STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY

GRAY DAVIS, Governor

DEPARTMENT OF HEALTH SERVICES
714/744 P Street
P.O. Box 942732
Sacramento, CA 94234-7320
(916) 657-2941

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TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons
All County MEDS Coordinators
All County MEDS Security Coordinators
All County Public Health Officers
All County Mental Health Officers

Letter No.: 00-43

CONFIDENTIALITY POLICIES GOVERNING MEDI-CAL AND THE MEDI-CAL ELIGIBILITY DATA SYSTEM (MEDS)

This is to remind county welfare departments (CWD) to follow the policies of the State Department of Health Services governing the confidentiality of and access to information obtained from Medi-Cal beneficiaries, Medi-Cal records, and or MEDS.

The Department's Medi-Cal and MEDS access policy has been established in accordance with federal and state laws governing confidentiality. This policy applies to any governmental or private entity. There is long-standing and strong public policy, as well as an overwhelming amount of legal authority upholding confidentiality. These laws are to be strictly construed in favor of protecting personal information about the individual, and the circumstances where disclosure is proper are extremely limited. Based on this policy, online MEDS terminal access with inquiry and/or update capabilities is available only to CWDs and their outstationed CWD staff. Confidential information regarding recipients may be released only for purposes related to the administration of the Medi-Cal program.

The following is a brief summary of the federal and state statutes and regulations governing release of beneficiary information:

State and federal laws and regulations generally prevent the disclosure of personal information regarding beneficiaries to the county. County welfare office employees are allowed access to eligibility data for purposes of administering the Medi-Cal eligibility process as agents of the state. This is a limited disclosure for limited purposes. Nothing in the law or regulations contemplates disclosure of Medi-Cal beneficiary information to the county generally or to the county in its role as provider.

Federal law governing Medicaid requires that medical information on applicants and beneficiaries be kept confidential. (Title 42, United States Codes (U.S.C.), Section 1396a (a)(7).) The regulations implementing this law deal with the disclosure of information collected and maintained by state Medicaid agencies. (Title 42, Code of Federal Regulations (CFR), Sections 431.300 et seq.)

Specifically, Title 42, C.F.R. Section 431.300 requires the Medicaid State Plan for each state to set forth the conditions under which, and individuals to whom, applicant information may be released. California's State Plan does not include release of applicant information to agencies, business firms, and other entities desiring to represent applicants in the eligibility process or to undertake collection activities against the Department. Further, 42 C.F.R. Section 431.306, requires the prior, informed written consent of the applicant/beneficiary be obtained before such disclosure can take place. That regulation further states that the non-disclosure policy applies to all requests for information, including those from other agencies, the courts, and law enforcement officials.

Welfare and Institutions (W&I) Code Section 14100.2 embodies these principles and describes the information to be regarded confidential. This information includes applicant/beneficiary names, addresses, services provided, social and economic conditions or circumstances, agency evaluation of personal information and medical data. (See Title 22, C.C.R,. Sections 50111 and 51009.)

The Medi-Cal Eligibility Procedure Manual, Section 2-H, titled CONFIDENTIALITY OF MEDI-CAL CASE RECORDS, referring to Section 14100.2, W&I Code, provides in part that:

(a) All types of information, whether written or oral, concerning a person, made or kept by any public office or agency in connection with the administration of any provision of this chapter shall be confidential, and shall not be open to examination other than for purposes directly connected with administration of the Medi-Cal program.

(b) Except as provided in this section and to the extent permitted by federal law or regulation, all information about applicants and recipients as provided for in subdivision (a) to be safeguarded includes, but is not limited to, names and addresses, medical service provided, social and economic conditions or circumstances, agency evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.

(c) Purposes directly connected with the administration of the Medi-Cal Program, encompass those administrative activities and responsibilities in which the State Department of Health Services and its agents are required to engage in to ensure effective program operations. These activities include, but are not limited to: establishing eligibility and methods of reimbursement; determining the amount of medical assistance; providing services for recipients; conducting or assisting an investigation, prosecution, or civil or criminal proceedings related to the administration of the Medi-Cal program; and conducting or assisting a legislative investigation or audit related to the administration of the Medi-Cal Program.

(f) Requires agents of the state to abide by rules and regulations governing the custody, use and preservation of all records pertaining to administration of the Medi-Cal Program.

(h) States that "any person who knowingly releases or possesses confidential information concerning person who have applied for or who have been granted any form of Medi-Cal benefits for which state or federal funds are made available in violation of this section is guilty of a misdemeanor."

The Medi-Cal Eligibility Manual, section 14-D, titled "VERIFICATION OF MEDI-CAL ELIGIBILITY" states in part:

A. Medi-Cal Providers:

"...only county welfare departments and their outstationed staff may have access to MEDS terminals for inquiry and update information." In addition, counties cannot provide MEDS printouts to any provider...."

The Department's current policy does allow providers to contact CWDs for eligibility information necessary to bill the Medi-Cal Program.

Section 14-D, continues:

"When a provider requests beneficiary information, the county should obtain the provider's name, telephone number, and enough information to identify the beneficiary. This information must be sufficient to assure the county that there is no question as to the identity of the beneficiary before it releases any information."

"Typically, providers will request the beneficiary's county identification number and/or verification of eligibility for a specific month to enable them to bill the Medi-Cal program for services rendered."

"If the provider is unable to furnish the beneficiary's birth date or social security number, but is able to provide sufficient information to identify the beneficiary (i.e., beneficiary's name and home address), the county may release the following beneficiary information:

1. County identification number (14 digits).
2. Date of birth.
3. Eligibility status for requested month(s) (e.g., eligible, ineligible, share of cost (SOC) amount, long-term care status).
4. Other health coverage.
5. Restricted status (if applicable).
6. Medicare coverage (if applicable).

"The county is not to release information concerning an ineligible individual other than the fact he or she is not eligible for Medi-Cal for a specific month."

One particular misinterpretation of the Department's policy has occurred where a county in its role as payer or a county hospital seeks to obtain confidential beneficiary information for the purpose of conducting collection activities against the Medi-Cal program (including pursuing eligibility for patients). Recently, there has been an attempt to justify the release of confidential information from the CWD to other branches of county government based on the contention that the collection activity is a part of the "administration of the program." The Department rejects this argument as contrary to law.

The "administration of the program" encompasses those administrative activities and responsibilities that the State is required to engage to ensure "effective program operations," which includes determination of eligibility by the Department and its agents. Although the county hospital is attempting to establish eligibility, the function of establishing eligibility for purposes of Section 14100.2 is by the State and its agents (the CWD) for the patient's benefit, not for the benefit of third party creditors, such as county hospital or other providers (or collection agencies working under contract for such providers). The language of the statute is very limiting in nature.

SUMMARY:

CWDs are responsible for assuring that the confidentiality of beneficiary eligibility information is maintained. CWDs must monitor their procedures for maintaining the confidentiality of eligibility information and remind staff of the confidentiality requirements. Welfare and Institutions Codes section 14100.2 ,subsection (h), provides that a violation of confidentiality is a misdemeanor. CWDs should remind their staff of this provision, so that they understand that they can be found guilty of a crime if they improperly release beneficiary information. This letter replaces All County Directors Letter No. 92-66.

If you have any questions regarding Medi-Cal confidentiality regulations and/or MEDS security policies, please contact Ana Ramirez of my staff at (916) 657-1401.

Sincerely,

ORIGINAL SIGNED BY

Angeline Mrva, Chief
Medi-Cal Eligibility Branch