

INFORMATION MEMORANDUM 90-X-83

TO: All OSH Personnel

FROM: W. M. Lybrand

SUBJECT: Authorization and Procedures for Reviewing Specific Medical Records To Verify Compliance with Subarticle III

DATE: February 21, 1990

1. Purpose

This instruction authorizes appropriately qualified OSH personnel to conduct reviews of the medical records specified of this instruction where there is a need to gain access to verify compliance with Subarticle III, Recordkeeping Requirements.

2. Background

a. All Compliance Officers and Industrial Hygienists have been instructed to examine other records, which are often in the form of employee medical records, to determine if OSHA-200 log entries are accurate.

b. "Employee medical record" is defined at 29 CFR 1910.1020(c)(6)(i) as a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:

- (i) Medical and employment questionnaires or histories (including job description and occupational exposures),
- (ii) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring),
- (iii) Medical opinions, diagnosis, progress notes and recommendations,
- (iv) First-aid records,
- (v) Descriptions of treatments and prescriptions, and
- (vi) Employee medical complaints.

c. Subarticle IX specifies the rules governing OSHA access to personally identifiable employee medical information contained in medical records. OSHA excluded from coverage by these rules, however, certain records that are of such occupational safety and health importance and that are so frequently used by various agency personnel

that rigid approval and security procedures would be both impractical and inappropriate.

d. Subarticle IX states that "...this section does not apply to records required by Subarticle III..." The agency interprets this to mean that OSHA does not need an access order or written employee consent to obtain access to the following employer-maintained records:

- (i) OSHA-300
- (ii) OSHA 301 or equivalent.
- (iii) Any backup information (e.g., first-aid logs, first report of injury) no more detailed than the type of information contained in the OSHA 301.

e. Certain backup medical records (e.g., some first reports of injury) that may be necessary to verify compliance with Subarticle III recordkeeping requirements contain information more detailed than that required by the OSHA 301, such as written medical opinions, press notes, prescriptions, and recommendations.

f. 29 CFR 1913.1020(b)(6) excluded from the rules governing OSHA records access situations "where a written directive by the Assistant Secretary authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results". Therefore, this instruction, pursuant to the provision, establishes procedures allowing direct OSHA access to additional types of medical records when necessary for the sole purpose of verifying compliance with Subarticle III.

3. Statutory Purpose and Need to Gain Access. The purpose of obtaining access to the medical information specific at 5.b. is to ensure safe and healthful working conditions for working men and women by providing an effective enforcement program for OSHA standards and the Occupational Safety and Health Act.

a. To accomplish this purpose it may be necessary for agency personnel to examine the employee medical information specified at 5.b. to determine compliance with the recordkeeping requirements of Subarticle III, Regulations and Procedures on Recording and Reporting Occupational Injuries and Illnesses.

b. It may further be necessary for appropriately qualified agency personnel to examine this medical information in a personally identifiable form to enable the agency to determine if all workplace injuries involving more than first-aid treatment are properly recorded on the OSHA Forms 300 and 301, or equivalents.

c. If a review of the medical information indicates that injuries and/or illnesses are occurring that are not being recorded, OSHA will investigate closely to determine the propriety of the employer's decision not to record them. Personally identifiable

information is, therefore, necessary to specify which records are to be examined and enable a complete investigation of all relevant information.

4. Qualified OSHA Personnel. Review of the medical information described at 5. shall be limited to:

a. Experienced safety or health compliance officers who are well-versed in the OSHA/Bureau of Labor Statistics recordability guidelines for the OSHA 300.

5. Authorized Medical Information.

a. This instruction authorizes qualified OSHA personnel to examine the content of and, if appropriate, copy employee medical records that:

(i) Are necessary to verify compliance with recordkeeping requirements, and

(ii) Contain more detailed information than that found in records specifically accessible to OSHA pursuant to Subarticle III (e.g., the OSHA 301).

b. The type of medical information so authorized to be accessible, if not already accessible under 2.d., are:

(i) Daily reports of new injury or illness cases.

(ii) State workers' compensation forms (independent of OSHA 300 and 301).

(iii) First-aid records.

(iv) Nurse/physician/clinic logs.

(v) Company accident reports; insurers' accident reports.

(vi) Sanitized medical records available to employer officials outside the medical office.

c. This authorization is contingent upon adherence to the guidelines described at 6 below of this instruction.

d. The information revealed through review of the records authorized in this instruction can then be used to document or support violations other than Subarticle III.

e. This instruction is not intended to limit OSHA access to information authorized elsewhere by regulation or directive.

- (i) Authorization procedures for access to biological monitoring results that involve the evaluation or physiological status of a body system.
  - (ii) Authorization procedures for access to medical opinions mandated by existing standards.
  - (iii) Biological monitoring results which directly assess the absorption of a substance or agent by body systems are exposure records—not medical records.
- f. Access to information other than that specifies in 5.b. and 5.d. above, will require a written access order following the procedures in Subarticle IX unless:
- (i) Specific written consent of an employee is obtained pursuant to 1910.1020(e)(2)(ii)(B) and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information.
  - (ii) An OSHA staff or contract physician consults with an employer's physician pursuant to Subarticle IX.
  - (iii) OSHA access to, or the use of, personally identifiable employee medical information is obtained in the course of litigation.
6. Guidelines for Screening Authorized Medical Information. Access to the medical information described at 5. (hereinafter referred to as “authorized backup records”) shall be restricted to situations where qualified OSHA personnel have determined that a review of such records is necessary to verify compliance with recordkeeping requirements. Moreover, where such review has been deemed necessary, it shall be confined to only that extent needed to assess compliance with Subarticle III.
- a. Limit Removal of Records. Access to authorized backup records shall, if practicable, involve onsite review. If possible, remove direct personal identifiers from the medical information onsite and code the medical information and the list of direct identifiers with a unique identifying number of each employee. A minimum of personally identifiable information shall be recorded for enforcement purposes and taken off-site.
  - b. Limit Review of More Sensitive Records. Records reviewed to assess Subarticle III compliance shall be screened in reverse order of sensitivity (the least sensitive first) to determine needs for further review. The order of review is normally thus:
    - (i) OSHA 300; OSHA 301 or equivalent.
    - (ii) State worker's compensation forms (independent of OSHA 300 and 301).

(iii) First-aid records, first report of injury, nurse/doctor/clinic logs, company accident reports, and insurers' accident reports, whose information is no more detailed than that of the OSHA 301 or equivalent.

(iv) Any further backup sanitized medical information describing injuries and illnesses resulting from workplace accidents available to employer officials outside the medical office.

(v) Supporting records specified in 6.b.(iii) that also contain more detailed medical information, such as medical opinions, progress notes, prescriptions, and recommendations.

c. Limit Access to Employee Medical File. Personally identifiable employee medical information shall be requested in as specific terms as possible to avoid unnecessary reviews of complete employee medical files.

d. Limit Unnecessary Documentation of Authorized Backup Records. Documentation of Subarticle III noncompliance through authorized backup records shall normally be confined to:

(i) Employee name.

(ii) Nature and location of record.

(iii) Nature of observed recordkeeping deficiency.

(iv) Evidentiary relationship of record to observe recordkeeping deficiency.

NOTE: Personally identifiable information shall not be disclosed on the citation.

7. Security and Confidentiality. Where access to employee medical information is obtained pursuant to the authorization of this instruction, the Area Director or a qualified person designated by the Area Director shall be responsible for ensuring its security and confidentiality.

a. Agency Use. Employee medical information in personally identifiable form obtained pursuant to this instruction shall be used and kept secured in accordance with Subarticle IX.

b. Retention of Identifiers. If clearance is obtained from the OSHA Medical Records Officer, direct personal identifiers may be kept together with the authorized backup records to which access has been obtained pursuant to this instruction, as long as the instant investigation and/or subsequent litigation is ongoing. Upon completion of the instant investigation and/or subsequent litigation, the personal identifiers shall either be removed and retained separately, or all records shall be returned to their sources or destroyed consistent with OSHA records deposition programs.

c. Segregation. Agency files containing personally identifiable employee medical information obtained pursuant to this instruction shall be kept segregated from other agency files. When not in active use, files containing the information shall be kept secured in a locked cabinet or safe.

d. Security. The security procedures set forth at Subarticle IX shall be followed.

e. Interagency Transfer and Public Disclosure. Personally identifiable employee medical information obtained pursuant to this instruction shall not be transferred to another agency or office outside of OSHA.

8. When Access is Denied. If access to medical records is denied, the Compliance Officer or Industrial Hygienist shall contact the Compliance Manager.