



HIPAA and L&I

HIPAA Privacy Rule Exceptions and L&I

Authorizations are not needed when patients are covered by workers' compensation

HIPAA *exempts* workers' compensation programs from the Act's Privacy Rule *authorization requirement* (45 CFR § 164.512(l)).

This means you can disclose a patient's personal health information to L&I or a self-insurer without obtaining authorizations from your patient as is generally required by HIPAA.

HIPAA also allows you to disclose a patient's personal health information to an employer regarding work-related illnesses or injuries without the patient's authorization (45 CFR § 164.512(b)(v)(B)).

Health Insurance Portability & Accountability Act (HIPAA) *allows exceptions* to the **HIPAA Privacy Rule** when providers are treating patients covered by the:

- L&I's workers compensation program.
- Crime Victims' Compensation (CVC) program.
- As well as when providers are conducting examinations required by the Washington Industrial Safety and Health Act (WISHA).

The information on this webpage explains how these exceptions to the HIPAA Privacy Rule apply when providers are taking care of patients through these programs.

Links to further information about these rules is provided at the end of this page.

HIPAA's "minimum necessary" standard does not apply to workers' compensation or crime victims' compensation claims

HIPAA's *minimum necessary* standard *does not apply* to any disclosure you are required to make by state law (45 CFR § 164.502(b)(2)(v)).

This means when L&I or a self-insurer requests the personal health information of a patient being treated under a workers' compensation or crime victims' compensation claim, you must send *everything* requested.

This includes requests for personal health information that *may appear unrelated* to your patient's claim. This is because L&I or self-insurer may cover treatment for a condition that is unrelated to an injury when the condition is retarding your patient's recovery.

L&I or the self-insurer may also request what appears to be unrelated medical information in order to review your patient's medical history when the patient contends a new condition is related to or has been aggravated by a work-related injury.

Releasing personal health information to vocational counselors, nurses and others assisting L&I or self-insurer

When a worker signs a "Report of Industrial Injury or Occupational Disease" form* or files an application to reopen a claim with L&I, he or she authorizes treating providers to release the worker's personal health information (PHI) as needed for them to receive benefits.

These benefits may include vocational rehabilitation, nurse case management, utilization review, independent medical exams, foreign language translation, and pre-authorized services such as pain clinics.

Providers must release the worker's personal health information to professionals who have an active L&I provider number and perform services for a worker with an industrial insurance claim. No additional worker authorization is required.

*For self-insurers, the "Physician's Initial Report" form or the "Self-insurer Accident Report" (SIF-2) form.

Your privacy notice should address disclosure to L&I

If you are subject to HIPAA, HIPAA requires that you develop a privacy notice for your patients (CFR 45 § 164.520). The notice must advise your patients of your legal duties under HIPAA, as well as how you may use and disclose their personal health information. We recommend that you include in your privacy notice that:

- You are required by Washington State law to disclose personal health information to the L&I or a self-insured employer when they are treated under a workers' compensation claim.
- You can disclose personal health information to an employer without an authorization from your patient if that information is about a workplace injury or illness, light duty work, workplace medical surveillance, or a return-to-work examination.
- You are required by Washington State law to disclose personal health information to the L&I if they are treated under a crime victims' compensation claim.
- Your patients can't compel you to restrict disclosures of their personal health information to L&I or self-insurer because it is required by law (45 CFR § 164.512, 164.522(a)(1)(v)).

Read [L&I's privacy notice](#) (190 KB PDF).

External HIPAA links

- [Centers for Medicare and Medicaid Services](#) – Directory of CMS's HIPAA-related business activities.
- [Office of Civil Rights](#) – Resources for understanding and asking questions about HIPAA.
- [Workgroup for Electronic Data Interchange \(WEDI\)](#) – WEDI focuses on electronic commerce within healthcare.

Multiple business establishments

WAC 296-27-02101

IF	THEN
The establishment is expected to be in operation for a year or more	Keep separate OSHA 300 logs for each establishment.
The establishment is short term – expected to be in business for less than a year	You may keep one Log that covers all short term establishments for individual company divisions or geographic regions.
Employees who <u>work at different locations</u> (i.e., construction)	You must link each employee to ONE of your establishments and record their injury/illness on the OSHA 300 Log for that establishment.
Employees <u>don't work at any</u> of your establishments (i.e., telecommute)	
An employee <u>of one of your establishments</u> is injured or becomes ill <u>while visiting or working at another of your establishments</u>	You must record the injury or illness on the OSHA 300 Log of the establishment at which the injury or illness occurred.
If the employee is <u>not at one of your establishments</u> and becomes injured or ill (i.e., away on business)	You must record the case on the OSHA 300 Log at the establishment at which the employee normally works.
<p>You keep records for an establishment at your headquarters or other central location</p> <p>Scenario:</p> <p>You have 3 establishments. One is located in Washington, the 2nd is in Ohio, and the 3rd, which is also headquarters, is located in Maine. For many reasons including the fact that they are not in close proximity, the employer would have to keep separate occupational injury and illness records for each of those establishments. However, the employer could keep the separate Logs at the Maine (headquarters) location as long as the employer is able to meet the adjacent requirements for transmitting, producing, and sending.</p>	<p>You must be able to:</p> <ul style="list-style-type: none"> ▪ <u>Transmit</u> information about the injuries and illnesses from the establishment to the central location within 7 calendar days of receiving information that a recordable injury or illness has occurred; and ▪ <u>Produce and send</u> the records from the central location to the establishment <ul style="list-style-type: none"> - By the next business day for employees, former employees or employee reps: - Within 4 business hours for government reps.

Establishment. A single physical location where business (i.e., services or industrial operations) is conducted.

- Where employees don't work at a single physical location (i.e., construction; transportation; communications, electric, gas and sanitary services; and similar operations), the establishment is represented by a main or branch office, terminal, station, etc., that either supervises or assigns the work.

	Number of Locations	Number of Establishments	Elements of definition; WAC 296-27-051	Example
Okay, so I have to keep a separate OSHA Log for each establishment, but how do I determine how many logs I need to keep if I have more than one location or more than one business establishment?	One	One	Normally, one business location has only one establishment.	Employer only has one business location where he owns a cabinet shop. <ul style="list-style-type: none"> • Employer must keep one OSHA 300 Log
	One	Two or more	Two or more separate businesses that share a single location would be classified as separate establishments only when: <ul style="list-style-type: none"> - Each establishments represents a distinctly separate business that is engaged in a different economic activity; - No one industry description (NAICS) applies to the joint activities of the establishments; and - Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. 	<p><u>IF</u> an employer operates a construction company at the same location as his lumber yard,</p> <p><u>THEN</u> the employer would consider each business to be a separate establishment.</p> <ul style="list-style-type: none"> • Employer must keep two Logs – one for each establishment.
	Two or more	One	One business establishment spread over multiple locations would be classified as one establishment only when: <ul style="list-style-type: none"> - Locations are operated as a single business under common management, <u>and are in close proximity to each other</u>; AND - Only one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. 	<p>One manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administration building across the street.</p> <ul style="list-style-type: none"> • Employer must keep one OSHA 300 Log

Notes:

- Number of establishments = Number of OSHA recordkeeping forms
- If you have multiple business establishments in multiple states that conduct the same business operations, you would need to keep separate OSHA 300 logs & OSHA 300 A- Summaries for each of these establishments.

RECORDKEEPING DECISION TREE

