

Workers' Compensation, HIPAA, and Accounting of Disclosures

This note is to provide clarity on release of health information for Workers Compensation purposes and the accounting of disclosures.

A patient and his/her employer sign an 801 form to provide notice of a claim and begin the process for workers compensation. The 801 contains language that permits medical providers to release medical records relevant to the injury to the workers' compensation insurance company and the Oregon Dept. of Consumer & Business Services.

The patient (injured worker) will also have an appointment with a provider and the patient will inform the provider that they were hurt on the job. At this encounter an 827 form is completed by the provider and the patient and the form is sent to the insurer by the provider. This form also contains language that permits medical providers to release medical records relevant to the injury to the workers' compensation insurance company.

In both cases above once the appropriate forms have been completed the release of information to the workers' compensation insurer or the Oregon Department of Consumer & Business Services is required to assist in the determination of benefits and claims* (OAR 436-010-0240). OHSU staff must apply the minimum necessary so that only the health information pertinent to the claim/injury is released to the insurer or state. Releases made to the insurer or state for the determination of workers compensation benefits or review of claims are subject to the accounting of disclosures and these releases must be included in the Accounting of Disclosures System (ADS) (45 CFR 164.528). (Note: this includes the submission of the 827 form, which contains protected health information.) The reason is that although the patient signs and submits the 801 and 827 forms, the forms are not valid HIPAA authorizations. HIPAA does contain a caveat so that we may release health information for worker's compensation as required to comply with laws relating to worker's compensation and the signing of the forms does initiate this process (45 CFR 164.512(l)). Therefore, based on the workers' compensation forms we are permitted to release medical records relevant to the injury or disease under review, but since a) the forms are not valid authorizations, b) the release is made because it is required by law, and c) the patient has no opportunity to restrict the information being released nor an opportunity to revoke the permission documentation - we do have to account for these disclosures.

Pertaining to payment of services, OHSU may disclose the pertinent health information to a workers compensation insurer for us to obtain payment for health care services rendered and these releases do not need to be included in the accounting of disclosures (45 CFR 164.528 (a)(1)(i)). This activity is part of our payment activities and therefore permitted without additional authorization and not subject to the accounting of disclosures. The minimum necessary standard is applied for these releases as well.

To clarify, we may disclose pertinent information to a workers compensation insurer or the state as a result of a workers' compensation claim, but the release of the information for the purpose of determination of benefits or review of a claim is subject to the accounting of disclosures, even if payment for our services is also included in the purpose of the disclosure (see below for some examples). Subsequent disclosures of health information made by OHSU to the insurer solely to obtain payment on care that we provided are part of our payment activities and are not subject to the accounting of disclosures.

Please note that requests from workers compensation insurers for additional health information should be forwarded to Health Information Services (Medical Correspondence) to be processed unless the department/clinic maintains non-duplicative records separate from HIS. (In those cases the department/clinic would handle the request.)

Below is a listing of some disclosures for workers compensation purposes that are subject to the Accounting of Disclosures:

- Progress notes disclosed as a result of an 801 or 827 (to the insurer or state)
- New attending physician documentation disclosed as a result of an 827
- Re-opening of a claim disclosed as a result of an 827 (aggravation of existing injury)
- Closing report to insurer
- Release to return to work (form 3245)
- Surgical procedure authorization disclosed to the workers compensation insurer

* Drug and alcohol treatment information (42 CFR 2) and HIV information (ORS 433.045(3)) in most cases require additional authorization before it is released