



MEMORANDUM

FROM: Jane Wilson, Privacy Officer
Legal Division
DATE: September 4, 2015
RE: HIPAA and PASRR Evaluation and Determinations

As the state agency for the Medical Assistance Program, the Department of Health Care Policy and Financing (Department or HCPF) has received several questions concerning Pre-Admission Screening and Annual Resident Reviews (PASRR) and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. Medicaid is required to comply with both the regulations concerning PASRR and HIPAA. This memo serves to clarify the Department's position.

42 C.F.R. 483.100-138 requires the State to screen or review "all individuals with mental illness or intellectual disability who apply to or reside in Medicaid certified nursing facilities (NF) regardless of the source of payment for the NF services, and regardless of the individual's or resident's known diagnoses" (483.102). The State's PASRR program must "identify all individuals who are suspected of having mental illness or intellectual/developmental disabilities as defined in §483.102" (Level I) (483.128), then to evaluate and determine whether nursing facility services and specialized services are required (Level II) (483.128).

This information may be disclosed without authorization from the client. Protected health information (PHI) must be used and disclosed to comply with the requirements of PASRR evaluations and PASRR determinations, and because data is being disclosed for the purposes of the Department's health care operations consistent with the Privacy Rule.

This information does not need to be tracked for Accounting of Disclosure purposes.

PASRR Evaluation:

PASRR evaluations must involve: "the individual being evaluated, the individual's legal representative (if designated), and the individual's family (if available and if individual or legal representative agree)" (483.128).

PASRR Determination:

PASRR Determinations must be based on a "comprehensive analysis of all data concerning the individual" (483.128). Evaluators may use "relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the



individual” (483.128). The HIPAA Privacy rules can be found at 45 C.F.R. Parts 160 and 164. Under 164.506, a covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that received the information, “if each entity either has or had a relationship with the individual who is the subject of the protected health information being requested, the protected health information pertains to such relationship, and the disclosure is for a variety of purposes including “case managed and care coordination” (164.501, *Health care operations*).

Any questions concerning this policy should be directed to the HCPF Privacy Officer at (303) 866-4366.

Thank you.

