MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)
Department of Labor and Economic Opportunity (LEO)

AGENCY INSTRUCTION

DOCUMENT IDENTIFIER:	DATE:
MIOSHA-COM-08-2R4	March 1, 2022

SUBJECT: Access to Employee Medical Records

I. Purpose. Michigan Occupational Safety and Health Administration (MIOSHA) staff may occasionally be required to conduct limited review of specific employee's medical records when MIOSHA Standards require such information. There may also be a need to gain access to such information for the purpose of determining compliance with other requirements of MIOSHA Standards. This instruction establishes procedures and guidance for ensuring uniform interpretation and application of MIOSHA rules for examining or copying personally identifiable employee medical information (PIEMI).

II. Scope. This instruction applies to the General Industry Safety and Health Division (GISHD), the Construction Safety and Health Division (CSHD), and the Consultation Education and Training (CET) Division.

III. References.

A. General Industry and Construction Safety and Health Standard Part 470. /R325.3451 et seq., Employee Medical Records and Trade Secrets.

B. General Industry Safety and Health Standard Part 554. /R325.70001 et seq., Bloodborne Infectious Diseases.

C. Michigan Occupational Safety and Health Act, R408.1001 et seq., P.A. 154 of 1974, as amended.

D. MIOSHA Administrative Rule Part 11. /R408.22101 et seq., Recording and Reporting of Occupational Injuries and Illnesses.

E. MIOSHA Field Operations Manual (FOM), as amended.

F. United States Department of Health and Human Services, Health Insurance Portability and Accountability Act of 1996 (HIPPA) Unofficial Version, as amended through March 26, 2013 45 CFR Part 160 and Subparts A and E of Part 164.

G. United States Department of Labor (US DOL), Federal Occupational Safety and Health Administration (OSHA), Compliance Directive 02-02-072, August 22, 2007, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records.

H. US DOL, OSHA Standard 29 CFR 1910.1020 Access to Employee Exposure and Medical Records, as amended June 8, 2011.

I. US DOL, OSHA Standard 29 CFR 1913.10, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records.

IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Accessible; MIOSHA Messenger; and Internet Accessible.

V. Cancellations. This agency instruction cancels all previous versions of this agency instruction.

VI. Next Review Date. This instruction will be reviewed in three (3) years from date of issuance.

VII. History. History of previous versions includes:

MIOSHA-COM-08-2R3, November 20, 2017
MIOSHA-COM-08-2R2, November 6, 2014
MIOSHA-COM-08-2R1, August 1, 2011
MIOSHA-COM-08-2, September 19, 2008

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X. Definitions.

A. Access: The right and opportunity to examine and copy.

B. Administrative Subpoena: A written order issued by MIOSHA to require an employer, or any other person, to produce listed records, documents, testimony and/or other supporting evidence relevant to an inspection or investigation under the Michigan Occupational Safety and Health Act. If the person served with a subpoena refuses to honor the order, a referral may be made to the Attorney General for appropriate action.

MIOSHA's policies and procedures for issuing administrative subpoenas are set forth in Chapter III of the MIOSHA FOM, as amended. According to the FOM, the division director or designee may contact the Department of Attorney General and request the issuance of an administrative subpoena.

C. Director: The Director of the Department of Labor and Economic Opportunity.

D. Electronic Medical Information: Health data or information created, converted, or maintained in an electronic form. This includes, but is not limited to, information on desktop or portable computer files, CD-ROM, compact disk, computer tape and diskette, electronic mail, automated data processing, and web-based Intranet and Internet applications.

E. Employee Medical Record (as defined in Part 470, Employee Medical Records and Trade Secrets, 1910.1020(c)(6)(i)(A)-(F): A record concerning any medical tests, examinations or health status of an employee that is made or maintained by a physician, nurse, technician, or other health care personnel, including the items listed.

1. These items include the following:

   a) Medical and employment questionnaires or histories (including job description and occupational exposures),

   b) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a base-line or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record"),

   c) Medical opinions, diagnoses, progress notes, and recommendations,

   d) First aid records,

   e) Descriptions of treatments and prescriptions, and

   f) Employee medical complaints.

2. As stated in Part 470, Employee Medical Records and Trade Secrets, 1910.1020(c)(6)(ii)(A)-(D) Employee medical records do NOT include the following:

   a) Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice; or

   b) Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

   c) Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or

   d) Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

F. Personally Identifiable Employee Medical Information (PIEMI): Employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances to indirectly identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.). However, employee exposure records and medical records required to be provided by MIOSHA standards are not included in PIEMI.

G. Principal MIOSHA Investigator (PMI): The MIOSHA employee in each instance of access to PIEMI, who is primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written medical access order (MAO) or employee medical records access authorization letter and the requirements of this instruction. Typically, this is the safety officer or industrial hygienist (SO/IH) who is conducting the enforcement inspection.

H. Medical Access Order (MAO): An authorization by the Department Director, upon the recommendation of the MIOSHA Director, for specified MIOSHA staff to examine or copy PIEMI contained in a record held by an employer or other record holder. According to Part 470, Employee Medical Records and Trade Secrets, Rule 21(2), a MAO must be signed by the Department Director.

XI. Application.

A. This instruction describes procedures to be followed when it is necessary to access/review employee medical records. Access to some types of medical records (personally identifiable employee medical information) normally requires an employee authorization, a written medical access order (MAO) or an administrative subpoena. Access to other types of medical records does not require any of these authorizations.

B. Medical records that do NOT require an employee authorization, a written MAO and/or an administration subpoena, include the following information/documents.

1. Medical information that is not in a personally identifiable form.

2. Records required by MIOSHA Administrative Rule, Part 11. Recording and Reporting of Occupational Injuries and Illnesses.

3. Employee exposure records, including biological monitoring records as described in Part 470, 1910.1020(c)(5)(ii) or monitoring records required by specific occupational health standards. See Appendix A for a list of common biological monitoring tests.

4. Employee medical records that are accessed solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational health standard or with the requirements of Part 11.

5. Death certificates.

C. Medical records that DO require an employee authorization, a written MAO and/or an administrative subpoena in order to access them, are records that contain PIEMI.

D. In all instances, the identity of an employee and his or her right to privacy shall be respected and appropriately safeguarded in accordance with statutory requirements and guidelines contained in this instruction.

XII. Background.

A. On June 29, 1983, the State of Michigan adopted General Industry and Construction Safety and Health Standard Part 470, Employee Medical Records and Trade Secrets. This standard was amended February 18, 1998. On December 12, 2018, Part 470 was amended and R 325.3451(4)(a) adopted by reference 29 CFR 1910.1020 Access to Employee Exposure and Medical Records, as amended June 8, 2011. Part 470. R 325.3471 Rule 21(1) provides authority for access to medical records by the department. Sub rule 21(2) makes reference to a written medical access order that must be signed by the Director for access to PIEMI. The Director is defined in Part 470 as the Director of the Department. Federal OSHA adopted, 29 CFR 1913.10, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records to address OSHA access to employee medical records. MIOSHA Standard, Part 470, does not include 1913.10 rules.

B. On August 22, 2007, federal OSHA published Compliance Directive 02-02-072, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records. MIOSHA published its initial agency instruction on September 19, 2008. The MIOSHA instruction is based on policies stated in the FOM as well as the authority granted MIOSHA under the Michigan Occupational Safety and Health Act and Part 470, Employee Medical Records and Trade Secrets.

C. Individuals have expressed a heightened concern over the privacy of their personal information. Among different sets of personal information, medical information is among the most sensitive. In recent years, rules requiring the protection of health privacy have been enacted by both the federal government and the states. Still, an individual's right to privacy regarding their health information is not absolute. It does not, for instance, prevent reporting of public health information on communicable and occupational diseases or prevent MIOSHA from gaining access to necessary medical information.

XIII. Significant Changes.

A. Deleted references to CET consultant accessing PIEMI in Section X. G. Definitions, PMI and Section XI. B. Application.

B. Added language to Section XII. Background, "Part 470 was amended and R 325.3451(4)(a) adopted by reference 29 CFR 1910.1020 Access to Employee Exposure and Medical Records, as amended June 8, 2011".

C. Updated Part 470 rule references with 1910.1020.

D. Deleted language, "such as, but not limited to, MIOSHA consultation visits and MIOSHA Voluntary Protection Program (VPP) sites" in Section XV. Reasons for MIOSHA Access to Medical Records.

E. Deleted Section XIX. Process of Access and Review of PIEMI, F., "If there is a need to retain copies of PIEMI in the case file, copies will be placed in an envelope, sealed, and marked confidential. The envelope will be retained in the case file. At the end of the case file retention period, copies of PIEMI information shall be shredded."

F. Deleted Section XXII. Confidentiality and Security of Medical Records, B., "When it is necessary to maintain PIEMI in an inspection case file, copies will be placed in an envelope, sealed, and marked confidential. The envelope will be retained in the case file. At the end of the case file retention period, copies of PIEMI information shall be shredded."

XIV. Responsibilities.

A. Division Directors shall be responsible for the overall administration and implementation of these procedures within their own divisions, including making final determinations concerning access to PIEMI.

B. Division managers or supervisors are designated as the division medical records officer (MRO). The MRO shall report through the chain of command to the agency director or designee, on matters concerning these procedures and shall be responsible for the following:

1. Assuring that a written MAO meets the requirements of Section XVII of this instruction.

2. Forwarding a written MAO through the chain of command to the Director's office for the Director's approval or denial.

3. Responding to employee, union, and employer objections concerning written MAOs.

4. Regulating internal agency use and security of PIEMI.

5. Ensuring that the results of agency analysis of PIEMI are, where appropriate, communicated to employees.

XV. Reasons for MIOSHA Access to Medical Records.

A. Access to employee medical records in certain circumstances is important to the agency's performance of its statutory functions. It should be stressed that in most cases, medical records that are not in a personally identifiable form, are sufficient for MIOSHA purposes and readily available to agency personnel through the employer in accordance with Part 470, Employee Medical Records and Trade Secrets, R 325.3471, Rule 21(1). Due to the substantial personal privacy interests involved, MIOSHA authority to gain access to PIEMI will be used only after the agency makes a careful determination of its need for this information and only with appropriate safeguards to protect individual privacy. A memorandum explaining MIOSHA's authority to access medical records is attached as

Appendix B. A copy of this memorandum may be provided to employers to help explain MIOSHA's authority.

B. The provisions set forth in Chapter III of the MIOSHA FOM and this instruction are internal procedures that govern the circumstances under which MIOSHA seeks access to PIEMI, and how the information is protected once it is in the agency's possession.

C. Agency practices and procedures are intended to preclude potential misuse of employee medical information, while at the same time enabling medical records information to play a constructive role in agency efforts to prevent occupational injury and illness.

D. Employee medical records often provide the critical information needed to determine whether an employee's safety and health has been adversely affected by conditions in the workplace. For example, MIOSHA access to employee medical records may be necessary during inspections to determine whether an employer has taken steps to abate existing violations. Access to employee medical information may also be helpful to the agency during certain non-enforcement inspections/audits to evaluate the effectiveness of Safety and Health programs at workplaces.

XVI. Typical Procedures for Obtaining PIEMI. In most situations, employee medical records containing PIEMI can be examined without obtaining a written MAO. The following steps should be followed when requesting medical records.

A. See Appendix C for a flow chart on the basic process of and a list of responsibilities for obtaining PIEMI.

B. Requests to review employee medical records must be specific. For example, to determine compliance with the medical provisions of the asbestos rules, the industrial hygienist should request only the records needed to determine compliance and not entire medical files.

C. When it has been determined that it is necessary to access PIEMI, the PMI should first contact the affected employees. The PMI can request that the employees themselves obtain the information and provide it to the PMI. Alternatively, the employee can authorize access to their PIEMI by completing the authorization form accompanying this instruction (see Appendix D). The preferred method for accessing a PIEMI is for the employee to provide a copy of the record or sign an authorization.

D. If the PMI asks an employee to sign an authorization form giving MIOSHA access to PIEMI, the PMI must explain the following to the employee.

1. The reason why MIOSHA needs to access this information.

2. Agency procedures for ensuring that the records are kept confidential.

3. The employee's right to refuse the request for written consent.

4. That no adverse action will be taken against the employee if he or she does refuse to give written consent.

E. If the employee provides a copy of the PIEMI record or signs an authorization form to access his/her PIEMI, then Sections XVII through XVIII of this instruction are not applicable.

F. If access is denied by the employee, the appropriate division MRO will be contacted to review the need to proceed with obtaining a written MAO or administrative subpoena as described in Section XVII of this instruction. In addition, the request for a written MAO must include a written description of the specific objections of the employee.

XVII. Obtaining a Written MAO and/or Administrative Subpoena.

A. The contents of a written MAO must include all of the information listed in the written MAO (see Appendix E), before it will be approved by a division director or the MIOSHA Director. The written MAO must be signed by the department director per Part 470, Employee Medical Records and Trade Secrets, R 325.3471, Rule 21(2). A written MAO may be approved and signed when all of the following requirements are satisfied.

1. The information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to the information.

2. The information to be examined or copied is limited to only that information needed to accomplish the purpose for access.

3. The MIOSHA personnel authorized to review and analyze the information are limited to those who have a need for access.

B. Procedures for obtaining a written MAO.

1. The PMI must review the need for the written MAO with his/her immediate supervisor and advise the appropriate manager and division director prior to filling out a request.

2. Included in the information to be discussed are the following:

a) Employer records relevant to the inspection or consultation visit such as MIOSHA 300, 301, or equivalent (exposure records, first aid logs, etc.).

b) An explanation why it is necessary to the inspection to review PIEMI.

c) The PMI in consultation with the supervisor must prepare and submit a completed written MAO Form to the MRO.

C. Administrative Subpoena.

1. When reasonably certain that access will not be permitted, an administrative subpoena should be presented to the employer concurrently with a written MAO. If the employer refuses access to the information

listed on the written MAO, MIOSHA staff must seek an administrative subpoena.

2. See Chapter III of the MIOSHA FOM, as amended, for specific instructions for obtaining and issuing an administrative subpoena.

3. According to the MIOSHA FOM, the division director or designee may contact the Department of Attorney General and request the issuance of an administrative subpoena.

XVIII. Presentation of Written Medical Access Order and Notice to Employees.

A. The PMI shall present at least two (2) copies of the written MAO (see Appendix E) and accompanying cover letter (see Appendix F) to the employer, prior to examining or obtaining medical information subject to a written MAO.

B. The employer must be directed to promptly post a copy of the written MAO (which does not identify specific employees by direct personal identifiers), as well as post the accompanying cover letter.

C. The PMI shall also present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent who represents an employee whose medical records are subject to the written MAO.

XIX. Process of Access and Review of PIEMI.

A. The PMI acquires records specified in the employee authorization form, the written MAO and/or administrative subpoena.

B. Only individuals identified on the employee authorization form, the written MAO or administrative subpoena may be included in the review of PIEMI records.

C. MIOSHA employees and contractors are only authorized to use PIEMI for the express purpose for which it was obtained as described in writing on the employee authorization form or on the written MAO/administrative subpoena. The only way PIEMI can be used for a secondary purpose is if the employee has given specific written consent to use the PIEMI for a secondary purpose or unless an additional written MAO and/or an administrative subpoena has been issued for the secondary purpose.

D. If abnormal findings are discovered in the employee medical records, they must be carefully evaluated. Abnormal readings are determined by a comparison with the health care laboratory's normal range for a particular test result. A laboratory will usually indicate the normal range for each test on their report and also indicate if a result is abnormal because the result is above or below the normal range. When test results are determined to be abnormal, the PMI should ensure that the following actions have been taken.

1. The employee is informed of the abnormal results.

2. The employer has complied with all other related requirements of specific standards, such as medical removal requirements.

E. Whenever practicable, the examination of PIEMI shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

F. If there is a need to obtain and review additional employee medical records not covered in the initial written MAO, the PMI must discuss this with his/her supervisor and go through all of the above required procedures again to gain access to the additional information.

XX. Access to Information for Which a Written MAO is Not Required.

It is not necessary to obtain a written MAO to view medical records or PIEMI under the following circumstances. NOTE: Even if a written MAO is not required to review PIEMI, all medically related information reported in personally identifiable form must be handled in the same manner as PIEMI that is obtained with a written MAO or administrative subpoena.

A. Review of PIEMI with Specific Employee Written Consent. Access to records without a written MAO or administrative subpoena is permitted when the specific written consent of an employee is obtained and the agency or an agency employee is listed on the consent form as the designated representative to receive the information. See Appendix D for the authorization form to be used to obtain employee consent to access their PIEMI.

B. Review of Medical Opinions mandated by MIOSHA Standards (i.e., Part 554, Bloodborne Infectious Diseases). A PMI may view a physician's opinion without a written MAO as long as that information is limited to the specific information the employer is required to retain pursuant to the provisions set forth in a MIOSHA Standard. However, a written MAO would be necessary for review of medical opinions that include information beyond the scope of what is required by a MIOSHA standard, such as a medical diagnosis. Medical opinions do not generally contain, and are not the same as, medical diagnoses.

1. Access to medical opinion information, without a written MAO, as described in this section, shall be restricted to situations where MIOSHA personnel have determined that a review of such information is necessary to verify compliance with MIOSHA standards.

2. Review of medical opinions is restricted to information needed to verify compliance.

C. Review of Specific Medical Information Required by a Medical Surveillance Program.

1. General Information. In order to verify employer compliance with requirements for medical surveillance records, the PMI may have access without a written MAO to employee medical information which is part of a medical surveillance program mandated by a specific MIOSHA standard (i.e., in order to determine that the medical information exists).

2. It may also be necessary to review medical surveillance records mandated by a specific standard to evaluate whether an employer is in compliance with the requirements of that standard (e.g., to determine whether an employer has instituted control measures that prevent employee absorption of toxic substances or harmful physical agents). Medical surveillance records include: 1) biological monitoring results; 2) specific diagnostic test results used to verify an exposure; and 3) physicians' written opinions required to be maintained by a standard.

3. Review of Biological Monitoring Results. MIOSHA personnel are permitted access without a written MAO to biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., blood lead levels; carboxyhemoglobin blood levels to evaluate carbon monoxide exposure; cadmium levels in urine; etc.). These results are defined in Part 470. 1910.1020(c)(5)(ii) as exposure records, and therefore, a written MAO is not required for MIOSHA access. Examples of biological monitoring or laboratory test results that may be accessed/reviewed are provided in Appendix A.

4. When accessing the specific medical information required by a medical surveillance program authorized by this section, the PMI should make the following determinations:

   a) The employee, for whom the records are requested, is exposed to a toxic substance or harmful physical agent in the course of employment through a route of entry (e.g., inhalation, ingestion, skin contact, or absorption, etc.). This determination of the employee's exposure includes both past and potential exposure.

   b) The laboratory test included as part of the medical surveillance program, is a recognized indicator of this employee's past and/or potential exposure to a toxic substance or harmful physical agent, or a recognized indicator of an adverse health effect of such an exposure. This can be derived from a variety of sources, including recognized textbooks in the field of industrial hygiene, medicine, and toxicology; publications; and technical journals.

   c) Because instruments may be calibrated differently among several laboratories, the normal range for laboratory test results may vary. When evaluating test results, the PMI should compare the test results against the normal range listed by the laboratory conducting the test.

5. This section does not authorize the PMI to examine medical records for the purpose of identifying trends of illness which are not directly related to the recognized adverse effects of specific substances or agents addressed by the tests listed in Appendix A of this instruction.

XXI. Medical Records that May or May Not Require an Employee Authorization or written MAO to Access.

A. Review of Specific Diagnostic Test Results.

1. There may be a need to review the content of, and if appropriate, to copy employee medical records that pertain to diagnostic tests which measure or reflect the adverse effects of exposure to toxic substances or harmful physical agents, and which are considered medical records under Part 470, 1910.1020(c)(6).

2. Diagnostic test results differ from biological monitoring results in that diagnostic test results provide information which identifies a specific disease or a specific health effect of a substance or agent. As an example, an employee medical file may contain biological monitoring results from blood and urine analysis for cadmium exposure as well as diagnostic test results which identify renal tubular dysfunction or cancer resulting from the employee's exposure to cadmium.

3. Access to this type of medical information (i.e., the diagnostic test results) in personally identifiable form shall only be done by obtaining a signed employee consent; by asking the employee to request a copy of the medical information from the health care provider and giving a copy of that information to MIOSHA; or by obtaining a written MAO and/or administrative subpoena.

B. Review of Medical Information to Verify Compliance with Administrative Rule Part 11, Recording and Reporting of Occupational Injuries and Illnesses.

1. General Information: Part 11, R 408.22140, Rule 1140(1) states that an authorized MIOSHA representative and other listed government representatives must be provided with copies of required injury and illness records that the employer is required to maintain. Therefore, MIOSHA personnel do not need a written MAO to access the following records required under Part 11.

a) MIOSHA Form 300, *Log of Work-Related Injuries and Illnesses*.

b) MIOSHA Form 300-*A*, *Summary of Work-Related Injuries and Illnesses*.

c) MIOSHA Form 301, *Injury and Illness Incident Report*, or equivalent.

d) Certain related information such as first aid logs or first report of injury, that is not more detailed than the type of information contained in MIOSHA Form 301.

2. Part 11 and this instruction authorizes MIOSHA personnel to examine without a written MAO, the contents of, and if appropriate, to copy the

following additional employee medical information when needed to verify compliance with Part 11 recordkeeping requirements:

a) Daily reports of new injury or illness cases.

b) First aid records.

c) Nurse/Physician/clinic logs.

d) Company accident reports, insurers' accident report, and workers' compensation basic report of injury.

e) Sanitized medical records available to employer officials outside the medical office.

f) Return to work slips.

g) Records related to medical removal.

3. When the medical information authorized to be reviewed by this instruction and Part 11 indicates that injuries and/or illness are occurring that are not being recorded, the PMI must investigate the employer's rationale for not recording the injury or illness.

4. In order to conduct a complete investigation of all relevant information related to injury and illness recordkeeping requirements, it may be necessary to examine additional employee medical records. Access to PIEMI related to injury and illness recordkeeping, but outside the scope of the Part 11 authorization, must be done with an employee authorization form; a written MAO or administrative subpoena; and in accordance with procedures in this instruction.

C. Access to Human Immunodeficiency Virus (HIV) Diagnostic Records or Bloodborne Infectious Diseases Records.

1. MIOSHA will not normally request access to medical records which indicate a specific diagnosis of HIV. If it is absolutely necessary to obtain PIEMI related to potential HIV exposures, diagnoses or infections, written employee authorization must first be obtained.

2. If an employee alleges a bloodborne infectious disease exposure incident, it is not necessary to document an actual diagnosis of HIV in the source individual to cite post exposure follow-up and evaluation violations of General Industry Safety and Health Standards Part 554, Bloodborne Infectious Diseases.

3. In the case of HIV test results from post-exposure evaluation, MIOSHA may request access to identify work-related seroconversion and to assure that tested employees are provided appropriate post-exposure evaluation, care, and counseling. In order to obtain these results, a signed employee authorization or a written MAO and/or administrative subpoena must be obtained.

4. The division director must be consulted and authorize any request for an employee to sign an authorization to release PIEMI related to HIV.

5. No diagnosis of HIV may be copied or retained in an inspection case file.

D. Access to Alcohol or Drug Test Results.

1. MIOSHA's access to complete medical records includes access to alcohol or drug test results that are maintained as part of the employer's medical program and its records. In very rare circumstances (e.g., accident investigations), alcohol and/or drug test results that are maintained as part of an employer's medical program may be pertinent to MIOSHA's investigation.

2. Alcohol and drug test results from voluntary employee assistance programs (e.g., alcohol, drug abuse, or personal counseling programs) that are maintained separately from the employer's medical program are exempted from the definition of "employee medical records" and may not be accessed.

XXII. Confidentiality and Security of Medical Records.

A. MIOSHA personnel and their contractors are required to maintain the confidentiality of all PIEMI and medical information/records that are either reviewed during an inspection or are maintained in inspection case files.

B. MIOSHA personnel and their contractors shall not discuss any of the information found in the records, which is associated with specific individuals, with any employer or employee representatives except the physician or health care personnel in charge of, or who has access to, employee medical records. This restriction applies even in situations where such medical information may be known to those specific (or other) individuals.

C. However, the PMI may reveal the following information to an employee whose medical record has been reviewed:

1. The laboratory or biological monitoring test examined.

2. The rationale for examining that test.

3. The normal ranges used for each test and the sources of these ranges.

4. The numerical test result if known by the PMI.

5. The PMI must not attempt any further discussion with the employee of the meaning of the results, conclusions, interpretations, diagnoses, etc., as such judgments can be made only in view of the total medical record and only by an examining physician. If the employee wants clarification, he/she shall be referred to a physician for any discussion of test results.

D. Interagency Transfer and Public Disclosure.

1. PIEMI shall not be transferred to another agency or office outside of MIOSHA (other than to the Attorney General) or disclosed to the public

(other than the affected employee or the original record holder) except when required by law or approved by the MRO or division director.

2. Any requests for such transfers must be approved by the appropriate MRO on a case-by-case basis.

E. Medical Records Maintained in Electronic Form. In some instances, employers and other record holders may maintain PIEMI in electronic form. If the PMI needs to have a copy of an electronic record, he/she should request to have a hard copy provided.

XXIII. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulation.

A. MIOSHA requirements for access to employee medical records are unaffected by the HIPAA privacy regulation. Employers have no basis to object that the privacy regulation prevents them from providing records to MIOSHA, or to those with a right of access under MIOSHA regulations, on the ground that authorization of individual employees is required.

B. The HIPPA privacy regulation (45 CFR 160 and 164) generally requires that covered entities such as health care providers handling individually identifiable health information assure the confidentiality of such records. The fundamental requirement of the regulation is that a covered entity may not use or disclose protected health information (PHI) without the written authorization of the individual to whom the records relate.

C. However, the regulation specifically provides exemptions for disclosures by covered entities of health information without individual authorization to "public health authorities" and to "health oversight agencies." See 45 CFR 164.512(b) and (d). The preamble to the HIPAA privacy regulation specifically mentions federal OSHA as an example of both, 65 FR 82492, 82526.

D. A separate set of exemptions generally allows covered entities to disclose PHI as required by law and as necessary for law enforcement and judicial and administrative purposes. See 45 CFR 164.512(a), I, and (f).

E. The privacy regulation does not govern the treatment of PHI once MIOSHA (which does not meet the definition of a covered entity under the regulation) received it. Therefore, internal agency policies regarding use and disclosure of medical information remain intact.

XXIV. Citation Guidelines.

A. The PMI should verify employer compliance with medical recordkeeping requirements by interviewing employer and employee representatives, employees, and where appropriate, physicians. The PMI may be required to verify compliance by reviewing a variety of medical records.

B. When medical records are used to verify compliance:

1. Documentation of noncompliance will include only the employee's name and violation, not the specific medical information unless absolutely required to fully document a violation and approved by the MRO.
2. Documentation of compliance will consist of a statement attesting to a check of some of the records and compliance with the specific recordkeeping requirement.
3. If copying or review of the PIEMI or other medical records is necessary, the PMI must follow the procedures described in this instruction.

C. Citations, classification of citations, and penalty calculations must be done according to policies described in Chapter VI of the MIOSHA FOM and Agency or Division Instructions that describe enforcement procedures for specific MIOSHA Standards.

XXV. Training Requirements. The division director/division managers are responsible for ensuring that all MIOSHA field personnel have been adequately trained on internal MIOSHA policies required for conducting inspections.

APPENDIX A

Examples of Biological Monitoring Tests/Results that may Reveal Work Related Absorption and/or Exposure to a Toxic Substance or Harmful Physical Agent:

1. Audiograms
2. Blood Urea Nitrogen (BUN)
3. Complete blood count with differential and description of peripheral smear
4. Creatinine phosphokinase (CPK)
5. Blood Erythrocyte and plasma cholinesterase assays
6. Blood Erythrocyte sedimentation rate
7. Lactic dehydrogenase (LDH)
8. Metabolites found in blood or urine when a specific exposure is identified or postulated; i.e., carboxyhemoglobin levels to indicate previous exposure to carbon monoxide
9. Blood Platelet count
10. Pulmonary function tests
11. Radiologists' interpretations of employee X-rays
12. Serum bilirubin, serum calcium, serum cholesterol, serum creatinine, or serum electrolytes
13. Serum glutamic-oxaloacetic transaminase (SGOT) or Aspartate aminotransferase (AST)
14. Serum glutamine-pyruvic transaminase (SGPT) or Alanine aminotransferase (ALT)
15. Serum phosphorus or serum triglycerides
16. Urinalysis, including test for hematuria, glucosuria, proteinuria, ketonuria, and microscopic examination of urine
17. Urine and sputum cytology reports
18. Zinc protoporphyrin test (ZPP)

APPENDIX B

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
BARTON G. PICKELMAN, DIRECTOR

SUSAN CORBIN
DIRECTOR

Memorandum

DATE: January 12, 2022

TO: All GISHD Managers, Supervisors, and Compliance Officers

FROM: Adrian Z. Rocskay, CIH, Ph.D.
Division Director AR

SUBJECT: HIPPA and Occupational Disease Data

We have received information that some of you are experiencing resistance from physicians and medical offices regarding the release of information related to occupational diseases. There is some confusion as to how the Health Insurance Portability and Accountability Act of 1996 (HIPPA) protects various medical records and reports.

The privacy provisions of the federal law apply to health information created or maintained by health care providers who engage in certain electronic transactions, health plans, and health care clearinghouses. The final rule was published in the Federal Register on December 28, 2000, (368 pages) with an effective date of April 14, 2001, and a rule compliance date of April 14, 2003 (or April 14, 2004, for small health plans).

The Department of Labor and Economic Opportunity is authorized by the Michigan Public Health Code to collect and compile data for medical research projects. Additionally, HIPAA authorizes this data collection in section 164.512, "Uses and disclosure for which consent, and authorization, or opportunity to agree or object is not required." Here is a quote from this section:

> (b) Standard uses and disclosures for public health activities. (1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to: (i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth, or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

I have attached a copy of the page from HIPPA in the Federal Register.

AZR:ld

Attachment: Federal Register excerpt

GENERAL INDUSTRY SAFETY AND HEALTH DIVISION
530 W. ALLEGAN • P.O. BOX 30644 • LANSING, MICHIGAN 48909-8144
OVERNIGHT MAIL ADDRESS: 2407 N. GRAND RIVER AVENUE • LANSING, MI 48906
www.michigan.gov/miosha • 517-284-7750 • fax 517-284-7755

(B) Except for religious affiliation, to other persons who ask for the individual by name.

(2) *Opportunity to object.* A covered health care provider must inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information (including disclosures to clergy of information regarding religious affiliation) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a)(1) of this section.

(3) *Emergency circumstances.* (i) If the opportunity to object to uses or disclosures required by paragraph (a)(2) of this section cannot practicably be provided because of the individual's incapacity or an emergency treatment circumstance, a covered health care provider may use or disclose some or all of the protected health information permitted by paragraph (a)(1) of this section for the facility's directory, if such disclosure is:

(A) Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and

(B) In the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment.

(ii) The covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures for directory purposes as required by paragraph (a)(2) of this section when it becomes practicable to do so.

(b) *Standard: uses and disclosures for involvement in the individual's care and notification purposes.* (1) *Permitted uses and disclosures.* (i) A covered entity may, in accordance with paragraphs (b)(2) or (3) of this section, disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's care or payment related to the individual's health care.

(ii) A covered entity may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death. Any such use or disclosure of protected health information for such notification purposes must be in accordance with paragraphs (b)(2), (3), or (4) of this section, as applicable.

(2) *Uses and disclosures with the individual present.* If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b)(1) of this section and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it:

(i) Obtains the individual's agreement;

(ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or

(iii) Reasonably infers from the circumstances, based the exercise of professional judgment, that the individual does not object to the disclosure.

(3) *Limited uses and disclosures when the individual is not present.* If the individual is not present for, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care. A covered entity may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

(4) *Use and disclosures for disaster relief purposes.* A covered entity may use or disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by paragraph (b)(1)(ii) of this section. The requirements in paragraphs (b)(2) and (3) of this section apply to such uses and disclosure to the extent that the covered entity, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

§ 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written consent or authorization of the individual as described in §§ 164.506 and 164.508, respectively, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) *Standard: Uses and disclosures required by law.* (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(b) *Standard: uses and disclosures for public health activities.* (1) *Permitted disclosures.* A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

(iii) A person subject to the jurisdiction of the Food and Drug Administration:

(A) To report adverse events (or similar reports with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations if the disclosure is made to the person required or directed to report such information to the Food and Drug Administration;

(B) To track products if the disclosure is made to a person required or directed by the Food and Drug Administration to track the product;

(C) To enable product recalls, repairs, or replacement (including locating and

APPENDIX C
Typical Process for Obtaining Employee Medical Information

Principal MIOSHA Investigator (PMI)

- Identify potential need to review employee medical records.
- Determine whether required information is classified as: an exposure record, medical surveillance record, information related to injury and illness recordkeeping requirements, or is classified as personally identifiable employee medical information (PIEMI) which requires employee authorization or a written medical access order (MAO).
- If a written MAO is not required, request records from employer.
- If required information is PIEMI, consult with the supervisor to determine if a need exists.
- Request copies of PIEMI from employee and/or authorization from employee(s).
- If employee authorization to access the PIEMI is not obtained, pursue a written MAO or administrative subpoena with medical records officer (MRO).
- Fill out written MAO, accompanying letter, and submit to supervisor.
- Once the written MAO is signed by the Department Director and the administrative subpoena is signed, present the documents to the employer or healthcare provider and request to review the PIEMI listed on the written MAO.
- If the employer or healthcare refuses to honor the written MAO or administrative subpoena, immediately inform the MRO, the division director, and the MIOSHA Director.

↓

Supervisor

- Discuss need to access PIEMI with PMI.
- Assist the PMI in filling out the written MAO and accompanying letter.
- Review the written MAO and submit the request to the MRO.

↓

Medical Records Officer (MRO)

- Decide if there is an identifiable and supportable need to obtain access to PIEMI through a written MAO.
- Finalize the written MAO and the accompanying letter.
- Ensure that an administrative subpoena is requested and filled out when necessary.
- Forward the written MAO, accompanying letter, and/or administrative subpoena to the MIOSHA Director.

↓

MIOSHA Director

- Approve the written MAO and/or administrative subpoena or request additional information.
- Forward the written MAO, accompanying letter and/or administrative subpoena to the Department Director for final approval.
- If the written MAO or administrative subpoena is presented and refused, treat as a refusal of entry.

↓

Department Director

- Approve and sign the written MAO.

APPENDIX D

Return Address: _____ Inspection No.: _____
_____ IH/SO: _____
_____

AUTHORIZED LETTER FOR THE RELEASE OF MEDICAL RECORD INFORMATION TO A DESIGNATED REPRESENTATIVE

I, _____, hereby authorize_____

(Full name of worker/patient) (Individual/organization holding medical records)

_____ to release to the Department of Labor and Economic Opportunity, General Industry Safety and Health Division OR Construction Safety and Health Division OR Consultation, Education and Training Division, the following medical information from my personal medical records:

_____

(Describe specifically the information desired to be released and the specific date(s) of treatment.)

_____

_____

I give my permission for this medical information to be used for the following purpose: _____

_____,

but I do not give permission for any other use or re-disclosure of this information.

(Note: Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to [1] specify a particular expiration date for this letter [if less than one year]; [2] describe medical information to be created in the future that you intend to be covered by this authorization letter; or [3] describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

_____

_____

_____

Any information received will be marked "Confidential" (i.e., to the extent allowed by law) and will remain so as part of Inspection File No. _____ for _____.

_____

Full name of Employee or Legal Representative (Please Print)

_____

Signature of Employee or Legal Representative

Date of Signature:_____Birth Date:_____Social Security No.:_____

APPENDIX E

Inspection Number: _____
Department of Labor and Economic Opportunity
Michigan Occupational Safety and Health Administration
(MIOSHA)

Employee Medical Records
Written Medical Access Order (MAO)

Record holder/Employer: _____

Address: _____

City, State, Zip: _____

Purpose(s) for seeking access order:

_____

Why is it necessary to examine personally identifiable information?

_____

Type of Employee Medical Information	Examined On-Site	Copied	Removed Off-Site
(1)	☐	☐	☐
(2)	☐	☐	☐
(3)	☐	☐	☐
(4)	☐	☐	☐

The following Principal MIOSHA Investigator will review and analyze the above-mentioned medical information:

Name(s)_____ Work Phone: (____)_____

This written access order has been reviewed by: _____ On _____
Medical Records Officer (MRO) Date

_____ On _____
MIOSHA Director Date

_____ On _____
Department Director Date

Failure to comply with this order is a violation of Michigan P.A. 154 OF 1974, as amended, and may result in the issuance of a citation and a penalty.

APPENDIX F

Date

Record Holder/Employer
Name
Address
City, State, Zip

Dear:

It has been determined by MIOSHA that in conjunction with an investigation or consultation site visit, it is necessary to examine or copy personally identifiable employee medical information (PIEMI).

As required by agency policy MIOSHA-COM-08-2, Access to Employee Medical Records, a written medical access order (MAO) describing what information is needed and why has been submitted and approved by the Director of the Department of Labor and Economic Opportunity. Pursuant to this policy, the attached written MAO must be presented to the record holder, each collective bargaining unit representing employees whose records are subject to the written MAO, and when deemed appropriate, to each affected employee.

A copy of the written MAO and this accompanying cover letter must be posted in a central location that is accessible to affected employees.

Questions concerning the written MAO may be directed to the principal MIOSHA investigator or to the medical records officer listed on the written access order.

Sincerely,

Name
Division Director

cc: Principal MIOSHA Investigator
Medical Records Officer
MIOSHA Director