State of California—Health and Human Services Agency
California Department of Public Health

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Occupational Lead Poisoning Prevention Program Letter to Employers: Health Insurance Portability and Accountability Act (HIPAA) and Sharing of Individual Employee Blood Lead Level (BLL) Test Results

Dear Employer:

Recently, the Occupational Lead Poisoning Prevention Program (OLPPP) in the California Department of Public Health (CDPH) has received questions concerning the impact of the federal HIPAA[1] Privacy Rule and California law on the sharing of employee blood lead level results between health care providers, employers, and CDPH.

OLPPP is a non-enforcement program that operates the State's Occupational Blood Lead Level Registry. OLPPP also provides employers, employees, and health care professionals with education, training, and technical assistance in the area of workplace lead exposure. We are writing to provide guidance on some of your questions on HIPAA, California law, and employer-sponsored blood lead level testing.

Under HIPAA rules, can a health care provider who ordered a blood lead level test report the results of the test to the employer?

HIPAA allows the health care provider to report the results of a blood lead level test to an employer under the following conditions:

- The blood lead level test was performed at the request of the employer as part of an employer-sponsored employee blood lead level testing program, AND
- Before the test was performed, the health care provider notified the employee in writing that the results of the test would be released to the employer.

Does the employee have to give the health care provider written consent to release the result to the employer?

No. HIPAA does not require that the employee sign a written consent. HIPAA only requires that the provider notify the employee in writing that the test results will be disclosed to the employer. If the employee does not want the information to be disclosed to the employer, the employee must decline the test. Please note that employers are required to offer employees with significant lead exposure a blood lead level test, but the employer can not require that an employee be tested.

If an employee goes to his or her personal health care provider for a blood lead level test, can the health care provider release the result of that test to the employer?

If the personal health care provider orders a blood lead level test at the request of the individual, HIPAA prohibits the provider from releasing the test result to the employer unless the provider gets written consent from the individual to release this information to the employer.

[1] Health Insurance Portability and Accountability Act

Can an analyzing laboratory provide blood lead level test results directly to an employer if the provider has notified the employee that this information will be disclosed to the employer?

No. California law requires that blood lead level test results be released only to the health care provider who ordered the test. Laboratories may not release results to an employer. Employers may be clients of the laboratory and pay the laboratory directly for blood lead level tests, however, test results may only be released to the health care provider who ordered the test.

Can an employer order a blood lead level test directly from a laboratory?

No. In California, blood lead level tests can only be ordered by a licensed health care professional. Unless the employer is also a licensed health care professional, the employer can not order a blood lead level test directly from a laboratory.

Can an employer release the results of a blood lead level test to the California Department of Public Health without notifying the individual or getting written consent from the individual to release that information to us?

Yes. HIPAA does not require that an employer notify an individual or get written consent from the individual in order to release blood lead level, or other medical test, results to CDPH. In addition, California law requires employers to release to CDPH all records, including medical surveillance records, that are kept in compliance with Cal/OSHA regulations as well as any other relevant records.

A blood lead level test is the best measure of an individual's lead exposure. Employers need this information to assess the effectiveness of their lead safety program. We strongly encourage employers to provide blood lead level testing to all their lead-exposed employees and work with the health care provider to ensure that information is released to the employer under conditions required by HIPAA.

We hope this information is helpful to you. We will also be sending similar information to health care providers and analyzing laboratories. If you have additional questions about HIPAA or are still unsure how these laws affect your particular situation you should consult legal counsel. For questions about lead medical surveillance or lead safety, please call the OLPPP Lead Safety Helpline at (866) 627-1587.

Sincerely,

Barbara Materna, PhD, CIH, Chief
Occupational Lead Poisoning Prevention Program
Occupational Health Branch
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Federal and California Laws and Regulations Referred to in this Letter
45 Code of Federal Regulations, Section 164.512
California Business and Professions Code, Section 1288
California Health and Safety Code, Section 105175