

## HIPAA AND WORKERS' COMPENSATION

Due to numerous questions concerning the obtaining of medical records and the privacy regulations of HIPAA that went into effect on April 14, 2003, I want to point out that HIPAA provides an exception for workers' compensation.

§ 164.512(l) states "Standard Disclosure for Workers' Compensation. A covered entity may disclose protected by health information as authorized by and to the extent necessary to comply with the laws related to workers' compensation or other similar programs established by law that provide benefits for work-related injuries or illnesses without regard to fault."

OCGA §34-9-207(a) provides that "When an employee has submitted a claim for workers' compensation benefits or is receiving payment of weekly income benefits or the employer has paid any medical expenses, that employee shall be deemed to have waived any privilege or confidentiality concerning any communications related to the claim or history or treatment of injury arising from the incident that the employee has had with any physicians, including, but not limited to, communications with psychiatrists or psychologists. Notwithstanding any other provision of law to the contrary, when requested by the employer any physician who has examined, treated, or tested the employee or consulted about the employee shall provide within a reasonable time and for a reasonable charge all information and records related to the examination, treatment, testing, or consultation concerning the employee."

Therefore, as § 164.512(l) provides for disclosure of medical records pursuant to Georgia workers' compensation law which states that employers are entitled to medical records if employee files a claim or is receiving income or medical benefits, a covered entity is permitted to disclose an individual's health information related to the claim. Since Form 207 is a medical release form provided by the State Board of Workers' Compensation, the Rules Committee is in the process of amending the 207 to add HIPAA compliant language. As soon as the new form is available, we will post it on our website.

It should be noted that psychotherapy notes are not exempted and an order should be obtained for disclosure of those records.

William S. Cain, Jr  
Chief Administrative Law Judge