

4/14/15

**SUMMARY OF FEDERAL AND STATE LAW RELATING TO
CONFIDENTIALITY OF MEDICAID DATA AT THE DEPARTMENT OF
SOCIAL SERVICES**

Federal Law

1. Medicaid statute - 42 U.S.C. § 1396a(a)(7)

A State plan for medical assistance must

(7) provide--

(A) safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with--

(i) the administration of the plan; and

(ii) the exchange of information necessary to certify or verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 [42 USCS §§ 1771 et seq.] and free or reduced price lunches under the Richard B. Russell National School Lunch Act [42 USCS §§ 1751 et seq.], in accordance with section 9(b) of that Act [42 USCS § 1758(b)], using data standards and formats established by the State agency; and

(B) that, notwithstanding the Express Lane option under subsection (e)(13), the State may enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act [42 USCS §§ 1751 et seq.] under which the State shall establish procedures to ensure that--

(i) a child receiving medical assistance under the State plan under this title whose family income does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act [42 USCS § 9902(2)], including any revision required by such section), as determined without regard to any expense, block, or other income disregard, applicable to a family of the size involved, may be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act [42 USCS §§ 1751 et seq.] and free breakfasts under the Child Nutrition Act of 1966 [42 USCS §§ 1771 et seq.] without further application; and

(ii) the State agencies responsible for administering the State plan under this title, and for carrying out the school lunch program established

under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), cooperate in carrying out paragraphs (3)(F) and (15) of section 9(b) of that Act [42 USCS § 1758(b)].

(emphasis added)

2. Medicaid regulations - 42 C.F.R. 431.300 to 431.307, inclusive.

These regulations specify that “ purposes directly related to plan administration” include establishing eligibility; determining the amount of medical assistance; providing services for recipients; and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan. They also specify the type of information that must be safeguarded. A copy of these regulations is attached.

3. HIPAA

Federal HIPAA regulations set forth the circumstances under which protected health information (“PHI”) may be used and disclosed by covered entities. PHI is information, including demographic information, which relates to (1) the individual’s past, present or future physical or mental health condition; (2) the provision of health care to the individual; or (3) the past, present or future payment for the provision of health care to the individual and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.

The Department of Social Services is a covered entity. In general, PHI may be disclosed without the individual’s consent only for purposes of treatment, payment or health care operations. These terms are defined in the regulations. HIPAA provides a floor with regard to what a covered entity may share with others without an individual’s consent. There are many exceptions in HIPAA, which allow protected health information to be disclosed without an individual’s consent. **But if there is a state statute or another federal statute or regulation that is stricter than HIPAA, i.e., that is more protective of the individual’s privacy than HIPAA, the covered entity must follow the stricter provision.**

4. 42 C.F.R. Part 2 – Alcohol and Substance Abuse Treatment Programs

While the Department is not an alcohol or substance abuse treatment program, if the Department has information about an individual that was obtained from an alcohol or substance abuse treatment program, with very limited exceptions, we must obtain the client's specific consent in order to re-disclose this information. 42 C.F.R. § 2.32.

State Law

1. Section 17b-90(b) of the Connecticut General Statutes

With specific exceptions set forth in the statute,

[n]o person shall, except for purposes directly connected with the administration of programs of the Department of Social Services and in accordance with the regulations of the commissioner, solicit, disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of, any list of the names of, or any information concerning, persons applying for or receiving assistance from the Department of Social Services or persons participating in a program administered by said department, directly or indirectly derived from the records, papers, files or communications of the state or its subdivisions or agencies, or acquired in the course of the performance of official duties.

(emphasis added)

2. Sections 1015.10, 1015.15, 1015.20, 1020, 1020.05, 1020.10, 1020.12, 1020.13, 1020.15 and 1020.20 of the Uniform Policy Manual govern SNAP, Medicaid, TFA.
3. There are specific state statutory protections for information the Department obtains from psychiatric providers and also for confidential HIV-related information. With very limited exceptions, the Department may not re-disclose such information without specific consent from the clients and such re-disclosures must contain statutorily- mandated language when it is disclosed. See Conn. Gen. Stat. §§ 52-146e, 52-146i, 19a-583, 19a-585.

ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 42 → Chapter IV → Subchapter C → Part 431 → Subpart F

Title 42: Public Health
PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

Subpart F—Safeguarding Information on Applicants and Beneficiaries

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SOURCE: 44 FR 17934, Mar. 29, 1979, unless otherwise noted.

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§431.300 Basis and purpose.

(a) Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan. This subpart specifies State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

(b) For purposes of this subpart, information concerning an applicant or beneficiary includes information on a non-applicant, as defined in §435.4 of this subchapter.

(c) Section 1137 of the Act, which requires agencies to exchange information to verify the income and eligibility of applicants and beneficiaries (see §435.940 through §435.965 of this subchapter), requires State agencies to have adequate safeguards to assure that—

(1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l)(7) of the Internal Revenue Code is exchanged only with agencies authorized to receive that information under that section of the Code; and

(2) The information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

(d) Section 1943 of the Act and section 1413 of the Affordable Care Act.

[51 FR 7210, Feb. 28, 1986, as amended at 77 FR 17203, Mar. 23, 2012]

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§431.301 State plan requirements.

A State plan must provide, under a State statute that imposes legal sanctions, safeguards meeting the requirements of this subpart that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan.

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§431.302 Purposes directly related to State plan administration.

Purposes directly related to plan administration include—

- (a) Establishing eligibility;
- (b) Determining the amount of medical assistance;
- (c) Providing services for beneficiaries; and

(d) Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related the administration of the plan.

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§431.303 State authority for safeguarding information.

The Medicaid agency must have authority to implement and enforce the provisions specified in this subpart for safeguarding information about applicants and beneficiaries.

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§431.304 Publicizing safeguarding requirements.

(a) The agency must publicize provisions governing the confidential nature of information about applicants and beneficiaries, including the legal sanctions imposed for improper disclosure and use

(b) The agency must provide copies of these provisions to applicants and beneficiaries and to other persons and agencies to whom information is disclosed.

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§431.305 Types of information to be safeguarded.

(a) The agency must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded.

(b) This information must include at least—

- (1) Names and addresses;
- (2) Medical services provided;
- (3) Social and economic conditions or circumstances;
- (4) Agency evaluation of personal information;
- (5) Medical data, including diagnosis and past history of disease or disability; and

(6) Any information received for verifying income eligibility and amount of medical assistance payments (see §435.940 through §435.965 of this subchapter). Income information received from § or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data, including section 6103 of the Internal Revenue Code, as applicable.

(7) Any information received in connection with the identification of legally liable third party resources under §433.138 of this chapter.

- (8) Social Security Numbers.

[44 FR 17934, Mar. 29, 1979, as amended at 51 FR 7210, Feb. 28, 1986; 52 FR 5975, Feb. 27, 1987; 77 FR 17203, Mar. 23, 2012]

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§431.306 Release of information.

(a) The agency must have criteria specifying the conditions for release and use of information about applicants and beneficiaries.

(b) Access to information concerning applicants or beneficiaries must be restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of the agency.

(c) The agency must not publish names of applicants or beneficiaries.

(d) The agency must obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment under section 1137 of this title and §§435.940 through 435.965 of this chapter.

If, because of an emergency situation, time does not permit obtaining consent before release, the agency must notify the family or individual immediately after supplying the information.

(e) The agency's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.

(f) If a court issues a subpoena for a case record or for any agency representative to testify concerning an applicant or beneficiary, the agency must inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.

(g) Before requesting information from, or releasing information to, other agencies to verify income, eligibility and the amount of assistance under §435.940 through §435.965 of this subchapter, the agency must execute data exchange agreements with those agencies, as specified in §435.945 of this subchapter.

(h) Before requesting information from, or releasing information to, other agencies to identify legally liable third party resources under §433.138(d) of this chapter, the agency must execute data exchanges agreements, as specified in §433.138(h)(2) of this chapter.

[44 FR 17934, Mar. 29, 1979, as amended at 51 FR 7210, Feb. 28, 1986; 52 FR 5975, Feb. 27, 1987; 77 FR 17203, Mar. 23, 2012]

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§431.307 Distribution of information materials.

(a) All materials distributed to applicants, beneficiaries, or medical providers must—

(1) Directly relate to the administration of the Medicaid program;

(2) Have no political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA) Pub. L. 103-931; for States that are exempt from the requirements NVRA, voter registration may be a voluntary activity so long as the provisions of section 7(a)(5) of NVRA are observed;

(3) Contain the names only of individuals directly connected with the administration of the plan; and

(4) Identify those individuals only in their official capacity with the State or local agency.

(b) The agency must not distribute materials such as “holiday” greetings, general public announcements, partisan voting information and alien registration notices.

(c) The agency may distribute materials directly related to the health and welfare of applicants beneficiaries, such as announcements of free medical examinations, availability of surplus food, an consumer protection information.

(d) Under NVRA, the agency must distribute voter information and registration materials as specified in NVRA.

[44 FR 17934, Mar. 29, 1979, as amended at 61 FR 58143, Nov. 13, 1996]

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