



North Carolina Department of Health and Human Services Division of Social Services

325 North Salisbury Street • Raleigh, North Carolina 27603
Courier # 56-20-25

Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

Pheon E. Beal, Director
(919) 733-3055

October 25, 2002

Dear County Director of Social Services:

SUBJECT: County DSS HIPAA Readiness

Attention: HIPAA Coordinators

This County Director Letter is to provide basic information for County DSS Directors and HIPAA Coordinators on how the HIPAA Privacy regulations, effective April 14, 2003, might affect their agencies. It also provides links to some HIPAA resources available on the Web and information regarding assistance from the Division.

County DSS HIPAA Impact Assessment Survey

We wish to thank all County DSS agency staff who participated in the County DSS HIPAA Impact Assessment Survey. We also want to encourage you to continue to update your agency's data, when your HIPAA impact assessment process is completed or if your HIPAA participation status changes.

Data is subject to change as counties complete their HIPAA assessments. However, it currently appears that only about two thirds of the County DSS agencies bill Medicaid electronically and will be required to comply with the HIPAA Privacy regulations that go into effect April 14, 2003. It is currently estimated that thirty to thirty-five County DSS agencies do not submit electronic transactions and will not be subject to HIPAA, unless identified as business associates of HIPAA covered entities

When this letter was prepared, we did not have completed surveys for nineteen County DSS agencies. Ten of these agencies were listed as lead Community Alternative Program (CAP) agencies. Therefore, an assumption was made that all ten DSS agencies billed Medicaid electronically and were subject to HIPAA. From telephone calls made to the remaining nine DSS agencies, it was learned that eight of these agencies billed Medicaid electronically and one did not.

Of the survey data collected from eighty-one County DSS agencies, slightly more than one half (forty-four) of the respondents indicated that the County DSS HIPAA impact assessment had not yet been completed. Most surveys indicated that County DSS staff would complete their assessments by December 31, 2002. During telephone conversations with some of these survey respondents, several reported they knew agency staff performed HIPAA covered functions, but had not yet received confirmation from County management and/or legal staff.

Of the thirty-seven County DSS survey respondents who indicated their HIPAA impact assessments were complete, eighteen reported that their County DSS agencies would not be subject to HIPAA. Their agencies either do not provide HIPAA covered health care services or do not bill electronically. The remaining nineteen respondents confirmed that agency staff performed HIPAA covered functions.

The majority of the County DSS agencies bill Medicaid electronically, using EDS developed software. Nine survey respondents reported that their agency utilizes County or County Vendor developed software



Dear County Director
October 25, 2002
Page 2

for electronic billing. Most indicated their local systems would be HIPAA compliant, after October 16, 2002, and their counties had already filed necessary extension requests with HHS. Only two survey respondents indicated that their County DSS agencies had considered hiring a vendor to assist DSS staff with HIPAA.

Responsibility for HIPAA Compliance

The State Attorney General's Office advised the Division that each County Department of Social Services is responsible to its own County Government entity for HIPAA compliance. Therefore, we strongly encourage you to coordinate very closely with your County Government management staff and designated legal staff on matters related to HIPAA impact and HIPAA compliance. Remember that non-compliance with the HIPAA Privacy regulation requirements could result in legal action against local DSS staff and/or County Government.

County DSS staff, in agencies determined subject to the HIPAA regulations, needs to understand the agency's legal relationship to the rest of County Government. This is important to know, when planning for HIPAA implementation. It is important to know whether the agency will function as a HIPAA covered entity or whether the agency will function as a part of a County Government hybrid entity with components that perform HIPAA covered functions. We also recommend you obtain legal assistance when defining the scope of your HIPAA compliance efforts.

Applicability of HIPAA (Medical) Privacy Rule to DSS Agencies

The following information is provided for your consideration and use, as deemed appropriate by your agency's designated legal staff. Remember to clear all interpretations of the HIPAA law with your legal staff.

HIPAA legislation was passed in 1966 to reform the health care industry, to simplify the administrative processes, and to protect individually identifiable health information transmitted electronically. The HIPAA Privacy regulations, also referred to as the HIPAA medical privacy rule, target the medical industry: health plans, hospitals, clinics, private physicians, and other private and public health care providers who electronically transmit patient health information when billing for health care services.

The HIPAA regulations specifically identify the Medicaid Program as a HIPAA covered health plan. Therefore, when County DSS agency staff electronically bills EDS for Medicaid services, the agency is subject to the HIPAA medical privacy rule. DSS agencies may also be subject to the HIPAA medical privacy rule as business associates, when agency staff performs services on behalf of another HIPAA covered entity and client medical information is exchanged.

It is anticipated that most DSS agencies will find only a limited number of agency staff functions that will be subject to the HIPAA regulations. HIPAA covered functions will most likely include those associated with the provision, supervision, clerical support, and the electronic billing for direct staff services paid by Medicaid. Examples: Medicaid At-Risk Management, Community Alternative Program, Medicaid Transportation and any other Medicaid direct services provided to adults and children. Under a hybrid entity approach to HIPAA, protections would only need to be applied to those staff who directly provide the health care services, supervisory and support staff, and the staff who perform electronic billing. Most staff functions in a typical County DSS agency would, most likely, not be impacted by the HIPAA regulations. However, where HIPAA covered agency staff functions are identified, County DSS HIPAA staff is encouraged to coordinate with appropriate local legal staff on how the following required activities will be handled:

- *the department must designate a privacy officer;*
- *the department must designate a contact person;*
- *the department must develop and implement (by April 14, 2003, the HIPAA Privacy deadline) written policies and procedures to comply with the HIPAA privacy rule (including policies related to complaints, use and disclosure of protected health information, "minimum necessary"*



Dear County Director
October 25, 2002
Page 3

- *standards, verification requirements, notice of privacy practices, individual access to and amendment of protected health information, accounting of disclosures, etc.);*
- *the department must provide training to its workforce with respect to its privacy policies and procedures;*
- *the department must establish safeguards to protect the privacy of protected health information;*
- *the department's covered components may not use or disclose (to a non-covered component in the department or to a person, agency, or entity outside the department) protected health information in a manner inconsistent with the HIPAA privacy rule or the department's privacy policies and procedures.*
- *the department must establish and apply appropriate sanctions for failure to comply with its privacy policies and procedures;*
- *the department must take appropriate action to mitigate the harmful effects of improper uses or disclosures of protected health information;*
- *the department or its covered components must post and provide to individuals a copy of the department's notice of privacy practices;*
- *the department or its covered components must provide an accounting for certain disclosures of protected health information;*
- *the department and its covered components must comply with other requirements of the HIPAA privacy, security, transactions, code sets, and administrative simplification rules.*

(From [County Attorney training materials](#) prepared by John Saxon, UNC-CH Institute of Government.)

Currently, those DSS agencies that do not bill electronically for health care services are not considered subject to the HIPAA medical privacy rule requirements. It is currently unclear whether submission of e-mail inquiries to EDS, regarding the payment status of claims submitted on paper forms, would be considered a HIPAA covered electronic transaction.

Source for HIPAA Implementation Materials and Other Resources

Several County DSS Directors recently indicated the need for information on HIPAA specific to County DSS operations. Probably the best source for information developed specifically for County use and most relevant to local DSS agency operations can be found on the UNC-CH Institute of Government's Web Site. Please refer to URL: http://www.medicalprivacy.unc.edu/resources_potm.htm for links to resource materials related to the Privacy regulations, developed for the HIPAA Privacy training conducted during May 2002. For links to specific HIPAA legal requirements and other information discussed during the July 2002 County Attorneys' Training, refer to URL: http://www.medicalprivacy.unc.edu/resources_cat.htm. Note that additional material was posted after the training. Please note both Web pages contain links to DSS specific materials, used during the DSS breakout sessions.

The NC DHHS HIPAA Web Site is also a good source of HIPAA information, developed for State and County staff use. Please refer to URL:

<http://dirm.state.nc.us/hipaa/hipaa2002/whatishipaa/whatishipaa.html>, for general information that explains the HIPAA requirements. To obtain information specific to the HIPAA regulations, go to URL: <http://dirm.state.nc.us/hipaa/hipaa2002/regulations/regulations.html>. For information regarding HIPAA covered functions, go to URL: <http://dirm.state.nc.us/hipaa/hipaa2002/amicovered.html>.

Several inquiries were received regarding the need for step by step instructions for implementing HIPAA. Please refer to the DHHS HIPAA Compliance Model, found on the NC DHHS HIPAA Web Site at URL: <http://dirm.state.nc.us/hipaa/hipaa2002/complianceprocess/complianceprocess.html>. This HIPAA compliance process model is presented as a step by step approach to HIPAA compliance. The model is currently being used by our Department to implement HIPAA and we encourage County DSS agencies to consider adapting this model for local use. HIPAA Office staff is currently working on HIPAA policies, procedures, sample notices and other materials for State use. These materials will be posted on the NC DHHS Web Site, when completed. Institute of Government staff has already addressed many of these



Dear County Director
October 25, 2002
Page 4

requirements and posted them on the Web, for county use. Currently, you may find resource materials on HIPAA Use and Disclosures of Protected Health Information, sample client notices, authorization forms, client access rights and other related information, at URL:
http://www.medicalprivacy.unc.edu/resources_cat.htm

Remember that the NC DHHS HIPAA Web Site is our department's primary vehicle for sharing resource materials with County DSS and the other affiliated local agencies. Some of the many other materials available from the Web site include: HIPAA Awareness presentations, Privacy training, and other training resource materials, HIPAA assessment and implementation guides, templates, etc. The HIPAA Office updates this site periodically, so it is recommended County DSS staff check this site frequently for updates. The Home Page is located at URL: <http://dirm.state.nc.us/hipaa/>. For a different view of the Web Site, go to the Site Map, located at URL: <http://dirm.state.nc.us/hipaa/hipaa2002/sitemap.html>. The Web site also contains links other Web sites with HIPAA information. Refer to URL: <http://dirm.state.nc.us/hipaa/hipaa2002/links.html>.


Division Assistance to County DSS Agencies

As most are aware, no HIPAA funding or additional staff resources were made available to the Division to support County DSS agencies with their HIPAA preparedness and implementation efforts. Therefore, current Division assistance is limited to general consultation and help in obtaining HIPAA resources that you can not readily find on the Web. You may contact our Division HIPAA Coordinator, Jim Bookout, by e-mail at: Jim.Bookout@ncmail.net or by telephone at the number provided below.

For more information regarding our Department's approach to HIPAA, please refer to the joint Division of Social Services and Division of Medical Assistance County Director of Social Services letter, dated April 19, 2002. The subject is: "HIPAA Compliance Assistance for Non-State Owned NC DHHS Affiliated Agencies." It can be accessed at URL: <http://www.dhhs.state.nc.us/dss/dcdl/section/resourceinformation.htm>.

You may contact Mr. Bookout at (919) 733-4533 regarding any questions about this letter or if you need assistance locating HIPAA resources.

Sincerely,



Pheon E. Beal

cc: Sherry Bradsher, DSS Deputy Director
Nina Yeager, DMA Director
Tom Lambert, DMA HIPAA Coordinator
Karen Tomczak, DHHS HIPAA Office
John Saxon, Institute of Government
Kevin Fitzgerald, Institute of Government
Rebecca Troutman, NC Association of County Commissioners

RIM-PM-3-2002

