



Center for Medicaid and State Operations

Ref: S&C-03-26

DATE: June 12, 2003

FROM: Director
Survey and Certification Group

SUBJECT: Impact of the Health Insurance Portability and Accountability Act (HIPAA) on the Nursing Home Requirement for Posting Survey Results

TO: Survey and Certification Regional Office Management (G-5)
State Survey Agency Directors

The purpose of this letter is to provide guidance regarding the impact of the HIPAA Privacy Rule on the nursing home requirements regarding the posting of survey results as stated in the Social Security Act (SSA).

The results of the most recent nursing home survey must be made available to the public under the statutory provisions of the SSA (see §§1819(g)(5) and 1919(c)(8)). In addition, the HIPAA Privacy Rule provides (at 45 CFR 164.512(a)) that protected health information may be used and disclosed without the authorization of the subject of that information to the extent a law mandates such use or disclosure. Therefore, the statutory requirements at §§1819(g)(5) and 1919(c)(8) of the SSA have not been negated by the HIPAA Privacy Regulations, and remain requirements for nursing homes.

We have attached a suggested template for use by the Centers for Medicare & Medicaid Services' Regional Offices (RO) and State Survey Agencies in response to providers' concerns over making survey results available as mandated by the SSA.

Effective Date: Immediately.

Training: The information contained in this announcement should be shared with all survey and certification staff, their managers and the state/RO training coordinator.

/s/
Steven A. Pelovitz

Attachment

Mr. X
Administrator
Specific Nursing Home
100 Main Street
City, State 11111

Re: Privacy Concerns about the Posting of Nursing Facility Survey Results

Dear Mr. X:

Thank you for your letter expressing concerns with the posting of federal and state nursing facility survey results in accordance with the statutory and regulatory requirements governing such facilities.

The nursing facility survey process was designed with three interests in mind: to provide surveyors with the information necessary to assess nursing facilities' compliance with federal standards, inform the surveyed facility and the general public about what deficiencies the facility was cited for and the bases for those deficiencies, and to maximize the confidentiality of personal and clinical records of nursing facility residents.

In furthering these goals, every effort is made during the survey process to minimize the use and disclosure of nursing facility residents' health information that must be accessed, assessed and reported. Deficiency statements, however, need to provide the evidence supporting deficient practice findings as these citations serve as the ultimate basis for the non-compliance finding. While the residents selected as part of the survey sample are referred to by code (rather than by name, social security number, or some other easily identified identifier), it may be possible in rare circumstances to determine the identity of a resident through the documentation of a deficient practice if one had enough specific information about a cited facility and its resident population.

While the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR Parts 160 and 164; 65 Fed. Reg. 82462 as modified by 67 Fed. Reg. 14776) guarantees certain minimum privacy rights to the subjects of protected health records, those rights have limitations. For example, the HIPAA Privacy Rule provides that protected health information may be used and disclosed without the authorization of the subject of that information to the extent a law mandates such use or disclosure. Survey results must be posted and made available to the general public under the statutory provisions of the Social Security Act (SSA). See SSA §§1819(g)(5) and 1919(c)(8). Furthermore, the HIPAA Privacy Rule provides that protected health information may be used and disclosed without the authorization of the subject of that information for health oversight activities. As such, government regulatory programs that need health information to determine compliance with program standards (including the nursing facility survey program) do not need to obtain an individual's authorization to use that individual's health records for the appropriate oversight of entities subject to that program's regulations.

We share your concerns about the privacy of nursing facility residents' medical records, but we must balance that concern with our statutory duties to regulate the nursing facility industry through the use of surveys and to inform the public by providing access to the results of those surveys. We regret that in rare circumstances the statements of deficiencies may inadvertently release information that can be traced to a particular resident of a surveyed facility. While we regret such inadvertent releases, however, we firmly believe that they do not constitute violations of the HIPAA Privacy Rule's spirit or provisions.

If you have any further questions or comments on this matter, please do not hesitate to contact [name of the state or RO contact person], at [phone number or address]. Alternatively, you may wish to contact your State Survey Agency for additional information on this subject.