

Notes from Labor-Management Advisory Council meeting in relation to "Exchange of Information" language also offered for consideration to the HIPAA subcommittee of the Economic Affairs Committee.

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Text of LMAC language for review at HIPAA Subcommittee meeting:

**Exchange of information regarding stay at work/return to work assistance.** (1) The worker, employer, medical providers, department, insurer, and the rehabilitation provider shall provide to one another case information as provided in ~~this section~~ **subsection (3)**.

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(2) (a) To protect the privacy rights of an injured worker, health care information **as defined in 50-16-504 and that is** related to a workplace injury or occupational disease may not be released to the worker's employer without an authorization for the release of the information, signed by the worker.

(b) ~~Either of the following documents constitutes an authorization for release of information:~~

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(i) ~~a first report of injury or occupational disease form signed by the worker; or~~  
(ii) ~~a written authorization for release of stay at work/return to work information, signed by the worker, allowing that allows information specified in subsection (3) to be provided to the rehabilitation provider, the employer, the department, the insurer, and to other health care providers. A written authorization as provided in this subsection (2)(b)(ii) may be executed without the need for either the worker or the employer to have already completed a first report of injury or occupational disease.~~

**Comment [SU1]:** The Trial Lawyers objected to use of the FROI, based on the Thompson challenge regarding privacy rights. Judy Bovington noted that if the FROI is retained here that the form would need to be altered to notify the worker what is available for release to employers, etc. Jason Miller said the FROI is not always signed at work and the FROI might be difficult to use as a release. Annette Hoffman said a signed FROI is a problem for people who submit their FROI electronically. She noted that most people do not know what a FROI contains.

(3) After satisfying the release of information requirements provided in subsection (2), only the following information, which may constitute health care information **as defined in 50-16-504**, may be released to the workers' employer:

**Comment [SU2]:** Diana Ferriter mentioned that the Work SafeMT committee on return to work is developing a workability form, which could be used as a model. Al Smith questioned if this form would be prescribed by the department. Diana suggested LMAC could discuss that option.

- (a) the workers' restrictions related to the ~~claim~~ **employment;**
- (b) the date or anticipated date the worker is release to return to work;
- (c) the approval or disapproval of work activities or job descriptions for the worker; and
- (d) the date or anticipated date of maximum medical healing.

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(4) An employer receiving information regarding a worker's medical condition pursuant to this section shall exercise due care to prevent unauthorized use or redisclosure of that information.

**50-16-602**

(2) (a) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

**Comment [SU3]:** Don Judge wanted to know why "which may constitute health care is included. Pat Murdo responded that the issue being dealt with by the HIPAA subcommittee includes concerns of medical providers who may provide that type of information in discussion of (3)(a) through (d). Larry Jones noted that the information in (3)(a) through (d) would be considered health care information in the definition under the Uniform Health Care Information section (50-16-504). Ryan Morton said (3)(a) through (d) are more about function than health care and the re is only need to distinguish information about function.

**50-16-504**

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

**Comment [SU4]:** Al Smith suggested that it is important to keep the word "claim" because it is more limited. Doug Buman suggested health information is broad and needs to be limited by the word claim.

**NOTE:** Jerry Keck commented that if an injured worker is included in discussions, there is no problem with a three-way discussion among doctors, employers, and the worker.

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**Comment [SU5]:** Rep. Hunter commented that this is important to employers. He urged this remain intact in a way that employers could talk with a doctor and get the (3)(a) through (d) information – not just have access in written form.