

HIPAA Privacy Regulations FAQs

Q. What is the purpose of the HIPAA Privacy Regulations (the Regs)?

A. The purpose is to restrict the use and disclosure of “Protected Health Information (PHI) of individual by a “Covered Entity”, as that term is defined in the Regs.

Q. What is Protected Health Information (PHI)?

A. PHI is defined as any health information (including demographic information) that identifies or can be used to identify an individual. In general, unless an exception applies, a Covered entity must have written authorization to transmit PHI.

Q. Do the Regs apply to all companies?

A. No. The Regs apply only to what are described as “Covered Entities”. A Covered entity is a health care provider that transmits data electronically, a health care clearing house, or a group health plan.

Q. Are there exceptions to the use of PHI?

A. There are three primary exceptions to the use or disclosure of PHI with a written authorization:

Disclosure to the Individual

For the provision, coordination or management of health care by one or more health care providers; and

If required by law.

Q. Is plan enrollment or participation information PHI?

A. No. This type of information is specifically excluded from the Regs.

Q. What are some examples of the types of group health plans that are subject to the Regs?

A. Group Medical Plans
Group Dental and Vision Plans
Medical FSA Plan
EAP

Q. Are employers covered by the Regs?

A. No. Employers are not considered Covered Entities when they act solely in their capacity as employers. Medical information gathered by an employer from an employee in its capacity as an employer (even if the employee is also a participant in the group health plan), and even if the employer is otherwise a Covered Entity, is NOT covered by the Regs. However, if an employer acts in the capacity of a group health plan, health care provider, or health care clearing house, the Regs do apply.

Q. What would be an example of an employer seeking medical information from an employee that is not covered by the Regs?

A. If an employer receives information from an employee in connection with a request for FMLA leave that would otherwise be protected health information, the Regs would not apply. The employer gathered the information in its capacity as an employer. In addition, a physician's statement documenting sick leave or the results of a fitness for duty exam are part of the employment record and not PHI. Interestingly, the physician (assuming he/she is not also the employer), because he/she is also a Covered Entity, will need to obtain permission from the Employee to release the information to the Employer.

Q. What is the Summary Health Information (SHI)?

A. This is information transmitted that provides health data but does not identify any individual. For example, a provider may transmit census data to an insured that describes various health conditions within a group but does not identify the individuals with the particular conditions. Summary Health Information (SHI) can be exchanged between Covered Entities without having to comply with the panoply of the Privacy Regs.

Q. What is significant about SHI?

A. The most significant application of SHI is for an employer/group health plan sponsor. If the group health plan is fully insured and only receives and transmits SHI, the group health plan is exempted from the Regs.

Q. What is a Business Associate contract?

A. Under the Regs, a Covered Entity may require its vendors to execute a Business Associate contract wherein the vendor acknowledges that its customer is a Covered Entity under the Regs and must comply with the Regs. The vendor also agrees to comply with the Regs to the extent that the vendor transmits or receives PHI to or from the customer.

Q. Is workers compensation insurance covered under the Regs?

A. No. The Regs specifically exclude workers compensation insurance. Therefore, an employee's involvement in the administration of a workers compensation plan, including the exchange of medical information for this purpose, is not subject to the Regs.

Q. Are the results of pre-employment drug testing subject to the Regs?

A. It is our opinion that drug test results would be considered employment records, and not PHI. Therefore, the results are not subject to the Regs.

Q. What is the effective date of the Regs?

A. The effective date of the Regs was April 14, 2003.

Brian M. Nugent, Esq. is principal of The Nugent Law Firm, P.C., Fort Collins, Colorado.
www.bmnlaw.com

This information is not intended or offered as legal advice. This material has been prepared for educational and information purposes only. It is not legal advice or legal opinions on any specific matters. Transmission of the information is not intended to create, and receipt does not constitute, a lawyer-client relationship between this site, the author, and you or any other user. Readers should not act, or fail to act, upon this information without seeking professional counsel. No person should act or fail to act on any legal matter based on the contents of this site. Unless expressly stated otherwise, no document herein should be assumed to be produced by an attorney licensed in your state.