# POSITION STATEMENT

# Confidentiality of Worker Health Information

**IMPORTANCE TO NURSING**

Confidentiality of health information is integral to the practice of nursing, regardless of role or specialization. Adherence to laws and regulations as well as professional codes of ethics promotes public trust with the assurance of protected health information. According to the AAOHN Code of Ethics (2009) Occupational and Environmental Health nurses "strive to safeguard workers' rights to privacy by protecting confidential information and releasing information only as required or permitted by law." The ethics providing confidentiality can also be found in the AAOHN Standards of Occupational and Environmental Health Nursing (2011). However, in occupational and environmental health settings, exceptions to the legal protection for health information may exist resulting in ethical conflicts for the nurse when asked to provide health-related records without workers' knowledge or consent.

**STATE LEGISLATION**

Most legislation protecting health information is enacted at the state level. These protections, where they exist, differ among states, leading to disparities and complexities for nurses practicing in multiple states. Most states do not protect communication between clients and occupational health professionals, because they are acting as agents of employers. Additionally, the HIPAA Privacy Rule recognizes the legitimate need of insurers and other entities involved in workers' compensation systems to have access to individuals' health information as authorized by the state or other laws. Due to the significant variability among such laws, the Privacy Rule permits disclosures of health information for workers' compensation purposes (USDHHS, 2003).

Workers filing workers' compensation claims may be relinquishing their rights to privacy.

**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

The Occupational Safety and Health Administration (OSHA) Access to Employee Exposure and Medical Records Standard 29CFR1910.1020 requires that the worker or worker's designated representative have access to the worker's exposure and health records, with the worker's written consent, according to the following guidelines:

- Access must be provided in a reasonable manner and place
- Records must be provided without cost to the worker or representative, and if possible within 15 working days of the initial request, and
- The employer must make provisions for copying of records.

A worker must give written consent before a designated representative may look at or copy the worker's record, but a recognized or certified collective bargaining agent is automatically considered to be a designated representative for purposes of access to worker exposure records and analyses prepared using exposure or health data.

**AMERICANS WITH DiSABILITY ACT AND AMENDMENT ACT**

Americans with Disabilities Act (ADA) and Amendment Act (ADAAA) protects individuals with disabilities from employment discrimination. The law places limits on an employer's right to collect and use health-related information about job applicants and workers. Although the ADA does not require an occupational health professional to be the custodian of worker health information, it does mandate that health data be kept in separate files and be treated with confidentiality regardless of whether the data

reveals a disability. Specific exceptions are as follows:

- Supervisors and managers may acquire limited health information if it is needed to make reasonable accommodation. They may also acquire limited health information if a determination of "direct threat" by the worker exists

- First aid and safety personnel may need to be informed of a worker's health status if the worker could possibly need emergency treatment

- Government officials investigating compliance with the ADA or established health and safety standards (e.g., OSHA) may have access to health information (29CFR1910.1020)

- State workers' compensation boards or other second injury funds may also access health information. Regulations governing workers' compensation claims supersede the ADA guidelines, provided only information related to the injury is released.

**THE HEALTH INSURANCE PORTABILITY AND ACCOUNTAILITY ACT**

The passage of the 1996 Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191, has validated the nurse's obligation to maintain confidentiality of health information. The primary intent of the HIPAA Privacy Rule is to protect the privacy of health information associated with electronic transmission related to medical claims (billing) and health care.

HIPAA restricts access to health information only if the health care provider generating or maintaining the information is a covered entity under the rule. Occupational health providers are generally not covered entities or in the workforce of a covered entity. Worker health records held in occupational health departments are excluded in the definition of protected health information.

Organizations that are directly affected by HIPAA are called "covered entities":

- Health plans: individual and/or group plans that provide health care and/or prescription drugs

- Health care providers: providers of health care services that furnish, bill, or are paid for health care in the normal course of business and that electronically transmit health information

- Health care clearing houses: public or private entities, including billing services, contractors or other non-workforce individuals that process nonstandard data or transactions received from another entity into standard data elements or transactions.

HIPAA also applies to "business associates" of covered entities because covered entities must bind them by contract to protect personal health information (PHI) in accordance with the HIPAA Privacy Rule requirements. Business associates include non-workforce members or companies that help covered entities with treatment, payment or healthcare operations (TPO) tasks such as software vendors or contract nurse case managers. Individuals or organizations that furnish certain specified services such as legal, accounting, consulting, or management services are also business associates (USDHHS, 2003).

With certain limits and protections, HIPAA permits, but does not require, covered entities to use and disclose PHI without the individual's permission, for the following functions:

- Treatment - the provision, coordination, or management of health care and/or related services by a health care provider

- Payment - reimbursement to a health care provider for services and the process by which a health care plan obtains premiums necessary to fulfill its coverage benefit responsibilities

- Health care operations - administrative, financial, legal, and quality improvement for a covered entity.

In all other situations, HIPAA mandates that covered entities obtain written authorization from an individual prior to disclosing PHI. In addition, HIPAA allows covered entities to secure such authorizations even when they are not required.

**RATIONALE**

The U.S. Department of Health and Human Services (2000; 2003a) has determined that the public benefit from the disclosure outweighs the loss of individual privacy. Many of these public policy disclosures are relevant to the nurse because they apply under the following circumstances:

- Life threatening emergencies

- Workers' compensation so long as state regulations imposing limits on releases to carriers and/or employers are followed

- U.S. Department of Transportation (DOT) mandated examinations and drug and alcohol testing except pre-employment or post offer examination results

- OSHA mandated medical surveillance and occupational injury or illness evaluations

- Compliance with government regulations

- Others as required by law: public health for specific public health purposes, law enforcement under specific conditions and circumstances, and judicial proceedings such as court order (subpoena).

HIPAA offers no privacy protections to health information collected from workers who voluntarily participate in company-sponsored wellness and health promotion activities conducted by nurses employed by the company. However, if employers establish wellness programs that involve outside licensed health care providers who are covered entities, the client will have to sign a HIPAA-compliant authorization before information can be released to the company nurse. The same is true for pre-placement or post-offer physical examinations or other fitness for duty examinations, although employers are permitted to require signed authorizations as a condition of employment. Moreover, once an employer receives employment-related health information that data ceases to be protected by the HIPAA Privacy Rule because employers are not covered entities under HIPAA.

Americans with Disabilities Act (ADA) and Amendment Act (ADAAA)/Family Medical Leave Act (FMLA) confidentiality requirements continue to mandate that health information be maintained separate and apart from other personnel records.

HIPAA grants no authority to regulate health information of non-covered entities once it leaves a covered entity (USDHHS, 2003). State laws and regulations, which provide greater privacy protection of health information, take precedence over HIPAA. Because nurses practice across state lines, nurses must be familiar with the state and local laws that are relevant to confidentiality and interstate nursing licensure compacts/statutes.

Confidentiality (privacy), which includes covered and non-covered entities, is broader than HIPAA. To ensure confidentiality of PHI, nurses should:

- Develop written policies and procedures regulating access, release, transmittal and storage of all health information

- Implement educational activities to inform clients, health care providers and other appropriate individuals of their need to maintain confidentiality of client health records

- Obtain legal guidance as necessary to aid in the interpretation of unclear practice situations

- Establish and maintain security standards for transmission and storage of employee personal health information

- Know state and local laws and company/facility policies as relevant to privacy and security of PHI.

**ELECTRONIC HEALTH RECORDS**

Electronic Health Records (EHRs) are the future of recordkeeping. The occupational and environmental health nurse must establish policies and procedures related to EHRs that appropriately document, secure and retain all medical/health information for workers and the company. At the same time, this information must be retrievable when needed.

Some federal agencies and legislation mandate certain recordkeeping requirements in the occupational health setting and address EHRs. Computerized records are permitted provided that equivalent forms can be produced when needed. EHRs must provide necessary information and data fields must be adequate, providers and recorders identifiable, and data accessible when needed. Reference is made to password protection for certain electronic health information. (Thompson, 2010).

**REFERENCES**

American Association of Occupational Health Nurses. (2009). *Code of Ethics and Interpretive Statements,* (Section 3).

American Association of Occupational Health Nurses. (2011). *AAOHN Standards of Occupational and Environmental Health Nursing*.

Lechner, D. (April, 2012). *American with Disabilities Act Amendment Act*. Presented at the American Association of Occupational Health Nurses Annual Conference, Nashville, TN.

Thompson, M. (2010). Medical recordkeeping in an occupational health setting. *AAOHN Journal*, *58*(12), 524-532.

U.S. Equal Employment Opportunity Commission. *EEOC Enforcement guidance: Workers' Compensation and the ADA*. Retrieved from http://www.eeoc.gov/policy/docs/workcomp.html

U.S. Department of Health and Human Services. (2003). OCR HIPAA Privacy: *Disclosures for Workers' Compensation Purposes* [45 CFR 164.512(l)]. Retrieved from http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/workerscomp.html

U.S. Department of Justice. (2009). *American with Disabilities Act of 1990 as Amended*. Retrieved from http://www.ada.gov/

U.S. Department of Labor. (1980). *Occupational Health and Safety Administration Access to employee exposure & medical records* [29 CFR 1910.1020].

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