



HIPAA and Employee Health Information

ANTHC must keep its role as a health care provider and an employer separate. Like many healthcare providers, ANTHC is also a major employer. ANTHC holds health information in both capacities. Different confidentiality requirements apply to the health information of individuals who are employed by ANTHC, based on if it's held as their employer or health care provider.

ANTHC workforce members must understand employee health information and protected health information (PHI) are different. Otherwise, we are at risk of violating an individual's patient privacy rights or failing to uphold workplace safety requirements that an individual is responsible for adhering to as an employee.

Employees who are "seen as patients" must be treated just as any other patient.

- Their care is confidential and the patient has the right to make a complaint or bring forward concerns without fear of retaliation.
- They are subject to ANMC's Patient Rights and Responsibilities, not ANTHC's workforce requirements, while being seen as a patient.

What does it mean to "be seen as a patient"? If you receive health care from ANMC, outside of an employee health process, then you are being seen as a patient.

- It does not matter if you are an Alaska Native beneficiary or a non-beneficiary patient. This includes being tested for COVID-19, unless you are being tested through an ANTHC Employee Health process.

If you are providing care to another ANTHC employee who presents for care as a patient, this is care confidential under HIPAA. It may NOT be shared with the employee's supervisor.

- If an ANMC provider has concerns about something an employee does or says when they are being seen as a patient, these concerns may not be shared with the patient's ANTHC supervisor or HR without patient consent, unless some other HIPAA exception applies that would allow the sharing.
- For example, it is a violation of HIPAA to say something like:
 - "Susie wasn't faking being sick, I saw her in the clinic yesterday."
 - "What happened to John? I saw his name on the ED tracking board."
 - "Tom was really rude when he came in yesterday."

If you are an ANTHC employee who receives care at ANMC as a patient:

- **The HIPAA Privacy Rule protects your information as a patient.** If you receive care at ANMC. Information about you as a patient cannot be used to make any employment decision about you. You have the same rights and responsibilities as any other patient, including the right to privacy.



- **ANTHC may not use your patient medical record to make employment decisions, without your authorization.** The HIPAA Privacy Rule prohibits the use of your patient health records, including clinical information regarding an employee's immunization status or exposures, by supervisors, human resources managers, or others.
- A supervisor can access the health information in your HR Files or Employee Health's records. But a supervisor is PROHIBITED from checking your patient medical record (unless they are also your treating provider).
- **The HIPAA Privacy Rule does not apply to your employment records.** Even if those records include health-related information, such as records of required immunizations or TB tests or supporting documents for FMLA leave.

Does this mean that employee health records are not private? No. Employee health records are subject to other laws and may be shared only as required to perform necessary job duties. *Example:* A supervisor can review employee health information, like a return to work note, to make sure you can safely perform your job. But, a curious co-worker cannot.

Why aren't employment records protected by HIPAA?

HIPAA applies to "Protected Health Information" or PHI. HIPAA defines PHI in regulation. The regulatory language excludes employment records maintained by a healthcare organization "in its capacity as an employer" from the definition of protected health information.

What about an employee who picks up medication or is seen during normal work hours?

- If the individual is acting as a patient, the care team must treat this information as confidential under HIPAA, including when the person was seen.
- A supervisor can address an employee's attendance or use of work time for personal tasks, but the supervisor should not access the medical record or be given the employee's patient information for use in tracking time or behavior. Even as an "FYI."

How do I know if health information is part of an employee record or a patient record?

Health information may look the same, but employee records and patient records are kept separately:

- **Employment records:** Employee information is maintained by Human Resources, by Employee Health, or a supervisor. The main electronic systems used are MyHR or the records in the EHR in an employee health facility. These records include "Employee" in the patient name field to make them easy to identify.
- **Patient records:** Patient information is stored in the Electronic Health Record and in other applications that pull information from the EHR, such as HealthCatalyst or the Business Intelligence portals.

If you are not sure, then ask a supervisor or Compliance for assistance before disclosing the information to the employee's supervisor or HR.