

THE IMPACT OF HIPAA'S PRIVACY RULES ON RESPONSES TO HEALTH CARE QUESTIONS

Frequently Asked Questions and Tips

The privacy rules for the Health Insurance Portability and Accountability Act (HIPAA) of 1996 govern the manner in which employers and health plans handle private medical information. These rules impose stringent requirements to ensure that medical information relating to employees, retirees and other participants in Marsh McLennan health plans is adequately safeguarded.

These frequently asked questions (FAQs) and tips have been prepared to help you, the members of Marsh McLennan's HR and employee service community, comply with the HIPAA privacy rules.

What kind of information is covered by the rule?

Protected Health Information (PHI) includes information about health care or payment for that health care that pertains to a participant in a Marsh McLennan health plan. PHI can be in any form including written, electronic and verbal. PHI *does not* include private medical information that relates to non-health care coverage such as disability, Workers' Compensation or life insurance.

How does this affect the HR and employee service community?

In general, you should not allow a plan participant to disclose any private medical information to you. That means you should limit your discussions to general health care coverage questions or issues regarding plan benefits or eligibility terms.

You can continue to assist plan participants with questions on non-health care coverage and related regulations, such as disability, the Americans with Disability Act (ADA), the Family Medical Leave Act (FMLA), Workers' Compensation or life insurance even where private medical information is involved.

However, when a plan participant asks for help resolving a specific health claim issue that would typically involve your contacting one of the Marsh McLennan plan's claims administrators or insurers, you must refer the plan participant to the plan's claims administrator directly. You cannot receive any participant health information either electronically, verbally, or in writing.

The next few questions examine some common situations to illustrate when you can respond to a plan participant and when you must refer the participant to the plan's claims administrator.

When should I refer the plan participant to the plan's claims administrator?

You should refer the plan participant to the plan's claims administrator immediately if, in order to assist the plan participant, you would be required to contact the claims administrator or insurer to discuss either a particular claim or the claims history of the participant or a family member.

You will want to be familiar with the listing of the claims administrators for each of the health plans offered in your location, which you can provide to the plan participant. The information for your list is available in the Contact Information section of the Benefits Handbook at Colleague Connect, <https://mmcglobal.sharepoint.com/sites/Home> for active employees or <https://careers.marshmclennan.com/global/en/us-benefits> for terminated employees.

When can I respond to the plan participant?

You can respond to the plan participant:

- If you can provide the requested assistance without having to contact the plan's claims administrator, insurer or HMO.
- If the participant asks whether a particular medical service or treatment is covered under his or her plan, and you do not need to obtain additional information about the participant's claims history to answer the question.

Example: Q: *"Does the Aetna \$1600 Deductible Medical Plan cover orthopedic MRIs?"* A: Typically, yes, but you must call Aetna to precertify. You can find more detailed information on precertification and coverage in the Aetna Medical Plan Options section of the online Benefits Handbook at Colleague Connect, <https://mmcglobal.sharepoint.com/sites/Home> for active employees or <https://careers.marshmcclennan.com/global/en/us-benefits> for terminated employees.

- If the participant's question can be answered based on the general health plan information that you already have or information that the participant provides (or some combination of both).

Example: Q: *"I received a bill for a lab test that my doctor ordered. How do I get reimbursed?"* A: You must file a claim with your plan's claims administrator. You can find contact information in the Contact Information section of the Benefits Handbook at Colleague Connect, <https://mmcglobal.sharepoint.com/sites/Home> for active employees or <https://careers.marshmcclennan.com/global/en/us-benefits> for terminated employees.

- If the participant's question deals solely with plan coverage terms or if the question deals with enrollment or eligibility issues.

Example: Q: *"My child is graduating this May and may not immediately find employment. How long can my child remain covered under my employee medical plan?"* A: Your child can remain covered under your plan until December 31 of the year your child attains age 26. You may be able to extend coverage for your child beyond the end of the calendar year in which the child attains age 26, if your child is disabled. More detailed information on eligibility can be found in the Benefits Handbook at Colleague Connect, <https://mmcglobal.sharepoint.com/sites/Home> for active employees or <https://careers.marshmcclennan.com/global/en/us-benefits> for terminated employees.

What if the plan participant wants to sign a consent form to release medical plan information to me so I can assist the participant with his/her claim?

Since the Company cannot receive any PHI, you should tell a participant that the Company cannot accept a signed consent form and that he or she must work directly with his or her plan's claims administrator to resolve the claims issue.

While disability is not covered by the HIPAA privacy legislation, are there any measures an employee should take with respect to medical information that his or her physician must provide?

Employees should follow up with their physician to make sure that the physician provides timely information to the Company's short- and long-term disability claims administrators to prevent any interruption in their pay. (Physicians, as providers, are subject to the HIPAA privacy legislation in sharing the employee's medical information with the short- and long-term disability claims administrators.) The Application for Short- or Long-Term Disability Benefits that an employee and his or her physician complete contains an authorization for medical information to be released; employees may want to provide a copy to their physician.

Can you provide me with a sample response for plan participants who must be referred to their plan's claims administrator?

A sample response might be:

Because of the HIPAA privacy legislation, I am unable to answer any questions that pertain to your medical condition. You must contact your plan's claims administrator with these questions. I would be happy to assist you in finding contact information on your plan so that you may contact the plan's claims administrator directly. [Then show the participant how to find this information. If active, the participant will go to the Contact Information section of the Benefits Handbook on Colleague Connect <https://mmcglobal.sharepoint.com/sites/Home>. If terminated, the participant will go to <https://careers.marshmclennan.com/global/en/us-benefits>.]

What if an employee, during his or her performance review, divulges medical information to his or manager as the reason for the performance evaluation?

Managers should discourage employees from divulging medical information and diagnoses. However, should an employee divulge such information, a manager should take particular care with the way that information is handled. It cannot be used in making any personnel decisions, and it should never be disclosed to co-workers or other employees for any reason. Its confidentiality should be maintained to the extent practicable. However, a manager may need to bring such medical information to the attention of the HR generalist, who can coordinate discussions about any requested accommodation and can ensure that an employee is made aware of alternatives such as the Family Leave Medical Act (FMLA) or short-term disability benefits.

The manager should refer inquiries regarding leaves of absence, disability benefits, or requested accommodations to HR. If there is a need for assistance with understanding the permitted uses of such information, you should encourage the manager to contact you for advice and assistance. If you need assistance, you should contact your Employee Relations manager or a Marsh McLennan Employment Counsel.