

QUESTION:

Under Department of Health and Human Services (HHS) Health Insurance Portability and Accountability Act of 1996 (HIPAA) rules, are employers and their service agents in the Department of Transportation (DOT) drug and alcohol testing program required to obtain employee written authorization in order to disclose drug and alcohol testing information?

ANSWER:

- No. HHS HIPAA rules do not require employers and service agents in the DOT drug and alcohol testing program to obtain written employee authorization to disclose drug and alcohol testing information required by 49 CFR Part 40 and other DOT agency drug and alcohol testing rules.
 - DOT-required drug and alcohol testing information differs significantly from health information covered by HIPAA rules (45 CFR Part 164). The DOT program is concerned only with employees' compliance with DOT safety regulations, and not with preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care or the past, present, or future physical or mental health or condition of an individual.
 - Even if DOT drug and alcohol testing information is viewed as protected health information under Part 164, however, it is not necessary, under §164.512(a), to obtain employee written authorization where Federal law requires the use or disclosure of otherwise protected health information.
 - Use or disclosure of the DOT drug and alcohol testing information without a consent or authorization from the employee is required by the Omnibus Transportation Employees Testing Act of 1991, 49 CFR Part 40, and DOT agency drug and alcohol testing regulations, unless otherwise stipulated by 49 CFR Part 40.
 - Consequently, 45 CFR §164.512 enables any employer or service agent in the DOT program to disclose the information without the employee's authorization. For example:
 - Employers need no employee authorizations to conduct DOT tests.
 - Collectors need no employee authorizations to perform DOT urine collections, to distribute Federal Drug Testing Custody and Control Forms, or to send specimens to laboratories.
 - Screening Test Technicians and Breath Alcohol Technicians need no employee authorizations to perform DOT saliva or breath alcohol tests (as appropriate), or to report test results to employers.
 - Laboratories need no employee authorizations to perform DOT drug and validity testing, or to report test results to Medical Review Officers (MRO).
 - MROs need no employee authorizations to verify drug test results, to discuss alternative medical explanations with prescribing physicians and issuing pharmacists, to report results to employers, to confer with Substance Abuse Professionals (SAP) and evaluating physicians, or to report other medical information (see §40.327).

-- SAPs need no employee authorizations to conduct SAP evaluations, to confer with employers, to confer with MROs, to confer with appropriate education and treatment providers, or to provide SAP reports to employers.

-- Consortia/Third Party Administrators need no employee authorizations to bill employers for service agent functions that they perform for employers or contract on behalf of employers.

-- Evaluating physicians need no employee authorizations to report evaluation information and results to MROs or to employers, as appropriate.

- HHS agrees that there is no conflict between the HIPPA rules and DOT requirements, and indicated so in the preamble to Part 164 [65 Federal Register 82593-94; December 20, 2000].