

VLTP Inquiries

Is it illegal/ wrong for NIH to allow the individual to provide the specific medical information in the VLTP agency announcement?

It is not illegal or wrong if an employee voluntarily consents to disclosing his or her medical emergency. David Fram of the National Employment Institute believes that the EEOC would consider it a violation of confidentiality if the agency distributed the employee's medical information without initially obtaining his or her consent.

Does voluntary consent cover any medical information the employee chooses to disclose?

As noted in the U.S. National Library of Medicine National Institute of Health article [“Informed Consent: An Ethical Obligation or Legal Compulsion”](#) “an all-encompassing consent to the effect ‘I authorize so and so to carry out any test/procedure/surgery in the course of my treatment’ is not valid. It should be specific for a particular event.” Therefore, consent to the disclosure of medical information must be specific to the information and purpose consented to by the applicant. Consequently, the consent form for participation in the NIH VLTP should clearly state how the information is going to be used. The employee should either agree to have the medical information distributed agency-wide or choose to just state, “undisclosed medical emergency.”

What is the practice considered acceptable by EEOC –what is done by other agencies?

The Office of Personnel Management's (OPM) voluntary leave transfer program form, entitled [form 630](#), gives the applicant the option to provide a description of the medical emergency to be distributed to servicing personnel. The Department of Energy (DOE) [requires](#) that its VLTP applicants use OPM's form 630 which would permit DOE employees to elect to provide a description of the medical emergency to be distributed to servicing personnel.

The Center for Disease and Control (CDC) and the Centers for Medicare & Medicaid Services (CMS) do not provide a description of the medical emergency.

What should be a part of the informed consent?

[Informed consent](#) must be preceded by disclosure of sufficient information. Consent can be challenged on the ground that adequate information has not been revealed to enable the patient or employee to take a proper and knowledgeable decision. Therefore, accurate, adequate and relevant information must be provided truthfully

in a form (using non-scientific terms) and language that the patient can understand. It cannot be a patient's signature on a dotted line obtained routinely by a staff member.

The NIH VLTP, like OPM and DOE, requires applicants to complete [form 630](#), to receive transferred leave. Question 14 of the form asks applicants whether or not they wish to “provide a description of the medical emergency to be distributed to servicing personnel offices so that other employees may donate annual leave to the applicant.” The applicant is then permitted to check the first box which reads “check box if applicant does not want a description distributed;” or check the second box which reads “check box if applicant does not wish to have name used with the description or disclosed to anyone except the supervisor, the supervisory channel and the deciding official, and individuals who maintain the program;” and a box that reads “Description of medical emergency” which provides the applicant with a space to describe his or her emergency.”

Recommendation

It is within the NIH's discretion to distribute VLTP requests that provide descriptions of medical emergencies agency-wide because of its adoption of OPM's form 630 which gives the applicant three options in response to question 14 which asks applicants whether or not they wish to “provide a description of the medical emergency to be distributed to servicing personnel offices so that other employees may donate annual leave to the applicant.” Applicants are permitted to a) not have a description distributed; b) have a description distributed but have their names omitted or; c) have a description with his or her name attached. Agencies like CDC and CMS do not provide descriptions of the medical emergency of recipients seeking assistance when notification of an individual participating in VLTP goes out agency-wide. The NIH would be in line with OPM and DOE if it elected to continue to include descriptions of the medical emergencies in its VLTP requests or notifications that are sent agency-wide.