

Guidelines for Disclosing Protected Health Information Clarified by Health and Human Services

Guidelines for disclosing protected health information (PHI) to individuals who call on a beneficiary's behalf, including non-family members such as an employer's human resources (HR) staff, was recently clarified in a March 14, 2006 U.S. Department of Health and Human Services (HHS) "frequently asked questions" document.

Plans may share with the beneficiary's "family member, relative or close personal friend" PHI "directly relevant to that persons's involvement with the individual's care or payment for care".

Other people, including HR and - in the Medicare Part D context - Centers for Medicare and Medicaid Services staff also may receive PHI, if the plan "has reasonable assurance that the person has been identified by the individual as being involved in his or her care or payment".

These disclosures may be made only if the beneficiary is given a chance to object and does not, or if the plan "can reasonably infer from the circumstances" that he or she does not. If the beneficiary is absent or incapacitated, the plan "can make the disclosure if, in the exercise of professional judgment, it believes the disclosure is in the best interest of the individual.

For example, a health plan may disclose relevant PHI to an HR representative of the beneficiary's employer who:

- 1) calls the plan with the beneficiary on the line;
or

- 2) turns the phone over to the beneficiary, "who could then confirm for the plan that the representative calling is assisting the beneficiary."

In other examples, a plan may disclose relevant PHI to the adult child of a hospitalized, elderly beneficiary to resolve a claims issue, or to a congressional office that forwards the beneficiary's letter or e-mail requesting its assistance.

The implementation of Medicare's Part D prescription drug benefit by allowing Part D plans to disclose relevant PHI to staff of HHS' Centers for Medicare and Medicaid Services (CMS) who are helping Part D beneficiaries. Such disclosures are allowed "if the information offered by the CMS staff person about the individual and the individual's concerns is sufficient to reasonably satisfy the plan that the individual has requested the CMS staff person's assistance.

What This Means For Counties

As a result of these guidelines, it is strongly recommended that counties review their procedures so as to minimize risk of disclosing information to unauthorized individuals.

For more information, contact CTSI at 303-861-0507.