

Filing for Disability: Privacy Concerns (plus an update on Obamacare changes)

By Jacques Chambers

March, 2014

If a person is applying for disability benefits, whether to an insurance company or to the Social Security Administration, it is probable that their medical records are going to need to be reviewed as part of the process. In this regard, claimants are asked to sign an Authorization to Release Medical Information.

Although this is one of those forms that is often signed without a thorough review, a careful reading of the form can be shocking when one sees how much information is required from many unexpected sources in addition to medical records from your doctors.

Authorizations to Release Information must be signed by the claimant before a claim can be processed. Although the forms vary substantially from carrier to carrier and from Social Security, they have certain sections in common:

- Who is authorized to release information?
- What information can be disclosed?
- To whom can the information be re-disclosed?
- Length of time the authorization is effective?

Who is authorized to release information?

Generally all medical sources are authorized to release information, i.e. hospitals, physicians, psychologists, laboratories, VA health facilities, social workers, pharmacists, etc.

Many authorizations also expand medical sources to include sources such as health insurance plans, insurance companies, workers' compensation, and other sources that may have medical information.

For the purpose of assessing the claimant's educational and work history, the requests may also include educational sources such as schools, teachers, records administrators, and vocational counselors as well as current and prior employers to provide an overview of the employment history.

NOTE: Virtually all insurance companies include the Social Security Administration as a source of the information they want to see. It should be noted, however, that the Social Security Administration insists that its own form be used before it will release its files. They require a completed: Social Security Administration - Consent for Release of Information (SSA-3288). I do not recommend signing this form unless the insurance company otherwise threatens to close the claim. All the insurance company really needs from a Social Security claim is the initial SSDI benefit amount and the date benefits started accruing.

That information is in the SSDI Notice of Award letter which you can send them a copy of upon receipt

In addition, most insurance company authorizations then expand into areas that seem totally unrelated to a disability. They ask you for permission to obtain information from financial resources: bank records, credit-reporting agencies and bureaus, financial institutions, tax preparers, and consumer agencies. They also want the ability to obtain information from employers, business records, pension records, academic transcripts, and other insurance companies.

While some business records may be needed if the claimant is self-employed, it is questionable whether a lot of the financial and personal information they ask for is really necessary to determine benefits. In my experience, they rarely even bother to ask for information from those sources, but they want permission to do so should they so choose. See below for how to “opt out” of releasing some of the information.

It is interesting to note that Social Security does not request all the financial information that private insurance companies do. Of course, they don't need it as they have access to IRS records, and that gives them all the financial information they need.

What information can be disclosed?

Essentially, they want all the information each entity has. It is really a blanket release.

Authorizations also specifically name certain medical conditions in their documents including records covering mental health, psychiatric and psychological, HIV/AIDS, alcohol or substance abuse, and communicable diseases. These are not included because they suspect the claimant has such issues with any of them, but, in many states, special confidentiality statutes require them to be named specifically in authorizations in order to get information related to them.

To whom can the information be re-disclosed?

The insurance company may not only use the information they collect, but they ask for the right to pass it on to other groups. That includes not only any subsidiaries and reinsurers the insurance company may work with but other entities as well. Some even want permission to provide information to employers, plan administrators, plan sponsors, and any other entity with business or legal connections to the claim.

Some releases actually state that any information provided to the insurance company is no longer protected by the federal HIPAA statute which specifically protects medical information that is held by medical facilities.

Length of time the authorization is effective?

The release will state that the authorization is limited to a specific length of time. It is often two years, however, many states have statutes that limit such authorizations to no longer than one year. The claimant retains the right to withdraw permission at any time.

What if I don't want to release some or any of the information?

In this situation, the insurance company has the advantage since they hold the checkbook that will pay your benefits. Obviously, they do need medical information from your treating medical providers to confirm that your medical condition meets the contract's definition of disability, however, it's highly questionable they need all the information they claim they want access to in their authorizations.

You have several choices on what to do about these releases, with varying chances for success.

First, however, realize that if you totally refuse to sign the authorization, the insurance company will simply stop processing your claim and close your file, invoking a small provision in the contract that says you must cooperate with them in their investigation.

At the other extreme, some people believe, in this digital age, there isn't a lot of information that remains truly private. They sign the authorization because they believe the information is accessible in one way or another anyway, plus they believe this facilitates the processing of the claim.

There is a middle alternative that has worked with some insurance carriers. You go through the authorization line by line and draw a line through the statements or the entities you do not wish included and initial each. If you don't delete any of the essential medical sources, there's a good chance the insurance company will accept it and proceed to process the claim.

Should you wish to do this, I do recommend you provide a cover letter to the marked-up form. In order to assure the carrier that you do intend to be cooperative, the letter should state something like:

“I have noted and initialed portions of the document that seem unnecessary to me for the processing of my disability claim. However, I do want to assist you with the processing of my claim as much as possible. If there is specific information you need that I have not authorized, I will be happy to approve release of that information if you note what specific information you need and explain why the information you are requesting is necessary.”

Recent Changes to Obamacare Deadlines

Because of the complexity involved in implementing the Affordable Care Act, several changes have been recently made that push back some effective dates and deadlines.

First, note that the deadline for Open Enrollment into health plans is still March 31, 2014, after which persons without health insurance may be subject to financial penalties.

Changes include:

- Postponed to 2015 – Federal scrutiny of an applicant's income when applying for subsidies whose listed amount substantially varies from reported income on tax returns.
- The Open Enrollment Period for 2015 will be from November 1, 2014 through February 15, 2015.
- Postponed to 2015 – Small Business Health Options Exchanges (SHOPs) will not be required to offer at least two health plans if they offer health insurance.
- Postponed to 2016 – Requirement that employers with 50 or more employees must offer health insurance or pay a penalty.
- Consumers will be allowed to get federal subsidies if they buy health plans outside the federal and state marketplaces. This is to aid consumers in those states whose implementation of the exchange has been delayed due to technical defects.
- States are given two additional years, through 2017, during which they can allow people to renew policies that fail to meet the law's minimum standards. This is the portion of the law that disputed the statement claiming you can keep your current insurance if you like it. As of now, Michigan, Illinois, Ohio, and Wisconsin have chosen to allow canceled health plans to be extended. New York, California, and Indiana have chosen **not** to extend these low-benefit plans. Others have not yet committed.