

State of Alaska
Department of Labor
Division of Labor Standards and Safety

DOSH Program Directive 89-5

Date: May 4, 1989

To: All LS&S/OSH Staff

From: Tom Stuart, Director *Stuart*

Subject: Authorization and Procedures for Reviewing Specific Medical Records to Verify Compliance with 8 AAC 61.230, Log of Occupational Injuries and Illnesses

- A. Purpose: This DOSH Program Directive (PD) authorizes appropriately qualified Alaska OSH personnel to conduct reviews of the medical records specified in Paragraph E of this PD where there is a need to gain access to verify compliance with 8 AAC 61.230, recordkeeping requirements.
- B. Background: Through the Compliance Manual, Alaska OSH emphasized the necessity of examining all applicable employer injury and illness records during every inspection to verify compliance with the recordkeeping requirements of 8 AAC 61.230. These records, which are often in the form of employee medical records, must be compared with the DOSH-200 log entries to investigate potential under reporting.
1. "Employee medical record" is defined in 8 AAC 61.270(u)(7) as a record which contains information concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:
 - a. Medical and employment questionnaires or histories (including job description and occupational exposures).
 - b. The results of medical examinations (preemployment, preassignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring).
 - c. Medical opinions, diagnoses, progress notes and recommendations.
 - d. First-aid records.
 - e. Description of treatments and prescriptions.
 - f. Employee medical complaints.

2. Chapter XI of the Alaska Industrial Hygiene Technical Manual (IHTM) sets out the procedures that Alaska OSH must use to gain access to personally identifiable employee medical information contained in medical records. However there are certain records that are of such occupational safety and health importance and that are so frequently used by various OSH personnel that rigid approval and security procedure would be both impractical and inappropriate.
 3. Alaska OSH does not need an access order or written employee consent to obtain access to the following employer - maintained records:
 - a. DOSH-200
 - b. DOSH-101 or equivalent
 - c. Any back-up information (e.g., first-aid logs, first report of injury) no more detailed than the type of information contained in the DOSH-101.
 4. Certain back-up medical records (e.g., some first reports of injury) that may be necessary to verify compliance with 8 AAC 61.230 recordkeeping requirements contain information more detailed than that required by the DOSH-101, such as written medical opinions, progress notes, prescriptions, and recommendations.
- C. Statutory Purpose and Need to Gain Access. The purpose of obtaining access to the medical information specified in Paragraph E.2 is to ensure safe and healthful working conditions for working men and women by providing an effective enforcement program for Alaska OSH standards and the Occupational Safety and Health law.
1. To accomplish this purpose it may be necessary for agency personnel to examine the employee medical information specified in Paragraph E.2 to determine compliance with the recordkeeping requirements of 8 AAC 61.230, Regulations and Procedures on Recording and Reporting Occupational Injuries and Illnesses.
 2. It may further be necessary for appropriately qualified agency personnel to examine this medical information in a personally identifiable form to enable the agency to determine if all workplace injuries involving more than first-aid treatment are properly recorded on the DOSH Forms 200 and 101, or equivalent.
 3. If a review of the medical information indicates that injuries and/or illnesses are occurring that are not being recorded, Alaska OSH will investigate closely to determine the propriety of the employer's decision not to record them. Personally identifiable information is, therefore, necessary to specify

which records are to be examined and enable a complete investigation of all relevant information.

D. Qualified OSH Personnel. Review of the medical information described in Paragraph E.2 shall be limited to:

1. Experienced safety or health compliance officers of journeyman grades who are well-versed in the Alaska OSH/Bureau of Labor Statistics recordability guidelines for the DOSH-200, or
2. Professionals with specific training or experience in reviewing the types of medical information necessary to verify compliance with 8 AAC 61.230 recordkeeping requirements, if approved by the Director.

E. Authorized Medical Information.

1. This DOSH PD authorizes qualified Alaska OSH personnel to examine the content of and, if appropriate, copy employee medical records that:
 - a. Are necessary to verify compliance with 8 AAC 61.230 recordkeeping requirements, and
 - b. Contain more detailed information than that found in records specifically accessible to Alaska OSH pursuant to 8 AAC 61.230 (e.g., the DOSH-101).
2. The types of medical information so authorized to be accessible are:
 - a. Daily reports of new injury or illness cases.
 - b. State workers' compensation forms (independent of DOSH-200 and -101).
 - c. First-aid records.
 - d. Nurse/physician/clinic logs.
 - e. Company accident reports; insurers' accident reports.
 - f. Sanitized medical records available to employer officials outside the medical office.
3. This authorization is contingent upon adherence to the guidelines described at F below of this PD.
4. The information revealed through review of the recordkeeping authorized in this PD can then be used to document or support violations other than 8 AAC 61.230.
5. This PD is not intended to limit Alaska OSH access to information authorized elsewhere by regulation.

- a. Authorization procedures for access to biological monitoring results that involve the evaluation or physiological status of a body system are described in IHTM, Chapter XI, Paragraph C.2.
 - b. Procedures to be used for access to medical opinions are described in IHTM, Chapter XI, Paragraph H.
 - c. Biological monitoring results which directly assess the absorption of a substance or agent by body systems are exposure records -- not medical records. (See 8 AAC 61.270(u)(5) and IHTM, Chapter XI, Paragraph C.2.)
6. Access to information other than that specified in E.2 and E.4 above, will require a written access order, unless:
- a. Specific written consent of an employee is obtained pursuant to 8 AAC 61.270(h) and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information.
 - b. An Alaska OSH staff or contract physician consults with an employer's physician pursuant to IHTM, Chapter XI, Paragraph H.2.b.
 - c. Alaska OSH access to, or the use of, personally identifiable employee medical information is obtained in the course of litigation.

F. Guidelines for Screening Authorized Medical Information. Access to the medical information described at E (hereinafter referred to as "authorized backup records") shall be restricted to situations where qualified Alaska OSH personnel have determined that a review of such records is necessary to verify compliance with 8 AAC 61.230 recordkeeping requirements. Moreover, where such review has been deemed necessary, it shall be confined to only that extent needed to assess 8 AAC 61.230 compliance.

1. Limit Removal of Records. Access to authorized backup records shall, if practicable, involve onsite review. If possible, remove direct personal identifiers from the medical information onsite and code the medical information and the list of direct identifiers with a unique identifying number for each employee. A minimum of personally identifiable information shall be recorded for enforcement purposes and taken off-site.
2. Limit Review of More Sensitive Records. Records reviewed to assess 8 AAC 61.230 compliance shall be screened in reverse order of sensitivity (the least sensitive first) to determine needs for further review. The order of review is normally thus:
 - a. DOSH-200; DOSH-101 or equivalent.

- b. State workers' compensation forms (independent of DOSH-200 and -101).
 - c. First-aid records, first report of injury, nurse/doctor/clinic logs, company accident reports, and insurers' accident reports, whose information is no more detailed than that of the DOSH-101 or equivalent.
 - d. Any further backup sanitized medical information describing injuries and illnesses resulting from workplace accidents available to employer officials outside the medical office.
 - e. Supporting records specified in F.2.c. that also contain more detailed medical information, such as medical opinions, progress notes, prescriptions, and recommendations.
3. Limit Access to Employee Medical File. Personally identifiable employee medical information shall be requested in as specific terms as possible to avoid unnecessary reviews of complete employee medical files.
 4. Limit Unnecessary Documentation of Authorized Backup Records. Documentation of 8 AAC 61.230 noncompliance through authorized backup records shall normally be confined to:
 - a. Employee name.
 - b. Nature and location of record.
 - c. Nature of observed recordkeeping deficiency.
 - d. Evidentiary relationship of record to observe recordkeeping deficiency.

NOTE: Personally identifiable information shall not be disclosed on the citation.

- G. Security and Confidentiality. Where access to employee medical information is obtained pursuant to the authorization of this PD, the Chief, Industrial Health Compliance, shall be responsible for ensuring its security and confidentiality.
 1. Agency Use. Employee medical information in personally identifiable form obtained pursuant to this PD shall be used and kept in accordance with IHTM, Chapter XI, Paragraph L.
 2. Retention of Identifiers. Direct personal identifiers may be kept together with the authorized backup records to which access has been obtained pursuant to this PD, as long as the instant investigation and/or subsequent litigation is ongoing. Upon completion of the instant investigation and/or subsequent litigation, the personal identifiers shall either be removed

and retained separately, or all records shall be returned to their sources or destroyed. (See 8 AAC 61.270(q) and (r))

3. Segregation. Agency files containing personally identifiable employee medical information obtained pursuant to this PD shall be kept segregated from other agency files. When not in active use, files containing the information shall be kept secured in a locked cabinet or vault.
 4. Security. The security procedures set forth in IHTM, Chapter XI, Paragraph M, will be followed.
 5. Interagency Transfer and Public Disclosure. Personally identifiable employee medical information obtained pursuant to this PD shall not be transferred to another agency or office outside of Alaska OSH (other than to the Attorney General's Office when necessary to determine compliance with 8 AAC 61.230) or disclosed to the public except when required by law or approved by the Commissioner.
- H. Technical Assistance and Training. Technical assistance and/or training can be provided by the Bureau of Labor Statistics and the OSHA Medical Records Officer. It shall be sought, where determined necessary, through appropriate OSHA Area and Regional Office.
- I. When Access is Denied. If access to medical records, as authorized by this PD is denied, an administrative subpoena shall be issued, if determined appropriate by the Director.