

Protecting your personal medical information



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For most of us, access to our personal medical information is as sacred as access to our bank accounts. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted to provide continued access to health care for people who had lost their health insurance through job loss.

Title II of HIPAA, known as the Administrative Simplification (AS) provisions, required the establishment of national standards for electronic health care transactions and national identifiers for providers, health insurance plans and employers. Title II was added after concerns developed when information technology made the transfer of personal information as easy as a click of a mouse.

HIPAA gives privacy rights to individuals regarding confidential medical records. With certain exceptions, the health care provider must have a signed disclosure from the individual before giving out any information on provided health care to anyone, including parents. Many of you have seen or filled out such a disclosure.

Confidential medical information of injured workers is affected by both HIPAA and federal compensation law.

The Office of Workers' Compensation (OWCP) requires employees to use Forms CA-1 or CA-2 to claim on-the-job injury. These forms include broad, inclusive authorization language. When an employee signs a CA-1 or CA-2, the signature authorizes physicians, hospitals or any other persons to furnish information to OWCP. However, that authorization releases information only to OWCP. It does *not* release information to the *Postal Service*.

Injured workers do have a duty to provide some medical information to the Postal Service when making a claim for compensation with the OWCP, but they have no obligation to share all of their medical information.

The implementing regulations of the Federal Employees' Compensation Act (FECA), at 20 CFR 10.210(b), state:

An employee must ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to when the employee can return to his or her date of injury job, is provided to the employer within 10 calendar days after filing the claim for COP.

This is important, as the Postal Service has an obligation to find available work for injured workers (see *ELM* 546.142), and cannot do so without knowing the injured workers' medical limitations.

What personal medical information does the Postal Service have the right to? 20 CFR 10.506 states: "The employer may

monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA-17 is usually adequate for this purpose." 20 CFR 10.331(b) states: "the employer should use Form CA-17 to obtain interim reports concerning the duty status of an employee with a disabling injury."

Postal management is required to provide an injured worker with a CA-17, Duty Status Report, upon request (see 20 CFR 10.7). Additionally, prior to providing a CA-17, postal management is required to accurately fill out Side A, and provide the injured worker's usual work requirements.

This is important. No two letter carrier routes are exactly alike; management must be specific as to the physical requirement of the injured worker's own particular route or assignment. A letter carrier with a mounted route has different work requirements than a carrier who does park-and-loops all day. 20 CFR 10.506 further states:

To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. (However, the employer shall not contact the physician by telephone or through personal visit.) When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

This is an important limitation on the Postal Service. It limits the Postal Service to *written* communication with an employee's physician, and it limits that communication to the subjects of work limitations and job assignments. It is vital to protecting injured workers' rights to privacy and protections under FECA.

One way that the Postal Service may access injured workers' confidential medical information is if the injured worker uses the Postal Service's voluntary prescription drug program with PMSI. OWCP allows employees free choice of pharmacy provider. The USPS has a contract with a private company, PMSI. A pharmacy agrees to receive less for a prescription from PMSI than it would receive if the pharmacy billed OWCP directly. PMSI and USPS split the difference. So, the Postal Service provides employees who file on-the-job injury claims with the PMSI pharmacy card and hope that employees use it. However, use of the PMSI card is totally voluntary. No employee is required to use PMSI to obtain prescriptions related to on-the-job injury or illness. Instead, employees can simply have the pharmacy bill OWCP directly.

If an employee does choose to use PMSI to fill prescriptions, the Postal Service may have access to that employee's confidential prescription information.

Injured workers should be mindful of granting access to their private medical information. As the poet Tom Waits aptly put it: "The large print giveth, and the small print taketh away."