

STATE OF TENNESSEE
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Opinion No. 07-165

HIPAA/TennCare/Medicaid Interplay

QUESTION

Do the provisions of the Health Insurance Portability and Accountability Act (HIPAA) that apply to the personally identifiable health information maintained in the TennCare/Medicaid files of the Department of Human Services program permit the release of such information or do the provisions of the Medicaid regulations control so as to limit the release to only the purposes described in the Medicaid regulations?

OPINION

HIPAA provides that a more stringent state law related to the privacy of individually identifiable health information will override a use or disclosure otherwise permitted under HIPAA. Therefore, Tennessee statutes that maintain the confidentiality of information concerning applicants and recipients of Medicaid control.

ANALYSIS

As a general rule, HIPAA prohibits the use or disclosure of individually identifiable health information by a covered entity. 45 C.F.R. §164.502(a). However, HIPAA's prohibition is subject to several exceptions. For example, a covered entity is permitted to use or disclose individually identifiable health information for treatment, payment, or health care operation purposes. 45 C.F.R. §164.502(a)(1)(ii). A covered entity may also use or disclose such information to the individual who is the subject of the protected health information or to third parties pursuant to the individual's valid authorization. 45 C.F.R. §164.502(a)(1)(i) and (iv). A covered entity is also permitted to use or disclose individually identifiable health information without the individual's authorization in situations that include disclosures about victims of abuse, neglect, or domestic violence and disclosures for public health or health oversight activities, judicial and administrative proceedings, and law enforcement purposes. 45 C.F.R. §164.512.

Your question concerns the interplay between these HIPAA exceptions and the mandatory confidentiality requirements of the state Medicaid program. The Bureau of TennCare, Tennessee's

designated Medicaid single state agency, and the Department of Human Services, the designated state agency for Medicaid eligibility determinations, are covered entities subject to HIPAA.

Federal Medicaid regulations require states to limit the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the program. 42 C.F.R. §§ 431.300(a) and 431.301. Purposes directly related to the administration of the program 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 program. 42 C.F.R. § 431.302. Information about applicants and recipients that must be safeguarded includes:

- (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 § 435.940ff). Income information received from SSA or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.
- (7) Any information received in connection with the identification of legally liable third party resources under § 433.138 of this chapter.

42 C.F.R. § 431.305.

As mandated by federal Medicaid law, Tennessee statutes incorporate the confidentiality restrictions contained in the federal Medicaid regulations. Tenn. Code Ann. § 10-7-504(a)(9)(C) provides that:

Information received by the state that is required by federal law or regulation to be kept confidential shall be exempt from public disclosure and shall not be open for inspection by members of the public.

Further, Tenn. Code Ann. § 10-7-503(b) authorizes the head of a state agency to promulgate rules to “maintain the confidentiality of . . . records required to be kept confidential by federal statute or regulation as a condition for the receipt of federal funds or for participation in a federally funded program.” The Bureau of TennCare must also:

Establish and enforce safeguards to prevent unauthorized disclosures or improper use of the information contained in applications, reports of investigations and medical examinations, and correspondence in the individual case records of recipients of medical assistance.

Tenn. Code Ann. § 71-5-105(a)(7).

HIPAA does not preempt a provision of state law that “relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement, or implementation specification” in part 164 of the HIPAA privacy rule. 45 C.F.R. § 160.203(b). Under HIPAA, a state law “relates to the privacy of individually identifiable health information” if the state law “has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way.” 45 C.F.R. § 160.202. “State law” includes “a constitution, statute, regulation, rule, common law, or other State action having the force and effect of law.” 45 C.F.R. § 160.202. In pertinent part, “more stringent” means that “the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under [HIPAA]” or “provides greater privacy protection for the individual who is the subject of the individually identifiable health information.” 45 C.F.R. § 160.202.

Therefore, the more stringent state law would preclude the release of information, including the personally identifiable health information, maintained in the TennCare/Medicaid files of the Department of Human Services program except for purposes directly connected with the administration of the program.

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