



**SELF-INSURANCE INSTITUTE
OF AMERICA, INC.**

Protecting and Promoting Self-Insurance and Alternative Risk Transfer Since 1981.

June 18, 2008

The Honorable John Dingle
Chairman
Energy and Commerce Committee
2125 Rayburn Building
Washington, DC 20515

The Honorable Joe Barton
Ranking Member
Energy and Commerce Committee
2322-A Rayburn Building
Washington, DC 20515

The Honorable Frank Pallone
Chairman
Subcommittee on Health
2125 Rayburn Building
Washington, DC 20515

The Honorable Nathan Deal
Ranking Member
Subcommittee on Health
2322-A Rayburn Building
Washington, DC 20515

Re: Proposed HIT Legislation – Workers’ Compensation Plans Access Concerns

Dear Chairmen Dingle and Pallone and Ranking Members Barton and Deal:

Thank you for inviting the Self-Insurance Institute of America (SIIA) to submit comments on the committee’s Health Information Technology/Privacy Discussion Draft.

Issue:

We address the issue of whether the HIT legislation should change current Federal/State law in connection with privacy laws that relate to workers’ compensation.

Background:

The release of medical records in connection with worker’s compensation claims is generally regulated by the States. Most State laws permit medical records to be transmitted without the claimant’s consent if specifically authorized by law. It is common for most State workers’ compensation laws to specifically authorize a health care provider to release, without the employee’s authorization, medical data that is directly related to a current claim for workers’ compensation to the State workers’ compensation agency, and to the employer and workers’ compensation payer (insurer or self-insured program) that are parties to the claim.

HIPAA regulations permit a health care provider to disclose Protected Health Information (PHI) without the authorization of the injured worker “as authorized by and to the extent necessary to comply with workers’ compensation laws that provide benefits for work related injuries or illnesses without regard to fault” (CFR 164.512 (l)).

Under HIPAA's Federal provisions and rules, workers' compensation insurers, self insured workers' compensation programs and firms that provide services to workers' compensation adjudicative agencies are not covered entities subject to HIPAA privacy provisions. Under HIPAA, they are allowed to use and disclose information to downstream entities pursuant to State law and practice. However, they receive information from medical providers that are covered entities. The HIPAA rules state that covered entities can only disclose the "minimum amount of PHI necessary" in response to a request for medical information. However, an exception allows covered entities to disclose PHI to the extent necessary to comply with State workers' compensation laws.

Thus, current Federal law recognizes that the release of health information within the workers' compensation system should be determined according to State law. (Sec. 164.512 (l), 45 CFR, Part 164)

Recommendation:

HIT legislation should recognize and preserve the current HIPAA exemption that permits a covered entity to disclose an individual's health information as necessary to comply with and to the full extent authorized by State workers' compensation laws. HIT provisions should not be interpreted in a manner that impacts workers' compensation by restricting medical providers and other HIPAA covered entities from disclosing or electronically transmitting medical information that is pertinent to workers' compensation cases. This is necessary not only to prevent fraud, but also to facilitate expedited management and administration of the current State regulated workers' compensation system

About SIIA and Self-Insurance

SIIA is a national association that represents companies that operate self-insured workers' compensation programs as well as related professional service provider organizations. Millions of individuals throughout the country received workers' compensation coverage through self-insured programs. Additional information about SIIA and self-insurance can be accessed on-line at www.siaa.org.

Thank you in advance for your time and consideration of this matter that is of the utmost importance to self-insured workers' compensation plans. Please do not hesitate to contact me or SIIA's Manager of Government Relations, Jay Fahrer, at 202-463-8161 to further discuss our comments or any other issue where SIIA can lend our expertise.

Respectfully,



Michael Ferguson
Chief Operating Officer
Self-Insurance Institute of America