



HIPAA Rules and UC Claims

UCAC, Inc. has received questions from some clients about whether release of drug testing information about a claimant to a state UC claims office for the purpose of providing information on a UC claim, would run afoul of HIPAA (Health Insurance Portability and Accountability Act).

It is our opinion that the vast majority of employers are not affected by HIPAA rules. There seem to be at least 3 tiers of protection for most employers.

1. The Department of Health and Human Services has repeatedly stated the HIPAA rules apply only to “covered entities”: “health plans, health care providers, and health care clearing houses” (1)
2. The Department has also repeatedly stated that “the Privacy Rule does not apply to employers, nor does it apply to the employment functions of covered entities. That is, when they are acting in their role as employers”. (1)

Even if a client were a “covered entity” the Department excludes *employment records* maintained by the covered entity in its capacity as an employer.

“Medical information needed for an employer to carry out its obligations under the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and similar laws, as well as the files or records related to occupational injury, disability insurance eligibility, sick leave requests and justifications, drug screening results, workplace medical surveillance, and fitness-for-duty test of employees, may be part of the employment records maintained by the covered entity in its role as an employer.” (2)

This type of medical information is necessary and the law permits employers to collect and maintain it. It is not HIPAA-protected, but is subject to state laws on privacy.

3. With regard to state laws on privacy or confidentiality, all states have rules and regulations regarding confidentiality of records, reports, and information obtained from claimants or employers.

All letters, reports, communication or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee is usually absolutely privileged communication in any civil or criminal proceedings (except proceedings involving child support).

(1) 53182 Federal Register/Vol.67, NO 157/ Wednesday, August 14, 2002/ Rules and Regulation-Department of Health and Human Services 45 CFR Parts 160 and 164.

(2) 67 Fed.Reg 53, 192 (Aug. 14, 2002).

The conclusions drawn on HIPAA Rules and UC Claims are not to be interpreted as legal opinion, nor the rendering of legal advice by UCAC, Inc.