

James G. Hodge Jr.

*The Intersection of Federal Health Information Privacy and State Administrative Law:  
The Protection of Individual Health Data and Workers' Compensation*

51 Admin. L. Rev. 117 (1999)

Abstract by Carrie Mitchell

This article analyzes issues related to health information privacy in workers' compensation cases. Privacy of health information arises as an important issue in workers compensation cases because of the need to balance medical information as evidence with a workers' right to privacy. As such, the purpose, design and administration of workers' compensation cases as well as legal protections in federal and state constitutional, statutory and judicial law become important. Tension arises between federal interests in protecting health information privacy and state interests in regulating state workers' compensation cases free from federal intrusion. Because information about health is so sensitive, there is a strong need to protect workers from mandatory disclosure of such information in order to bring a workers' compensation case. On the other hand, the need for states to be able to regulate workers' compensation and their need for such information is also valuable. After examining federal protection of health information collected, used and disclosed in state workers' compensation systems, the author proposes using state workers' compensation insurers and providers in the HHS proposed health insurance information privacy protections for proposed federal legislation.

Although privacy interests are important in workers' compensation cases, in order for the system to succeed, individuals cannot ultimately control how their information is used. Society will benefit from a uniform and fair system to deal with employee injuries even if the disclosure of information is compulsory. The author advocates beginning by applying federal health information privacy systems to the systems already in place. The systems of health information privacy and workers' compensation can then be molded together to ensure the integrity of the information as well as the health of the workers.