

# News Release



U.S. Department of Labor  
Office of Public Affairs  
Philadelphia, Pa.  
Release Number: 07-1049-NEW (osha 07-112)

For Immediate Release  
Mon., July 16, 2007  
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## **Paramus, N.J., medical center reverses employee suspension after U.S. Labor Department's OSHA completes whistleblower investigation** *Agency's New York regional office publishes fact sheet on HIPAA and OSHA complaints*

**PARAMUS, N.J.** — An investigation conducted by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has resulted in the reversal of an employee suspension and full reimbursement of her salary at the Bergen Regional Medical Center in Paramus.

OSHA initiated an investigation in response to the employee's complaint under the employee protection provision of the Occupational Safety and Health Act, which protects employees who are punished or discriminated against for exercising their workplace safety and health rights. The employee was suspended for three days in October 2006 for an alleged violation of the Health Insurance Portability and Accountability Act (HIPAA) when she reported a workplace violence incident to the Health Professionals and Allied Employees union (HPAE), naming a patient as an assailant.

"Our investigation found that this activity did not constitute a HIPAA violation because employees can report a threat of violence to a supervisor, union official or OSHA without violating HIPAA," said Patricia K. Clark, OSHA's regional administrator in New York, adding that the agency has published a fact sheet on the issue to prevent any future confusion.

HIPAA requires the protection of privacy for individuals' health care records and information. Any person or organization that furnishes bills or is paid for health care is a "covered entity" that must safeguard private health information against disclosure with policies, people and procedure. Under normal circumstances, an individual must give written consent before his or her health information is disclosed. However, an entity's employees may disclose protected information when reporting conditions that pose a serious threat to one or more patients, employees or the public.

In addition to reversing the suspension, the center agreed to reimburse the complainant her full salary for the three-day suspension and expunge any reference to the suspension from her personnel file.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to assure the safety and health of America's working men and women by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual process improvement in workplace safety and health. For more information, visit [www.osha.gov](http://www.osha.gov).

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**Note: See attached OSHA fact sheet on HIPAA and OSHA whistleblower complaints.**

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# OSHA FactSheet

## HIPAA and OSHA Whistleblower Complaints

### ***What is HIPAA? What Does It Do?***

HIPAA stands for the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. HIPAA requires the protection of the privacy of individuals' health care records and information. See 45 CFR §164.508.

### ***What Records Get Privacy Protection?***

Any information about a person's physical or mental health or health care in any written or oral form—including computer records—is protected from unauthorized disclosure. See 45 CFR §§160.103, 164.514(a).

### ***Who Must Keep Health Records Private?***

Any person or organization that furnishes, bills, or is paid for health care is a "covered entity" that must guard private health information against disclosure with policies, people, and procedures in place to do this. Entities violate HIPAA if they wrongfully disclose HIPAA information.

### ***Can Health Information Be Disclosed? When?***

Under normal circumstances, an individual must give written consent to disclose his or her health information. However, a covered entity's employees or business associates may disclose private or protected health information to a health oversight or public health authority (such as OSHA) that is investigating a covered entity's conduct, to a health care accrediting organization, or to an attorney considering a whistleblower case. These disclosures

are permitted as long as the employee believes in good faith that the conditions he is reporting pose a serious threat to one or more patients, employees, or the public. So, for example, an employee can report a threat of violence to a supervisor, union official, or OSHA without violating HIPAA. If the employee believes that he or she has been retaliated against for such reporting, then he can file a whistleblower complaint under Section 11(c) of the Occupational Safety and Health Act, also without violating HIPAA. See 45 CFR §530(e)(1).

### ***What Is OSHA's Role?***

OSHA is charged with ensuring health and safety in the workplace, and is considered a public health authority and a health oversight agency under HIPAA. The agency often has to use and disclose protected health information to investigate matters to protect the public and may use protected health information to prevent or reduce serious health or safety threats to the public and to individuals, including the targets of such threats. In the context of a whistleblower investigation, OSHA can disclose this information without authorization and without violating HIPAA. See 45 CFR § 530(e)(1) & 65 Fed. Reg. 82502.

OSHA will not disclose protected health information without a reasonable belief that disclosing this information is needed to prevent a serious threat to health and safety. It will use this information to protect the public—part of the reason for HIPAA.