

	ACCESS TO MEDICAL & EXPOSURE RECORDS	Document No.:	HSE-OP-041
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Purpose

The purpose of Trinity's Access to Medical & Exposure Records Program is to ensure that employees and their designated representatives have a pathway to access relevant and exposure records. It also is intended to provide access for representatives of the governmental institutions (e.g. OSHA) to improve the detection, treatment & prevention of occupational disease.

Except as expressly provided, nothing in this program affects the "existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

Definitions

"Access" means the right and opportunity to examine and copy.


"Analysis using exposure or medical records" means any compilation of data or any statistical study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

"Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

"Employee exposure record" means a record containing any of the following kinds of information:

- Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

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- Material safety data sheets indicating that the material may pose a hazard to human health; or
- In the absence of the above, a chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

"Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:

- Medical and employment questionnaires or histories (including job description and occupational exposures),
- The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purpose of establishing a base-line or detecting occupational illnesses and all biological monitoring not defined as an "employee exposure record"),
- Medical opinions, diagnoses, progress notes, and recommendations,
- First aid records,
- Descriptions of treatments and prescriptions, and
- Employee medical complaints.

"Employee medical record" does not include medical information in the form of:

- Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, or
- Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.), or
- Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or
- Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

"Employer" means a current employer, a former employer, or a successor employer.

"Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

"Health Professional" means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

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"Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

"Specific chemical identity" means a chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

"Specific written consent" means a written authorization containing the following:

- The name and signature of the employee authorizing the release of medical information,
- The date of the written authorization,
- The name of the individual or organization that is authorized to release the medical information,
- The name of the designated representative (individual or organization) that is authorized to receive the released information,
- A general description of the medical information that is authorized to be released,
- A general description of the purpose for the release of the medical information, and
- A date or condition upon which the written authorization will expire (if less than one year).
- A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization.
- A written authorization may be revoked in writing prospectively at any time.

"Toxic substance or harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo - or hyperbaric pressure, etc.) which:

- Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) which is incorporated by reference as specified in Sec. 1910.6; or
- Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or
- Is the subject of a material safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

"Trade secret" means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

"Preservation of records."

Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

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"Employee medical records." The medical record for each employee shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that the following types of records need not be retained for any specified period:

- Health insurance claims records maintained separately from the employer's medical program and its records,
- First aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records, and
- The medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

"Employee exposure records." Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

- Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and
- Material safety data sheets records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years and biological monitoring results designated as exposure records by specific occupational safety and health standards shall be preserved and maintained as required by the specific standard.

"Analyses using exposure or medical records." Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

Administrative Duties

The Operations Manager (or designee) is the program coordinator / manager and is responsible for its implementation. The upper management assumes all responsibility for the activity of the safety committee and its efforts. Copies of the written program may be obtained in the Operations office.

Access to Records

Whenever an employee or designated representative requests access to a record, Trinity shall assure that access is provided in a reasonable time, place, & manner. If Trinity cannot

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reasonably provide access to the record within fifteen (15) working days, Trinity will advise the employee or designated representative requesting the record during the fifteen day time frame the reason for the delay and the earliest date when the record can be made available.

Trinity will require the requester only of such information as should be readily known to the request and which may be necessary to locate or identify the records being requested (e.g. dates, locations)

Whenever an employee or designated representative requests a copy of a record, Trinity will assure that either:

- A copy of the record is provided without cost to the employee or representative
- The necessary mechanical copying facilities (e.g. photocopying) are made available without cost to the employee or representative for copying the record; or
- The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

When a record has been previously provided without cost to an employee or designated representative, Trinity will charge reasonable, non-discriminatory costs (e.g. search & copying expenses but not including overhead expenses) for a request by the employee or designate representative for additional copies of the record, except:


- In the case of an original X-ray, Trinity will restrict access to on-site examination or make other suitable arrangements for the temporary loan of the X-ray.
- Trinity will not charge for an initial request for a copy of new information that has been added to a record which was previously provided.

No part of this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available.

Employee Exposure Records

Except as limited in the case of a **trade secret** (see below), Trinity shall, upon request, assure the access to each employee and designated representative to relevant employee exposure records. A relevant exposure record (to the employee) consists of:

1. A record which measures or monitors the amount of a toxic substance or harmful physical agent to which the employee is or has been exposed;
 - a. In the absence of such directly relevant records, such records of other employees with past or present job duties or working conditions related to or similar to those of the employee to the extent necessary to reasonably indicate the amount and

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nature of the toxic substances or harmful physical agents to which the employee is or has been subjected; and

2. Exposure records to the extent necessary to reasonable indicate the amount and nature of the toxic substances or harmful physical agents at workplaces or under working conditions to which the employee is being assigned or transferred.

Requests by designated representatives for unconsented access to employee exposure records shall be in writing and must specify with reasonable particularity:

1. The record to be disclosed; and
2. The occupational health need for gaining access to these records

Exposure records may include environmental and / or biological monitoring.

Environmental monitoring may environmental (workplace) or biological monitoring.

Employee exposure records must be retained for 30 years.

Employee Medical Records


Trinity will assure the access of each employee to employee medical records of which the employee is the subject, except as provided in cases of information detrimental to the employee's health as outlined below.

Trinity shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent.

Whenever access to employee medical records is requested, a Trinity physician may recommend that the employee or designated representative:

1. Consult with the physician for the purposes of reviewing and discussing the records requested;
2. Accept a summary of material facts and opinions in lieu of the records requested; or
3. Accept release of the requested records only to a physician or designated representative

Whenever an employee requests access to his or her employee medical records, and a Trinity physician believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, Trinity may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only.

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Where a designated representative with specific written consent requests access to information so withheld, Trinity shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

A physician, nurse, or other responsible health care personnel maintaining employee medical records may delete from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

Employee medical records will be kept for the entire time of employment plus thirty (30) years.

Analyses Using Exposure or Medical Records

Trinity shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), Trinity shall assure that personal identifiers are removed before access is provided. If removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis will not be provided.

OSHA Access to Exposure or Medical Records

Trinity will allow OSHA and its representatives prompt access to employee exposure and medical records and to analyses using exposure or medical records pursuant to 29 CFR 1913.10.

Trade Secrets

Except as provided below, nothing in this section precludes Trinity from deleting from records requested by a health professional, employee, or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in mixture, as long as the health professional, employee, or designated representative is notified that information has been deleted.

Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, Trinity shall provide alternative information which is sufficient to permit the requesting party to identify where and when exposure occurred.

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Trinity may withhold the specific chemical identity, including the chemical name and other specific identification of a toxic substance from a disclosable record provided that:

- The claim that the information withheld is a trade secret can be supported;
- All other available information on the properties and effects of the toxic substance is disclosed;
- Trinity informs the requesting party that the specific chemical identity is being withheld as a trade secret; and
- The specific chemical identity is made available to health professionals, employees and designated representatives in accordance with applicable provisions.

In the case of a medical emergency that requires the specific chemical identity of a toxic substance which is necessary for emergency or first-aid treatment, Trinity will immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse, regardless of a written statement of need or confidentiality agreement. Trinity will require a written statement of need or confidentiality agreement as soon as circumstances permit.

In non-emergency situations, Trinity shall, upon request, disclose a specific chemical identity or trade secret to a health professional, employee, or designated representative if:

- The request is in writing;
- The request describes with reasonable detail one or more of the following occupational health needs for the information:
 - To assess the hazards of the chemicals to which employees will be exposed
 - To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;
 - To conduct pre-assignment or periodic medical surveillance of exposed employees;
 - To provide medical treatment to exposed employees;
 - To select or assess appropriate personal protective equipment for exposed employees;
 - To design or assess engineering controls or other protective measures for exposed employees; and
 - To conduct studies to determine the health effects of exposure
- The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health professional, employee or designated representative to provide occupational health services

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- The properties and effects of the chemical;
 - Measures for controlling workers' exposure to the chemical;
 - Methods of monitoring and analyzing worker exposure to the chemical; and
 - Methods of diagnosing and treating harmful exposures to the chemical.
- The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and
 - The health professional, employee, or designated representative and the employer or contractor of the services of the health professional or designated representative agree in a written confidentiality agreement that the health professional, employee or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA.

The confidentiality agreement:


- May restrict the use of the information to the health purposes indicated in the written statement of need;
- May provide for appropriate legal remedies in the even of a breach of the agreement, including a stipulation of a reasonable pre-estimate of likely damages; and
- May not include requirements for the posting of a penalty bond.

No regulations exist to preclude the parties from pursuing non-contractual remedies to the extent provided by law.

If Trinity denies a written request for a disclosure of a specific chemical identity, the denial will:

- Be provided to the health professional, employee or designated representative within thirty days of the request;
- Be in writing;
- Include evidence to support the claim that the specific chemical identity is a trade secret;
- State the specific reasons why the request is being denied; and
- Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity

The health professional, employee or designated representative may refer a denial to OSHA, who will consider the evidence to determine if:

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- Trinity has supported the claim that the specific chemical identity is a trade secret;
- The health professional, employee or designated representative has supported the claim that there is a medical or occupational health need for the information; and
- The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.

Employee Information

Upon an employee's first entering into employment, and at least annually thereafter, Trinity shall inform current employees covered of the following:

- The existence, location and availability of any records covered by this section;
- The person responsible for maintaining and providing access to records; and
- Each employee's right of access to these records

Trinity also retains a copy of OSHA's "Access to Employee Exposure and Medical Records" standard, which is available upon written request.

Transfer of Records

If Trinity ceases to do business, Trinity shall transfer all records subject to this regulation to the successor employer. The successor employer shall receive and maintain these records.

In the case where there is no successor employee to receive and maintain the records subject to the standard, Trinity will notify affected current employees of their rights of access to records at least three (3) months prior to the cessation of business. Any records Trinity requires to be preserved for at least thirty (30) years, Trinity will transfer to the Director of the National Institute for Occupational Safety & Health (NIOSH) if so required by a specific occupational safety & health standard.