CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

SUBCHAPTER 7A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0900 – ACCESS TO EMPLOYEE MEDICAL RECORDS

13 NCAC 07A .0901 SCOPE AND APPLICATION
(a) The provisions of 29 CFR 1913.10 concerning OSH Division access to employee medical records do not apply. Rather, the rules in this Section apply to all requests by OSH Division personnel to obtain access to employee medical records in order to examine or copy personally identifiable medical information.
(b) For the purposes of the rules in this Section, “personally identifiable medical information” means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title).
(c) The examination of personally identifiable medical information shall, to the extent practicable, be performed on-site. OSH Division personnel shall only take medical information in a personally identifiable form off-site if such information is necessary for the investigation.
(d) The rules in this Section do not apply to access to, or the use of, aggregate employee medical information or medical records on individual employees by OSH Division personnel which is not in a personally identifiable form.
(e) The rules in this Section do not apply to records required by 29 CFR 1904, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 CFR 1910.1020(c)(5) or by specific occupational safety and health standards as exposure records.
(f) The rules in this Section do not apply where OSH Division personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard or with the employee exposure and medical record requirements of 29 CFR 1910.1020. An examination of this nature shall be conducted onsite and, if requested, shall be conducted under the observation of the record holder and the OSH Division personnel shall not record and take off-site any information from these medical records other than documentation of the fact of compliance or non-compliance.
(g) The rules in this Section do not apply to access to, or the use of, personally identifiable medical information obtained in the course of litigation.

History Note: Authority G.S. 95-133; Eff. March 1, 2010.

13 NCAC 07A .0902 RESPONSIBLE PERSONS
(a) The Commissioner is responsible for the overall administration and implementation of the procedures contained in the rules in this Section, including making the final determinations concerning:
   (1) Access to personally identifiable medical information; and
   (2) Inter-agency transfer or public disclosure of personally identifiable medical information.
(b) Medical Records Coordinator. The Commissioner shall designate an OSH Division employee to oversee the security procedures established in the rules in this Section.
(c) Medical Records Administrators. The Commissioner shall designate an OSH Division employee at each field location to maintain a log of uses and transfers of personally identifiable medical information for each file, including the name of each person accessing the information. The Medical Records Administrators shall also have primary control of the locked cabinet or vault where such records are stored and shall not allow access to the information contained in the cabinet to any person not authorized by the rules in this Section.
(d) Principal OSH Investigator. The Principal OSH Investigator shall be the OSH Division employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for ensuring that the examination and use of this information is performed in the manner prescribed by the rules in this Section.

History Note: Authority G.S. 95-133; Eff. March 1, 2010.
13 NCAC 07A.0903 SECURITY PROCEDURES; RETENTION AND DESTRUCTION OF RECORDS
(a) All medical information obtained pursuant to an investigation that contains direct personal identifiers shall be separated from the rest of the investigation file and coded with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be secured in a locked cabinet or vault.
(b) The photocopying or other duplication of personally identifiable medical information shall be limited to what is necessary to accomplish the purposes for which the information was obtained.
(c) The protective measures established by the rules in this Section apply to all worksheets, duplicate copies, or other documents containing personally identifiable medical information.
(d) Transfers of personally identifiable medical information shall be by hand delivery, certified mail, or other equally protective means.
(e) In accordance with the Department records retention schedule, personally identifiable medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained or when the case file is closed.

History Note: Authority G.S. 95-133;

13 NCAC 07A.0904 INTRA-AGENCY USE AND TRANSFER
(a) The Medical Records Administrator at each field location shall ensure that personally identifiable medical information is secured in accordance with the rules in this Section.
(b) The Principal OSH Investigator, the Medical Records Administrator, or the Director or his designee, may permit the examination or use of personally identifiable medical information by OSH Division employees who have a need for access. No OSH Division employee, other than the Principal OSH Investigator, shall examine or otherwise use personally identifiable medical information unless so permitted.
(c) Medical records shall not be transferred to Department employees outside of the OSH Division unless authorized by the Director or his designee.
(d) OSH Division employees and other Department employees are only authorized to use personally identifiable medical information for the purposes for which it was obtained, unless the written consent of the employee is obtained for a secondary purpose.

History Note: Authority G.S. 95-133;

13 NCAC 07A.0905 INTER-AGENCY TRANSFER AND PUBLIC DISCLOSURE
(a) Personally identifiable medical information shall not be transferred to another agency except as noted in Paragraph (c) of this Rule, or disclosed to the public (other than the affected employee or the original record holder) except when required by law or approved by the Commissioner or his designee.
(b) The Commissioner or his designee shall not approve a request for an inter-agency transfer or for the public disclosure of personally identifiable medical information which the affected employee has not consented to unless there are compelling circumstances affecting the health or safety of an individual or the public.
(c) Upon approval of the Commissioner or his designee, personally identifiable medical information may be transferred to:
   (1) The North Carolina Attorney General's Office; or
   (2) The North Carolina Occupational Safety and Health Review Commission when an employee files a notice of contest pursuant to G.S. 95-137.

History Note: Authority G.S. 95-133;