



## POSITION STATEMENT

### Role of Occupational and Environmental Health Nurses and Nurse Case Managers in Protecting Confidentiality of Health Information

Confidentiality of protected health information (PHI) is integral and central to the practice of the nurse case manager (NCM) and the occupational and environmental health nurse (OHN). Confidentiality of a client's PHI is maintained in accordance with professional codes, laws, and regulations. The confidential treatment is a professional obligation of the NCM and OHN to ensure public trust and prevent unauthorized and inappropriate disclosure of PHI.

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

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

- Health plans - individual and/or group plans that provide or pay the cost of medical care (health, dental, vision) and/or prescription drugs, HMOs, employer-sponsored group plans, etc.
- Health care providers - providers of health care services and other persons or organizations that furnish, bill, or are paid for health care in the normal course of business and that electronically transmit health information with certain transactions, i.e., claims, benefit eligibility inquiries, referral authorization requests or other HIPAA-standard transactions.
- Health care clearinghouses - 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 indirectly to "business associates" of covered entities because covered entities must bind them by contract to protect 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 (U.S. Department of Health and Human Resources, 2003a).

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 TPO functions:

- Treatment - the provision, coordination, or management of health care and/or related services by a health care provider. For example, when a NCM or OHN working for a "covered entity" coordinates client care, they are providing treatment.
- 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. For example, a NCM or OHN employed by a health care provider to assess whether needed services are eligible for coverage under an individual's health plan is providing payment services.
- Health care operations - administrative, financial, legal, and quality improvement for a "covered entity". For example, a NCM or OHN employed as a health plan administrator, a plan case manager or a plan utilization review nurse is furnishing health care operations services. The HIPAA Privacy Rule also permits, but does not require, covered entities to disclose PHI for certain public

policy purposes without permission from the individual so long as regulatory safeguards are followed.

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 get such authorizations even when they are not required.

If a nurse case manager is working as an independent third party and engaged in treatment, payment or health care operations for or on behalf of a covered entity, a business associate relationship is created and a business associate agreement will be required (DiBenedetto, 2003). In essence, this agreement will require the contract nurse to protect PHI under the rules applicable to the covered entity that has retained the nurse.

Because of uncertainties with the HIPAA Privacy Rule, some licensed health care providers (LHCP) may be concerned about civil and possibly criminal penalties related to inappropriate disclosure of PHI and will be reluctant to release necessary health information without authorization even when HIPAA would permit the disclosure. The NCM/OHN will need to understand when HIPAA permits disclosures without authorizations and when it does not. The NCM/OHN will also need to develop effective communication channels with the client and the client's LHCP, explaining the need for particular information and, where applicable, the rules for lawfully releasing the information without an authorization under HIPAA. By routinely obtaining an authorization from the client, the NCM/OHN may find the process of getting needed information from outside providers easier.

## Rationale

Confidentiality (privacy) of PHI is a fundamental and underlying concept to good nursing practice, good nurse case management and good occupational and environmental health nursing practice. It is an implicit promise between client and provider (NCM/OHN) that PHI will be placed and remain in the health record and not be disclosed, except by legal, ethical, or regulatory processes or client consent (AAOHN, 1996).

Generally, individuals must consent to disclosures of their PHI, but the HIPAA Privacy Rule permits covered entities, with certain limits and protections, to use and disclose PHI without authorization, pursuant to TPO functions and in certain limited situations. These uses and disclosures are designed to avoid interfering with an individual's access to quality health care or the efficient payment for such health care (U.S. Department of Health and Human Resources, 2003b). They also involve

situations where the U.S. Department of Health and Human Services 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 NCM/OHN 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 Health & Human Services, 2003a).
- U.S. Department of Transportation (DOT) mandated medical exams and drug and alcohol testing except pre-employment or post offer medical exam results.
- OSHA mandated medical surveillance and occupational injury illness evaluations (U.S. Department of Health & Human Services, 2000).
- 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 PHI collected from clients who voluntarily participate in company-sponsored wellness and health promotion activities conducted by OHNs employed by the company. On the other hand, if employers establish wellness programs that involve data collection by outside LHCPs who are covered entities, the client will have to sign a HIPAA-compliant authorization before that information may be released to the company NCM/OHN. Similarly, LHCPs need to have signed authorizations from clients before they can release information to employers or their carriers for short-term disability (STD) and long-term disability (LTD) determinations. The same is true when OHCPs conduct pre-employment or post-offer physical examinations or other fitness for duty examinations, although employers are permitted to make signing such authorizations 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. That said, Americans with Disabilities Act (ADA)/Family Medical Leave Act (FMLA) confidentiality requirements still apply and mandate that the medical information be maintained separate and apart from other personnel records.

Nurse case managers and occupational and environmental health nurses should take reasonable steps to limit use and disclosure of and requests for PHI to the minimum necessary. There are three levels of confidentiality that require increasing limits of use and disclosure, Level III being the most controlled (AAOHN, 2003):

- Level I - Information required by law. These include data on occupational illnesses and injuries, exposure to data and information derived from special examinations, such as food handlers. All disclosure should be coordinated and controlled by the OHN or NCM and made to the client; with appropriate written authorization, to the client's designated representative; or to management on a need-to-know basis with reference only to workability status.

- Level II - Information to assist human resource management. This includes information obtained from job placement and provider health surveillance and other exams to determine workability status of the employee. Disclosure same as Level I.

- Level III - PHI includes all information not recorded in Level I or Level II. Examples are treatment for non-work related health problems or family health counseling. The NCM and OHN control all information.

HIPAA grants no authority to regulate health information in the hands of non-covered entities once it leaves a covered entity (U.S. Department of Health & Human Services, 2003b), but health information may be subject to state and other federal laws. State laws and regulations, which provide greater privacy protection of PHI, take precedence over HIPAA. Because case managers and occupational and environmental health nurses are sometimes working across multi-state lines, each NCM and OHN should know the state and local laws that are relevant to the issue of confidentiality and interstate nursing licensure compacts.

Confidentiality (privacy), which includes covered and non-covered entities, is broader than HIPAA. To ensure confidential handling of PHI, nurse case managers and occupational and environmental health 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; and
- Know your state and local laws and company/facility policies as relevant to privacy and security of PHI.

Confidentiality (privacy) is a professional and ethical issue as well as a legal obligation and should be handled with a high level of professionalism.

Note: AAOHN and CMSA recognize that other disciplines practice in the field of case management and we highly recommend that these practitioners be knowledgeable of their scope of practice and state and federal laws and other policies that might apply.

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Small Business Association:  
[www.sba.gov/advo/state\\_legislative03.pdf](http://www.sba.gov/advo/state_legislative03.pdf)

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### **Additional Resources**

American Association of Healthplans HIPAA information:  
[www.aahp.org/Templage.cfm](http://www.aahp.org/Templage.cfm)

Administrative Simplification:  
[www.aspe.hhs.gov/admsimp/](http://www.aspe.hhs.gov/admsimp/)

HIPAA Privacy Rule: Provisions Relevant to Public Health Practice: [www.cdc.gov](http://www.cdc.gov)

Medicare and Medicaid HIPAA information:  
[www.cms.hhs.gov/hipaa/](http://www.cms.hhs.gov/hipaa/)

Health Privacy Organization: [www.healthprivacy.org](http://www.healthprivacy.org)

HIPAA Advisory: [www.hipaaadvisory.com](http://www.hipaaadvisory.com)

29 CFR 1910.1020, Access to employee exposure & medical records: [www.osha.gov](http://www.osha.gov)