

OSHA FactSheet

HIPAA and OSHA Whistleblower Complaints

What is HIPAA? What Does It Do?

HIPAA stands for the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. HIPAA requires the protection of the privacy of individuals' health care records and information. See 45 CFR §164.508.

What Records Get Privacy Protection?

Any information about a person's physical or mental health or health care in any written or oral form—including computer records—is protected from unauthorized disclosure. See 45 CFR §§160.103, 164.514(a).

Who Must Keep Health Records Private?

Any person or organization that furnishes, bills, or is paid for health care is a "covered entity" that must guard private health information against disclosure with policies, people, and procedures in place to do this. Entities violate HIPAA if they wrongfully disclose HIPAA information.

Can Health Information Be Disclosed? When?

Under normal circumstances, an individual must give written consent to disclose his or her health information. However, a covered entity's employees or business associates may disclose private or protected health information to a health oversight or public health authority (such as OSHA) that is investigating a covered entity's conduct, to a health care accrediting organization, or to an attorney considering a whistleblower case. These disclosures

are permitted as long as the employee believes in good faith that the conditions he is reporting pose a serious threat to one or more patients, employees, or the public. So, for example, an employee can report a threat of violence to a supervisor, union official, or OSHA without violating HIPAA. If the employee believes that he or she has been retaliated against for such reporting, then he can file a whistleblower complaint under Section 11(c) of the Occupational Safety and Health Act, also without violating HIPAA. See 45 CFR §530(e)(1).

What Is OSHA's Role?

OSHA is charged with ensuring health and safety in the workplace, and is considered a public health authority and a health oversight agency under HIPAA. The agency often has to use and disclose protected health information to investigate matters to protect the public and may use protected health information to prevent or reduce serious health or safety threats to the public and to individuals, including the targets of such threats. In the context of a whistleblower investigation, OSHA can disclose this information without authorization and without violating HIPAA. See 45 CFR § 530(e)(1) & 65 Fed. Reg. 82502.

OSHA will not disclose protected health information without a reasonable belief that disclosing this information is needed to prevent a serious threat to health and safety. It will use this information to protect the public—part of the reason for HIPAA.