

WCB COMMUNICATION GUIDELINES

In order to foster appropriate communications among the participants in the New York workers' compensation system, the Workers' Compensation Board (Board) has developed the following communications guidelines. These guidelines are meant as a brief overview of the communications that may properly be made by, and with, claimants, claimants' counsel, the employer, the employer's workers' compensation carrier, the employer and carriers' counsel, the Board and health care providers. A more detailed treatment of these communications can be provided by your legal counsel.

1. Communications Involving the Claimant:

If a claimant is represented by an attorney, and a Form OC-400 (Notice of Retainer/Substitution) has been filed with the Board, then an attorney-client relationship has been established and any communication with the claimant by the employer and/or carrier's attorney that is related to the claimant's workers' compensation case must be initiated through the claimant's attorney (see 22 NYCRR § 1200.33(a) [Rule 4.2]). The only exception is if the employer and/or carrier's attorney has the consent of the claimant's attorney or licensed hearing representative to engage in such communication, or such contact is authorized by law.

Workers' Compensation Law (WCL) § 110-a(2)(c) permits the Board to disclose the claimant's own information and records directly to the claimant. The Board may do so only after verifying the claimant's identity.

A health care provider is permitted to disclose a claimant's own health information directly to the claimant under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

2. Communications Involving the Claimant's Counsel:

The employer or carrier's attorney is not permitted to communicate directly with a represented claimant concerning his/her workers' compensation case and must communicate only with the claimant's attorney or licensed hearing representative (see 22 NYCRR § 1200.33(a) [Rule 4.2]).

WCL § 110-a(2)(c) permits the Board to disclose any claimant information and records in its possession to an attorney or licensed hearing representative retained by the claimant in the workers' compensation claim.

The claimant's attorney or licensed hearing representative may acquire the claimant's medical records or information from a treating medical provider only upon presentation of a HIPAA compliant medical authorization to the provider's office.

3. Communications Involving the Employer:

WCL § 110-a(2)(d) permits the Board to disclose any claimant information and records in its possession to the employer.

The employer is not a covered entity under HIPAA (see 45 CFR § 160.103), but is required to keep the claimant workers' compensation information and records in their possession confidential pursuant to WCL § 110-a(4).

A health care provider may disclose claimant records and communicate with the employer without a HIPAA compliant authorization if (1) ordered to do so by a Workers' Compensation Law Judge, (2) in compliance with a specific provision of the WCL (see WCL § 13-a(4) and 13-g) with reasonable assurance from the party requesting the records or information that the claimant has been notified of the release, or (3) in order to facilitate the payment of the health care provider (See Board's "HIPAA Restrictions and Medical Records" Guideline).

4. Communications Involving the Carrier:

WCL § 110-a(2)(d) permits the Board to disclose any claimant information and records in its possession to the employer's workers' compensation carrier.

An employer's workers' compensation carrier is not a covered entity under HIPAA (see 45 CFR § 160.103), but is required to keep any claimant's workers' compensation information or records in its possession confidential under WCL § 110-a(4).

A health care provider may disclose claimant records and communicate with the carrier without a HIPAA compliant authorization if (1) ordered to do so by a Workers' Compensation Law Judge, (2) in compliance with a specific provision of the WCL (see WCL § 13-a(4) and 13-g) with reasonable assurance from the party requesting the records or information that the claimant has been notified of the release, or (3) in order to facilitate the payment of the health care provider (See Board's "HIPAA Restrictions and Medical Records" Guideline).

5. Communications Involving the Employer and/or Carrier's Attorney or Licensed Representative:

Once the employer has retained an attorney, any communication with the employer by the claimant's attorney that is related to the workers' compensation case must be initiated through the employer's attorney (see 22 NYCRR § 1200.33(a) [Rule 4.2]).

Once the employer or carrier has retained an attorney, any communication by the attorney regarding the claimant's workers' compensation case is required to be initiated through the claimant's attorney or licensed representative, and not the claimant directly (see 22 NYCRR § 1200.33(a) [Rule 4.2]).

WCL § 110-a(2)(d) permits the Board to disclose any claimant information and records in its possession to the employer or carrier's attorney or licensed hearing representative.

An employer or carrier's attorney or licensed hearing representative needs to secure a HIPAA compliant authorization in order to directly obtain information or records from a claimant's treating medical provider.

6. Communications Involving the Board:

The Board's release of its records containing claimant information is restricted by WCL § 110-a. WCL § 110-a(2) permits the Board to release claimant records to, among others, its employees, the claimant, the employer, the carrier, and a claimant's treating physician or other health care provider. WCL § 110-a(4) prohibits the re-disclosure of claimant records once released by the Board to those parties listed in WCL § 110-a(2).

The Board is permitted to release claimant records to any party upon their filing of an original Form OC-110A (Claimant's Authorization to Disclose Workers' Compensation Records), or original notarized authorization specifically directing the release of his/her records to that person, pursuant to WCL § 110-a(3).

WCL § 110-a(1) permits the disclosure of claimant records by the Board upon its receipt of an order or subpoena of a court of competent jurisdiction, or a subpoena of a law enforcement agency, or subpoena properly issued under the authority of an administrative agency. Subpoenas for Board records are to be served on the Board's Office of the Secretary, or any of the eleven Board District Offices.

Once the Board receives a claimant's medical records, they are considered to be a Board "record" under the definition set forth in WCL § 110-a(1)(b) and may only be released by the Board consistent with WCL § 110-a.

The Board is not a covered entity under HIPAA (see 45 CFR § 160.103), and does not possess or maintain health information as that term is defined in HIPAA. The Board does not honor HIPAA authorizations for the release of its records (See Board's "Use of HIPAA Authorizations to Obtain Claimant Records" Webpage Statement).

A health care provider may disclose claimant records and communicate with the Board without a HIPAA compliant authorization if (1) ordered to do so by a Workers' Compensation Law Judge, (2) in compliance with a specific provision of the WCL (see WCL § 13-a(4) and 13-g) with reasonable assurance from the party requesting the records or information that the claimant has been notified of the release, or (3) in order to facilitate the payment of the health care provider (See Board's "HIPAA Restrictions and Medical Records" Guideline).

7. Communications Involving the Health Care Providers:

WCL § 13-a(6) prohibits the improper influencing or attempt by a party to influence the medical opinion of a physician who has treated or examined a claimant. As such, contact with health care professionals should be limited to relevant inquiries pertaining to a claimant's condition and treatment (See Board Subject Number 046-124). Any attempt to influence the opinion of a physician should be reported to the Board's Health Management Bureau.

A physician who treats a claimant is a covered entity under HIPAA (see 45 CFR § 160.103) and the release of any medical records or the discussion of any patient information is governed by HIPAA.

An Independent Medical Examiner (IME) retained by the employer or carrier is also covered by HIPAA (See Board's "HIPAA Restrictions and Medical Records" Guideline and the definition of Health Care Provider in 45 CFR § 160.103).

Disclosure of medical records in the possession of a claimant's health care provider generally requires the presentation of a HIPAA compliant authorization to the provider prior to release.

Under HIPAA, a covered entity may disclose protected health information as authorized by, and to comply with workers' compensation laws and other programs providing benefits for work-related injuries or illnesses (see 45 CFR § 164.512[1]).

A health care provider may disclose claimant records and communicate with the Board, carrier or employer without a HIPAA compliant authorization if (1) ordered to do so by a Workers' Compensation Law Judge, (2) in compliance with a specific provision of the WCL (see WCL § 13-a(4) and 13-g) with reasonable assurance from the party requesting the records or information that the claimant has been notified of the release, or (3) in order to facilitate the payment of the health care provider (See Board's "HIPAA Restrictions and Medical Records" Guideline).

Disclosure of information by a health care provider to the Board, a carrier or an employer that is not directly related to the claim for compensation requires the presentation of a HIPAA compliant authorization.

WCL § 110-a(2)(h) permits the Board to disclose any claimant information and records in its possession to a treating physician or health care provider who has rendered treatment to a claimant or is seeking authorization for treatment or special services if the information sought to be disclosed relates to the compensability of a claim related to such treatment, reimbursement for such treatment, or authorization for special services. Such a treating physician or health care provider may also obtain claimant information and records where the information sought to be disclosed is limited to a notice that a WCL §32 settlement agreement has been initiated.