

MAINTENANCE/DESTRUCTION OF MEDICAL RECORDS BY DEP EXAMINERS AND THEIR DESIGNEES

I. STATEMENT OF ISSUE/CURRENT SITUATION

Whether as a result of statutes, BWC policies, or to gather medical opinions to support claim management decisions, BWC is dependent on independent medical evaluations and file reviews performed by Disability Evaluator Panel (DEP) evaluators external to BWC. To properly perform these DEP services, the evaluators must have relevant medical records available to them that describe what occurred previously in the diagnosis and treatment of the injured worker. Once the evaluator is selected to perform a specific DEP service, BWC staff forwards relevant medical records to the DEP evaluator or the DEP evaluator's designees (staff or Administrative Agents) either as hardcopy documents (examinations) or by electronic transmission (file reviews). Once the records are released by BWC staff, there are concerns regarding the proper handling, maintenance, and perhaps destruction of the medical records which may contain sensitive medical or personal identity information. The BWC DEP Contract and the *DEP Handbook* have limited reference to the proper handling, maintenance, and destruction of documents whether sent by BWC or those created by the DEP evaluator. Additionally, these documents provide little direction regarding the maintenance of documents created and maintained electronically. The purpose of this policy is to provide direction and establish accountability for those involved with any aspect of the handling of medical records related to DEP services including those records supplied by BWC, those created by DEP evaluators, and those transmitted and maintained electronically.

II. SUMMARY OF RESEARCH FINDINGS

The following sections of the DEP Contract and DEP Agreement Addendum 050302 pertain to DEP evaluators and their staff accessing, handling, and maintaining medical records.

From the DEP Contract:

2. REPRESENTATIONS AND WARRANTIES

i. Disability Evaluator shall promptly notify the BWC's Medical Care Services Division of 1) any changes in ownership, business address or telephone number; 2) any legal or government action initiated against any license of the Disability Evaluator; or 3) any other problems or situations that will materially impair the ability of the Disability Evaluator to carry out the duties or obligations of this Agreement. **(Applicable to circumstances when records may be lost or stolen – unable to carry out obligations)**

j. Disability Evaluator shall assure that all services rendered by Disability Evaluator are performed by appropriately qualified personnel and conform in all respects to the standards normally maintained by similarly licensed facilities and personnel in good standing in similar communities. **(Maintenance of records and confidentiality applies here as "standards".)**

l. Disability Evaluator, the Disability Evaluator's agents, and employees shall not use any information or records made available to the Disability Evaluator for any purpose other than to fulfill the contractual duties as set out herein. **(This paragraph limits use of information or records to only DEP services.)**

m. Disability Evaluator shall hold the BWC harmless and indemnify the BWC from and against any claims, demands, losses, and causes of action asserted against or incurred by the BWC with regard to personal injury or property damage which result from or arise out of the negligent conduct or intentional acts of the Disability Evaluator, the Disability Evaluator's agents, employees and subcontractors. **(This paragraph establishes the Evaluator as responsible for negligent conduct or intentional acts of the Evaluator or agents including Administrative Agents.)**

p. Disability Evaluator shall keep and retain accurate and current medical records concerning his/her examinations or medical file reviews of each injured worker referred by BWC to the Disability Evaluator for a period of six (6) years. For examinations, such records shall include: personal notes, progress notes or diary entries regarding the examination and when it was performed; a sign-in sheet (in a format acceptable to BWC) completed by the injured worker; and the formal written report regarding the examination. For medical file reviews, such records shall include: personal notes, progress notes or diary entries regarding the file review; and the formal written report regarding the file review. The Disability Evaluator further agrees to any quality assurance, peer review process or audit or evaluation that may be requested by BWC at any time. Disability Evaluator is prohibited from modifying, tampering, or destroying records of injured workers referred by BWC to Disability Evaluator which records may be relevant to an ongoing investigation. **(This paragraph established the requirement that medical records be maintained by the Evaluator and the 6 year time period for maintenance of the records.)**

s. Disability Evaluator agrees to comply with all applicable federal and Ohio laws, regulations and directives including, but not limited to the Minority Fair Hiring Practices Act and the Americans with Disabilities Act. Disability Evaluator agrees and covenants that it at this time is and for the duration of this contract will not knowingly violate the laws of Ohio specifically including, but not limited to, the workers' compensation laws of Ohio, the corporate laws of Ohio, and all rules and regulations promulgated under those laws. Breach of this covenant by Disability Evaluator will be grounds for immediate termination of this Agreement. **(This paragraph also includes laws, regulations, and directives pertaining to maintenance and disposal of medical records.)**

Regarding internet access to medical records contained in the claim files, BWC has signed agreements with DEP Evaluators who wish to have this access and perform on-line file reviews. Key items in this agreement are as follows:

"In consideration of the convenience of electronic access to BWC's claim information, the undersigned current and active DEP Member agrees to the following conditions:

- I will not set up designees, including office staff, other physicians or administrative agents, and I will not allow anyone else to access information, directly or indirectly, using my Web account; and
- I will use my Web account to access information only on those claims assigned to me under DEP for review/examination.

The undersigned Member understands that his/her access will be monitored, and any violation of the provisions of this addendum may be considered grounds for immediate dismissal from the BWC DEP.

Further, the undersigned Member realizes violation of the agreement could lead to investigation for violation of applicable state and federal confidentiality laws or rules, now or hereinafter enacted, including but not limited to the Health Insurance Portability and Accountability Act."

Regarding the relationship between the DEP Evaluator and any Administrative Agent selected by the Evaluator, the DEP Contract states the following:

“All payments that BWC determines to be due to the Disability Evaluator for services rendered shall be made to the Disability Evaluator. If anyone other than Disability Evaluator is to receive payment from BWC for services rendered by Disability Evaluator, Disability Evaluator must name his/her authorized administrative agent for purposes of receiving payment from BWC and sign the following release. Furthermore, the Disability Evaluator may name only one authorized administrative agent for purposes of this Agreement.

I, _____, do hereby authorize
(Disability Evaluator)

(Authorized Administrative Agent's Name)

as my agent for purposes of receiving payment for services I render to BWC. I desire BWC to make all payment to my authorized administrative agent for services I have rendered to BWC. I further understand and agree that the authorized administrative agent is not a party to this Agreement; that I am fully responsible for the actions of my agent; that BWC's contractual obligations extend only to me, the Disability Evaluator; and that there exists no contractual relationship between BWC and my authorized administrative agent. In addition, I shall hold BWC harmless and indemnify BWC from and against any claims, demands, losses, and causes of action asserted against or incurred by BWC which result from or arise out of the negligent conduct or intentional acts of the authorized administrative agent.

Disability Evaluator's SIGNATURE

The parties expressly agree that referrals for medical file reviews for BWC level dispute resolution without examination will be directed to the Disability Evaluator without referral to the Disability Evaluator's administrative contact in consideration of the short period permitted for second level dispute resolution.”

This section of the contract firmly established the DEP Evaluator as responsible for the actions of the Administrative Agent. This would include the loss of or mishandling of confidential medical information including but not limited to medical records supplied to the DEP Evaluator by BWC staff.

Ohio Administrative Code (OAC) 4123-6-4551 states a health care provider shall create and maintain sufficient records to substantiate delivery of goods and services for a minimum of three (3) years. No specific rule, policy, or guideline relating to medical record retention could be found on the website of the State Medical Board of Ohio.

III. RECOMMENDATIONS

It is recommended that BWC adopt the following policy and inform the DEP Evaluators by letter, amendment to contract, and modification of *DEP Handbook* that:

- 1) The DEP Evaluator is responsible for actions of his/her staff and any other agents including Administrative Agents in the performance of DEP services. This includes, but is not limited to, securing and proper maintenance, utilization, and destruction of all claim records(whether

provided by BWC to the DEP evaluator or generated by the DEP evaluator) by the evaluator, the evaluator's staff, or the evaluator's Administrative Agent for the performance of DEP services. DEP Evaluator is responsible and liable for any costs incurred by BWC as a result of any loss, misuse, or improper destruction of such claim records by the evaluator, the DEP evaluator's staff, or the evaluator's Administrative Agent, or any other agent of the DEP evaluator.

- 2) The DEP Evaluator must maintain records created by the evaluator and submitted to BWC for a period of three (3) years following the submission of the final report to BWC. Records may be maintained as a hardcopy record or by electronic means so long as the records are accessible and maintained in a safe, secure manner.
- 3) Claim records provided by BWC to the DEP Evaluator, evaluator's staff, evaluator's Administrative Agent, or other agent for the performance of DEP services may be properly destroyed after 60 and by 90 days after submission of the Evaluator's created report (Evaluation report or file review) to BWC. DEP Evaluator is responsible for ensuring claim records are properly destroyed by cross-cut shredding or incineration. Claim documents transmitted electronically to the DEP Evaluator for file review may be deleted after submission of the Evaluator's file review report.

IV. BUSINESS IMPACTS

- a. **Training** – primary customers are the DEP Evaluators who will be notified by mail, modification of the contract, and the *DEP Handbook*. Additionally, this topic will be discussed at seminars and conferences focused to DEP services.
- b. **Systems** – none.
- c. **Legal** – editing and modification of contract.
- d. **Operations**

V. JUSTIFICATION

This policy specifically addresses the proper handling and destruction of claim records in the possession of DEP examiners, their employees and agents. The policy also shortens the duration records must be maintained given that current BWC practice is to image records into the claim file once received. After three (3) years, most issues or concerns regarding the issue for which the service was requested would be addressed.