



Health Insurance Portability and Accountability Act: Basics in RETAIN

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RETAIN

Retaining Employment and Talent
After Injury/Illness Network

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Today's Webinar

- Submit questions at any time during the webinar in the Chat Pod
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- Please mute your individual device unless actively speaking
- Attendees will be unmuted occasionally to interact verbally

Raise your hand if you have a question



Welcome

RETAIN | Retaining Employment and Talent After
Injury/Illness Network

About RETAIN

- Retaining Employment and Talent After Injury/Illness Network (RETAIN)
- Joint initiative funded and led by the U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) and in partnership with DOL's Employment and Training Administration and the Social Security Administration
- Focused on building state capacity in SAW/RTW strategies across 8 states
- Explores ways to help people who become ill or injured during their working years to remain in the labor force

Today's Presenters



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Outline

- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - Introduction to HIPAA
 - Need for HIPAA
- What is Protected Health Information?
- Information Protected by HIPAA Privacy Rule
- Entities Covered by HIPAA
- RETAIN Expectation for Obtaining Informed Consent
- Participants in RETAIN Projects
- Purpose and Components
 - Informed Consent Form
 - HIPAA Authorization Form

Introduction to the Health Insurance Portability and Accountability Act (HIPAA) of 1996

- Main federal law that protects health information
- Detailed requirements regarding both privacy and security

Need for the Health Insurance Portability and Accountability Act

- States: laws to protect the privacy and confidentiality of health information
- Health care providers: safeguard private health information
- Wide variations in state laws
- Possible gaps in protection
- Emergence and growth of electronic health records
- HIPAA Privacy Rule: establishes a Federal *minimum* level of safeguards to protect the confidentiality of medical and health information
- State laws versus HIPAA

The HIPAA Titles and Rules

- HIPAA: Five titles
- Title 2: Administrative simplification
 - Provisions to protect the privacy and security of health information
 - Electronic standards for transmitting health information
 - Requires unique identifiers for providers
 - Five rules
- Two key rules:
 - Privacy Rule
 - Security Rule

The HIPAA Privacy Rule and Security Rule

- **HIPAA Privacy Rule:** Establishes standards to protect PHI, in any medium, held by:
 - Health care providers
 - Health plans
 - Health care clearinghouses
 - Business associates of these entities
- **Privacy Rule:** Addresses when protected health information (PHI) may be used and disclosed for patient care and other purposes
- **HIPAA Security Rule:** Specifically covers electronic protected health information (ePHI)

What Is Protected Health Information?

- More than names of patients and their medical history
- Any information in a health record that can be used to identify an individual, and that was created, used, or disclosed when a health care service was provided
- Information is protected in any form or media: electronic, paper or oral

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Data Protection Under HIPAA

- Protect PHI: electronic, paper or oral format
- Transmission: inside or outside a health care facility
- Anyone or any institution involved with use of health care-related data
- Any size of the data
- Not intended to interfere with health services delivery
 - Share information to facilitate appropriate, high-quality care
- Access confidential health information only when there is a reason

Source: U.S. Department of Labor (2018).

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Entities Covered by HIPAA

- **Health Care Providers**

- Examples: doctors, dentists, clinics, chiropractors, nursing homes, pharmacies, psychologists

- **Health Plans**

- Examples: self-funded health plans, government programs that pay for health care

- **Health Care Clearinghouses**

- Public or private entities that process nonstandard health information they receive into a standard format
- Examples: billing service, repricing company, or community health information system

- **Business Associates of these entities**

- Engaged by one of the HIPAA-covered entities to help carry out its health care activities and functions

RETAIN Expectation for Obtaining Informed Consent

Question: “Regarding HIPAA, health care providers cannot provide other agencies with information about who may be eligible for RETAIN because it would violate HIPAA.

How does the Department of Labor (DOL) envision states will address this?”



Response: “Projects must satisfy the application requirement to demonstrate legal authority to share required data with DOL and the Social Security Administration (SSA), as discussed on pages 19 and 34 of the Funding Opportunity Announcement. In order to do so, we expect projects will need to obtain informed consent from all participants.”

Who Are Your Participants in the RETAIN Projects?

- Three possible categories of participants:
 - Workers
 - Employers
 - Health care providers

What Is Informed Consent?

- Voluntary agreement to participate in research
- Not just providing a consent form
- It is a process!
 - Assess person's ability to understand the information and make an independent, voluntary decision
 - Present relevant information about RETAIN
 - Talk about possible risks and benefits
 - Talk about risks and benefits of other options
 - Provide opportunity to ask questions and answer questions
 - Provide time to discuss this with his or her family member

Source: U.S. Department of Labor (2018).

Components of an Informed Consent Form

- Concise summary of the project
- Research statement
- Purpose
- Participant duration
- Procedures
- Experimental procedures
- Alternatives to RETAIN
- Possible benefits
- Possible risks
- Protection of data
- Contacts
- Participation is Voluntary
- Options if the person declines participation
- New information is learned during the study
- Inducements
- Costs of participating
- New findings developed during the research
- Number of participants

Purpose and Components of a HIPAA Authorization Form

Obtain permission from participant to disclose PHI

Core Elements:

- Description of PHI to be shared or disclosed
- Persons or entities authorized to disclose the information
- Persons or entities with whom the information can be shared
- Purpose for disclosing the specified PHI
- An expiration date or event
- Signature and date

Required Statements:

- Revoke authorization, instructions
- Treatment, payment, enrollment or eligibility for benefits not conditional on obtaining authorization
- Potential for PHI to be redisclosed by the recipient

Combined or Separate Informed Consent Form and HIPAA Authorization Form

- To combine or not combine informed consent form and HIPAA Authorization Form?
- Institutional Review Board guidance
- Article—some arguments:
- Article: HIPAA Authorizations Should Not Be Combined With Research Consent Documents (*Health*, 2017):
https://firstclinical.com/journal/2017/1701_HIPAA_Form.pdf

Summary Points

- **HIPAA:** main federal law that protects health information
- **PHI:** any information in a medical or health record that can be used to identify an individual, and that was created, used, or disclosed when a health care service was provided
- **HIPAA Privacy Rule:** standards to protect PHI held by health care providers, health plans, health care clearinghouses, and the business associates of these entities
- **RETAIN Projects:** must satisfy the application requirement to demonstrate legal authority to share required data with DOL and SSA
- **Participants:** workers, possibly employers, possibly health care providers
- **Informed Consent Form and Process:** voluntary consent to participate in the study
- **HIPAA Authorization Form:** obtain permission from the participant to disclose PHI

Questions?

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