

Date:	11/22/2021
Title:	COVID-19: Vaccination and HIPAA Guidance
Healthcare Type:	All Types
Source:	https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-covid-19-vaccination-workplace/index.html
Abstract:	This article provides a brief overview of the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) guidance issued on September 30, 2021, to address questions about when and how the HIPAA Privacy Rules apply to uses and disclosures of COVID-19 vaccination-related information.

Article Text

The HIPAA Privacy Rule only applies to HIPAA covered entities such as health plans, health care clearinghouses, and health care providers that conduct standard electronic transactions, and, in some cases, to their business associates. Examples of business associates include health care claims processing services, medical transcriptionists, and accounting firms that have access to protected health information.

The HIPAA Privacy Rule does NOT apply to employers or employment records. It does not prohibit an employer from requiring an employee as part of the terms and conditions of employment to disclose whether they have received a COVID-19 vaccine to the employer, their clients, or other parties. However, other federal or state laws do address terms and conditions of employment. For example, while federal anti-discrimination laws do not prevent an employer from requiring that all employees physically entering the workplace be vaccinated against COVID-19 and provide proof that they have met this requirement, this documentation must be kept confidential and stored separately from the employee's personnel files under Title I of the Americans with Disabilities Act (ADA).

HIPAA does not prohibit any person (e.g., an individual or an entity such as a business), including HIPAA covered entities and business associates, from asking whether an individual has received any particular vaccine, including COVID-19 vaccines.

HIPAA also does not apply when an individual:

- Is asked about their vaccination status by a school, employer, store, restaurant, entertainment venue, or another individual.
- Asks another individual, their doctor, or a service provider whether they are vaccinated.
- Asks a company, such as a home health agency, whether its workforce members are vaccinated.

While HIPAA does not prohibit covered entities, for example a covered doctor, hospital, health plan, or business associate from asking whether an individual such as a patient or visitor has received a particular vaccine, including COVID-19 vaccines, it does regulate how and when these covered entities or business associates may use or disclose information about an individual's vaccination status.

Generally, HIPAA does prohibit covered agencies such as doctors' offices from disclosing an individual's PHI, including vaccination status, to the individual's employer or other parties, unless the individual authorizes them to do so. Without authorization from the individual or when permitted to disclose by the Privacy Rule, covered entities may only disclose PHI when it is reasonably necessary to accomplish a stated purpose for the disclosure.

Examples:

A physician may disclose PHI relating to an individual's COVID-19 vaccination to the health plan to obtain payment for the administration of the vaccine.

A pharmacy can disclose PHI relating to vaccination status, including the date of the vaccination and the manufacturer, to a public health authority, such as a state or local public health agency.

A covered hospital can disclose PHI relating to an individual's vaccination status to the individual's employer so that the employer may conduct an evaluation relating to medical surveillance of the workplace (e.g., surveillance of the spread of COVID-19 within the workforce) or to evaluate whether the individual has a work-related illness, if all of the following conditions are met:

- The covered hospital is providing the health care service to the individual at the request of the individual's employer or as a member of the employer's workforce.
- The PHI that is disclosed consists of findings concerning work-related illness or workplace-related medical surveillance.
- The employer needs the findings to comply with its obligations under the legal authorities of the Occupational Safety and Health Administration (OSHA), the Mine Safety and Health Administration (MSHA), or state laws having a similar purpose.

- The covered health care provider provides written notice to the individual that the PHI related to the medical surveillance of the workplace and work-related illnesses will be disclosed to the employer, either with a copy of the notice at the time care is provided, or by posting the notice in a prominent place at the location where the health care is provided if the care is being provided at the work site of the employer.

HIPAA generally requires a covered entity to obtain an individual's written authorization before disclosing the individual's PHI relating to vaccination status to other entities such as a sports arena or entertainment venue, a hotel, resort, or cruise ship, or an airline or car rental agency.

HIPAA does not prohibit an individual from choosing to provide any entity with information regarding their vaccination status.

The Guidance on HIPAA, COVID-19 Vaccinations, and the Workplace may be found at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-covid-19-vaccination-workplace/index.html>.