

NAVIGATING THE MAZE

*Cheri Benander, MSN, RN, CHC, NHCE-C
Health Services Consultant, HealthTechS3*

INFLUENZA VACCINATIONS

Flu season is upon us and many healthcare workers have questions regarding the mandatory policies surrounding the flu vaccine. Specifically, those policies that identify employees who have or have not taken the vaccine. Examples include alerts on identification badges or requiring those who have not received the vaccine to wear a surgical mask throughout flu season.

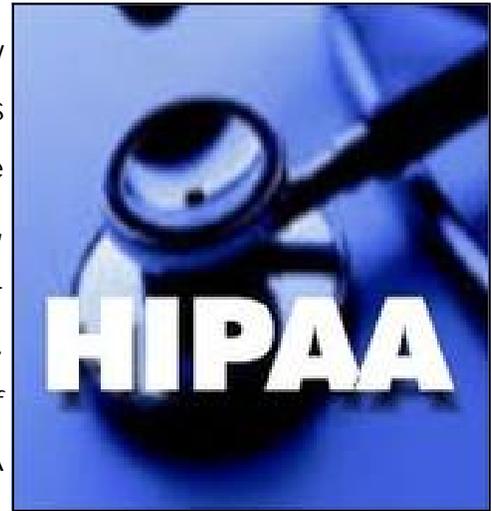


DEBATE

Controversy exists as to the legal basis for employers developing mandatory influenza programs. Position statements by several leading medical associations support annual mandatory influenza immunization programs.¹ The Centers for Disease Control (CDC) states that research indicates that influenza vaccinations of health care personnel can enhance patient safety, however the CDC "...does not issue any requirements or mandates for state agencies, health systems, or health care workers regarding infection control practices, including influenza vaccination or the use of masks."² Individual states have varying laws that either recommend or mandate that health care workers receive influenza vaccinations unless they meet specific exceptions.³ An internet search will lend itself to just as many arguments against the policies of mandating influenza vaccinations in healthcare workers and whether these policies are discriminatory in nature. This debate has been ongoing for several years and will not be solved here. However, we can review questions your employees may have relat-

ed to whether or not the identity of those who have or have not had an influenza vaccination is a violation of patient privacy rules.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established national standards to protect an individual's medical record. The rule applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. "Employers by themselves do not fit within any of those categories, so they are not subject to HIPAA privacy rules."⁴



The use and disclosure of protected health information (PHI) is regulated by HIPAA. The definition of PHI does not include employment records, even if those records are health-related. However, the rules do protect your medical record if you are a patient of the facility.⁵

This exception would also exist if the facility offers a workplace wellness program as part of their group health plan for employees. "HIPAA also protects PHI that is held by the employer as plan sponsor on the plan's behalf when the plan sponsor is administering aspects of the plan, including wellness program benefits offered through the plan."⁶ Essentially, if the information the facility holds is related to your employment it is not protected, if the information is health information related to you as a participant in the company's insurance program or as a patient, it is protected.

CONCLUSION

Controversy and debate continues around the topic of mandatory influenza programs. Compliance and Privacy officers responsibilities in this debate, is to ensure that privacy rights are adhered to when appropriate. They must also be prepared to provide education about the applicability of HIPAA rules and the situations in which the rules do and do not apply.

¹ Immunization Action Coalition (IAC). Influenza Vaccination Honor Roll. Available from: <http://www.immunize.org/honor-roll/influenza-mandates/>

² Centers for Disease Control and Prevention (CDC). Influenza vaccination information for health care workers. Available from: <https://www.cdc.gov/flu/healthcareworkers.htm>

³ Centers for Disease Control and Prevention (CDC). Menu of State hospital influenza vaccination laws. Available from: <https://www.cdc.gov/php/docs/menu-shfluvacclaws.pdf>

⁴ Zabawa, B.J. Flu shots in the workplace: Do HIPAA privacy rules apply. Available from: <https://flushotsforyou.com/flu-shots-in-the-workplace-do-hipaa-privacy-rules-apply.html>

⁵ Office for Civil Rights. Employers and Health Information in the Workplace. Available from: <https://www.hhs.gov/hipaa/for-individuals/employers-health-information-workplace/index.html>

⁶ Office for Civil Rights. HIPAA Privacy and Security and workplace wellness programs. Available from: <https://www.hhs.gov/hipaa/for-professionals/privacy/workplace-wellness/>

HealthTechS3 hopes that the information contained herein will be informative and helpful on industry topics. However, please note that this information is not intended to be definitive. HealthTech and its affiliates expressly disclaim any and all liability, whatsoever, for any such information and for any use made thereof. Recipients of this information should consult original source materials and qualified healthcare regulatory counsel for specific guidance in healthcare reimbursement and regulatory matters.

For more information, please contact Cheri Benander:

Cell: 307-202-0315

Main: 615-309-7421

cheri.benander@healthtechs3.com

5110 Maryland Way, Suite 200 | Brentwood, TN 37027

www.healthtechs3.com

HealthTechS3 is an award-winning healthcare consulting and hospital management firm based in Brentwood, Tennessee with clients across the United States. We are dedicated to the goal of improving performance, achieving compliance, reducing costs and ultimately improving patient care. Leveraging consultants with deep healthcare industry experience, HealthTechS3 provides actionable insights and guidance that supports informed decision making and drives efficiency in operational performance.

BUILDING LEADERS | TRANSFORMING HOSPITALS | IMPROVING CARE