

February 26, 2003

Dear MCO Directors:

RE: Disclosure of Medical Information for Quality Assessment Purposes and for Coordination of Care

Assessing quality of care is a significant responsibility of the Medicaid Program. It is one of its lawful duties. Md. Health-Gen. Art. § 15-102.1. Likewise, coordinating and managing patient care between and among various providers, MCOs, and the Department is an important patient health and safety goal.

We understand that many providers are concerned that the Health Information Portability and Accountability Act (HIPAA) will prohibit them from using or disclosing a patient's protected health information (PHI) for the purposes described above. Some providers believe that HIPAA prohibits all disclosure of PHI for almost all purposes. Such is not the case.

Quality Assessment

Under HIPAA, without consent of the patient, a provider is permitted to use and disclose PHI to another covered entity for the purpose of "health care operations." 45 C.F.R. § 164.506(a). Some of the types of health care operations recognized under HIPAA are quality assessment and improvement activities and reviewing health plan performance. 45 C.F.R. § 164.501. These are just the type of activities that the MCOs and the Department (which are covered entities) undertake in the yearly quality review of MCOs and their providers. A provider is clearly permitted to disclose medical records to the MCO and the Department and their agents for these purposes.

Another section of HIPAA also allows a provider to disclose PHI for quality assessment purposes. Specifically, HIPAA permits a provider to disclose PHI to a health oversight agency for oversight activities authorized by law. 45 C.F.R. § 164.512(d). The Department is a health oversight agency authorized by state law to monitor quality of care in the HealthChoice Program specifically, and the Medicaid Program, generally. Md. Health-Gen. Art. §§ 15-102.1; 15-103(b)(9); 45 C.F.R. § 164.501. When the Department seeks access to medical records to conduct quality assessments of MCOs and their providers, it does so as a health oversight agency to which disclosure of PHI can be made without patient consent. HIPAA permits this disclosure.

We believe that State law and federal HIPAA law are in concert concerning disclosure of PHI for quality assessment purposes. State law allows disclosure of medical records to MCOs for the evaluation and management of the MCO. Md. Health-Gen. Art. § 4-305(2). State law also allows disclosure to a government agency, like the Department, in order to perform its lawful duties. Md. Health-Gen. Art. § 4-305(3). Medicaid law allows disclosure of Medicaid records for purposes related to the administration of the Program. Md. Code Article 88A § 6. Finally, Medicaid regulations governing the HealthChoice Program require that MCOs and their providers allow the Department access to all records. COMAR 10.09.65.02(M) and (N).

Coordination and Management of Care

In the same vein, providers have expressed their belief that HIPAA does not allow them to share medical information, particularly mental health information, with other providers. As you know, coordinating care between the mental health system providers and MCOs and somatic providers has been considered critically important for patient safety. For example, we believe all providers treating one patient should be aware of the treatments and medications each prescribes so that dangerous drug interaction can be prevented. Yet, because of provider's understandable sensitivity about privacy of mental health records, coordination of care sometimes becomes a secondary concern. We believe that respect for privacy and coordination of care can and must co-exist in the legal and medical worlds. That belief is grounded in both federal and state law.

Under HIPAA, without patient consent, a health care provider may disclose PHI to another provider or to an MCO for "treatment activities". 45 C.F.R § 506(c)(1) and (2). Treatment is not a narrowly defined term. It means, not only the provision of care, but also the "coordination or management of health care" between and among several health care providers. 45 C.F.R. § 164.501. This provision allows providers to share PHI with one another to coordinate and manage the patient's care.

We recognize that mental health patients are given special privacy protection under HIPAA. That protection is specific to "psychotherapy notes." Indeed, for most purposes a provider may not disclose psychotherapy notes without patient authorization to do so. 42 C.F.R. § 164.508. We point out, however, that HIPAA excludes from the definition of psychotherapy notes "medication prescription and monitoring, modalities and frequencies of treatment furnished, results of clinical tests and a summary of . . . diagnosis, functional status, treatment plan, symptoms, prognosis and progress to date." 45 C.F.R. § 164.501. Therefore, to the extent that a provider, citing HIPAA, declines to share any PHI with an MCO or another provider seeking to coordinate or manage a patient's care, you can inform the provider that HIPAA clearly allows disclosures of certain PHI for such purposes.

State law is also in concert with HIPAA on the issue of disclosure of medical records for the purpose of coordination of care.

State law specifically states that a healthcare provider may release a medical record to another healthcare provider if the release is for the sole purpose of treating the patient on whom the record is kept. Md. Health-Gen. Art. § 4-305(b)(4). The term “healthcare provider” is defined broadly to include licensed or certified healthcare professionals, facilities, and their agents. Md. Health-Gen. Art. § 4-301(h).

Moreover, Medicaid law allows disclosure of Medicaid records as necessary to discharge responsibilities to administer the medical assistance program. Md. Code Article 88A § 6(a). Coordination of care is a significant responsibility of the HealthChoice Program and all of its component parts, including the providers who work with HealthChoice recipients. The responsibility to coordinate care requires the exchange of medical information between and among providers for the purpose of providing services to the patient. Disclosure of medical records to coordinate or provide care is, therefore, perfectly legal under state law as well as federal law.

For all those reasons, we believe providers can and should feel confident that HIPAA allows them to disclose PHI to MCOs and to the Department for quality assessment purposes and to other providers and MCOs and the Department for coordination and management of care. We hope this letter addresses the concern expressed by some HealthChoice providers about the legality of providing protected health information to other providers, MCOs, the Department, or our subcontractors. We appreciate your cooperation in helping us to ensure quality health care for Medicaid recipients.

Sincerely,

Susan Tucker
Executive Director

cc: Elizabeth M. Kameen, AAG