



MEDSWEEPS:

THE MANDATORY

VALUE-ADD TO EVERY CLAIM

by Kevin Powers

MEDICAL SWEEPS & FRAUD

In the world of investigations, prior medical treatment of an injured worker or plaintiff can be vital to understanding and prevailing in a contested insurance claim or litigation. How is it that the appropriate parties can obtain medical information when fraud or abuse is suspected? In a perfect world, the injured individual would be forthcoming in their statement or deposition with all their prior treatment including physician names, locations, treatment dates, as well as providing a signed authorization for the release of their medical records. The reality is that at worst, a person may have something to hide, and at best an individual's medical history can be lengthy and complex- sometimes the injured individual can't quite remember a surgery date or what the name of the treating physician was. So, what can you do to ensure that you are getting the full picture?

The solution is a service that has been a staple of DigiStream's investigative suite for some time- the medical sweep. A medical sweep is a straightforward process of contacting strategically chosen or requested facilities and confirming the existence of medical records. When making a sweep call, one of two things will happen: a.) they confirm or deny that an individual has records at their facility, or b.) they cannot give any information about persons who have treated at that facility. The reason why a facility would choose not to give out any information is a matter of internal

policy. Sometimes, the facility policy states that they cannot confirm or deny over the phone, however they can give a fax number or mailing address via which they accept such requests.

When all the carefully selected locations are compiled together in one report, the medical sweep can shine a light on any patterns of treatment for the claimant. Preexisting injuries or other related medical treatments can provide the basis to settle a case immediately or may inform a more targeted effort into records retrievals for the discovered facilities.

LEGAL ISSUES

In an effort to bring the health care system up to date with privacy issues introduced by computers and the internet, congress passed the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In short, this act was designed to protect patients' privacy rights and apply legal standards to how our protected health information (PHI)¹ is accessed, and by whom. Within the act, key sections of the privacy rule define who must operate within the legal scope outlined by HIPAA, what specifically is considered PHI, and how the PHI should be properly disclosed or transferred. The goal of HIPAA is to keep PHI strictly confidential while allowing for the convenience of keeping and transmitting electronic records.

The entities that are bound by the Privacy Rule contained in HIPAA include health plan carriers, health care providers, health care clearinghouses, and some business associates.² Some examples of what is considered PHI include an individual's past or current health conditions or diagnoses, the type(s) of treatment provided to the individual, and past or present payments for services rendered. It is clear from the detail in HIPAA that violations are treated seriously³ which is how we can all rest easy knowing that our most sensitive information is treated with confidentiality and care.

HOW DO WE STAY WITHIN THE ETHICAL BOUNDS SET-FORTH BY HIPAA?

Since we are only inquiring about the existence of such records and not requesting the actual records themselves, we are not asking anyone to exceed the limitations of HIPAA. Neither DigiStream nor the provider are communicating any Protected Health Information (PHI), which also keeps the interaction within the bounds of HIPAA. In the unlikely instance that PHI is accidentally disclosed by the provider, that information is redacted from the final report, and confidentially destroyed if necessary.

Other than confirming that the subject has treated, another detail that does not fall within HIPAA and the Privacy Rule is the date on which that treatment occurred. Though a sweep is often used as a precursor for gathering the full files, details such as dates can illuminate new red flags in the case. For instance, say that a claimant has treated on the day before the claimed date of loss. Just this small amount of information is invaluable when deciding how to prioritize records requests or subpoenas of multiple facilities.

The simple fact of knowing records exist at a location can be a powerful asset to any investigation. Identifying facilities will go a long way towards identifying red flags, saving time when contacting treatment facilities for complete records, and ensuring the completeness of records when issuing

subpoenas, as typically only the information being specifically described in the subpoena will be disclosed. The details provided in a sweep are crucial to understanding the full scope of an injured party's treatment, as well as to the ultimate goal of gaining access to the complete treatment records.

For instance, there was a woman in Oconomowoc, Wisconsin who allegedly suffered a "contusion" while working for an employer insured by our client. After an initial sweep by an outside vendor yielded four hits, our client decided to conduct another investigation into her medical history, but this time with IntelliSweep. By using a more strategic approach and investing additional time into other variables such as maiden names, we were able to return with eleven new hits. The information gathered here included numerous older hospital visits the year before her claimed injury and multiple prescriptions being filled. This led to our client being made aware of a long and extensive history of treatment and ultimately affecting the claim in a way that wasn't an option beforehand. This perfectly illustrated the significance of merely contacting random facilities vs. a new approach to obtaining the treatment histories of workers compensation and liability claimants.

1 According to the U.S. Department of Health and Human Services article Summary of the HIPAA Privacy Rule, "The Privacy Rule standards address the use and disclosure of individuals health information – called protected health information" (PHI). Accessed at: <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>

2 Section 160.102 of the Health Insurance Portability and Accountability Act. Accessed at: <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/administrative/combined/hipaa-simplification-201303.pdf>

3 The American Medical Association provides a comprehensive breakdown of penalties, to summarize, a minimum of \$100 in cases where the responsible party can prove that a violation was made "unknowingly", vs. a \$50,000 penalty for willful neglect (in a civil case, criminal violations are handled by the Department of Justice). Accessed at: <https://www.ama-assn.org/practice-management/hipaa/hipaa-violations-enforcement>