are encouraged to consult their attorneys. Health care providers and others with questions about release of medical data under the Minnesota workers' compensation law may contact the Minnesota Department of Labor and Industry for assistance at 1-800-DIAL-DLI (1-800-342-5354). Contact information for questions about HIPAA at the federal Office of Civil Rights is available at www.hhs.gov/ocr/contact.html.

⁴The OCR guidance lists 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 as examples of federal no-fault workers' compensation programs.

⁵HIPAA regulations and the Minnesota Health Records Act may have different requirements. Under HIPAA, the provision that is most protective of privacy controls. For example, the OCR guidance document notes that under [45 CFR 164.512\(a\)](#), protected health information may be released without patient authorization for purposes of obtaining payment, but that exception is not included in the Minnesota Health Records Act; therefore, the Minnesota law controls. Additionally, the HIPAA regulations and the Minnesota Health Records Act each contain unique provisions governing the release of mental health records and the release of health records for research purposes. The Americans With Disabilities Act, the Federal Confidentiality of Alcohol and Substance Abuse Patient Records Act, the Minnesota Fair Information Reporting Act and the Minnesota Data Practices Act are examples of other laws that may restrict or authorize disclosure of health data. The examples above illustrate the complexity of state and federal laws that govern the release of health records. The applicability and interaction among the various laws is beyond the scope of this discussion.