



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244-1850

Ref: S&C-02-36

DATE: June 13, 2002

FROM: Director
Survey and Certification Group
Center for Medicaid and State Operations

SUBJECT: Privacy of Medical Record Information in Rural Health Clinics

TO: Associate Regional Administrators, DMSO
State Survey Agency Directors

The purpose of this letter is to clarify an adjustment to current surveyor policy guidance regarding the confidentiality of record information in Rural Health Clinics (RHC). We are providing you with additional guidance on how to enforce the current rule. This change in policy will allow more provider flexibility in keeping medical record information confidential.

The regulatory requirement for rural health clinics, at 42 C.F.R. §491.10(b)(1), states, “the clinic or center maintains the confidentiality of record information and provides safeguards against loss, destruction or unauthorized use.”

A recent legal interpretation indicates that the regulation allows certain flexibility in the method of compliance. Until now, CMS has told surveyors that documents must be locked in a secure area.

CMS is expanding their interpretation to allow RHCs other options to satisfy these regulations in ways beyond just locking up their records. This is not a change in policy because we are not applying a different interpretation of the regulation, but rather an expanded application of CMS’s regulations to new methods of compliance. The regulation is outcome oriented; it defines a result, not a process. Therefore clinics are allowed discretion to how best produce the required result. However, if CMS finds that a RHC’s chosen alternatives do not produce confidential and safeguarded documents, the facility will be cited for its failure to comply with the regulation.

Facilities should keep in mind that in addition to the requirement present in 491.10, the privacy of individually identified health care information will be addressed in detail in the final Privacy Rule to be published by the Office for Civil Rights later this year and the final security rule which will follow the publication of the final privacy rule. Moreover RHC’s also may be subject to state confidentiality laws which could restrict this practice.

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If you have further questions, please contact Jacquelyn Kosh-Suber of my staff at (410) 786-0618.

Effective Date: June 13, 2002

Training: This memo should be shared with all Rural Health Clinic Surveyors and Regional Office Rural Health Clinic contacts.

/s/
Steven A. Pelovitz