

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20202

INFORMATION MEMORANDUM
RSA-IM-01-44
DATE: September 25, 2001

TO: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)
STATE REHABILITATION COUNCILS (SRCs)
CLIENT ASSISTANCE PROGRAMS (CAP)
REGIONAL REHABILITATION CONTINUING EDUCATION
PROGRAM (RRCEPS)
AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES
PROJECTS
RSA SENIOR MANAGEMENT TEAM

SUBJECT : APPLICABILITY OF THE HEALTH INSURANCE PORTABILITY
AND ACCOUNTABILITY ACT OF 1996 TO THE VOCATIONAL
REHABILITATION SERVICES PROGRAM

ISSUE: This Information Memorandum (IM) provides clarification of the relationship between the State Vocational Rehabilitation Services program (VR program) under title I of the Rehabilitation Act of 1973, as amended, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Specifically, the issue addressed herein is whether the uniform standards and requirements under the HIPAA implementing regulations that govern the electronic transmission of certain health information within the health care industry apply to designated State agencies (VR agencies) administering a State's VR program.

DISCUSSION: We have consulted extensively with the U.S. Department of Health and Human Services (HHS), the Federal agency responsible for administering HIPAA, on this issue and have learned that, for the reasons set forth below, the requirements governing electronic transmission of health care information – in particular, the Administrative Simplification provisions in Subtitle F of title II under HIPAA and in 45 CFR Parts 160 and 162 – do not apply to State VR agencies.

The scope of entities subject to the electronic transmission standards developed under HIPAA regulations was clarified in final regulations promulgated by HHS on December 28, 2000 (65 FR 82461) which, along with final regulations published on August 17, 2000 (65 FR 50312), establish requirements pertaining to electronic transactions between health

industry entities covered by HIPAA.¹ The December 28, 2000 regulations, like those published in August, identify “health plans, health care providers, and health care clearinghouses” as “covered entities” that must comply with the transaction codes in 45 CFR Part 162 whenever they transmit certain health information electronically. For purposes of administering the VR program, however, State VR agencies do not qualify as one of the three covered entities.

This position, which we have confirmed with HHS, is based on the regulatory definitions of the entities covered by the HIPAA regulations. First, the December 28, 2000, regulations revised the definition of the term “health plan” under 45 CFR §160.103. While a “health plan” includes any “individual or group plan that provides, or pays the cost of, medical care,” subsection (2)(ii) of the definition specifically excludes:

“a government-funded program . . . whose principal purpose is other than providing, or paying the cost of, health care.”

While State VR agencies may, under certain conditions, expend VR program funds to pay for the diagnosis and treatment of an eligible individual’s physical or mental impairment when necessary for the individual to achieve his or her employment goal (see section 103(a)(6) of the Rehabilitation Act and 34 CFR §361.48(e) of the VR program regulations), the provision of medical care is not the primary purpose of the VR program. Instead, the VR program is “designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for and engage in gainful employment” (see section 100(a)(2) of the Rehabilitation Act). Thus, the VR program is not a “health plan” as defined in the HIPAA regulations.

Nor does the regulatory definition of “health care provider” [“a provider of . . . medical or health services, and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business”] accurately describe the VR program. Preamble language to the December 28, 2000, final regulations makes it clear that “health care providers” include entities that actually provide diagnostic and preventative care and sell and dispense drugs. Providers of health care services include entities such as hospitals, skilled nursing facilities, home

¹ Congress required HHS to promulgate a set of regulations establishing standards and protections for health information systems. The first final regulations in this set, Standards for Electronic Transactions, were promulgated on August 17, 2000 (65 Federal Register 50312). The second final regulations in the set, Standards for Privacy of Individually Identifiable Health Information, were promulgated on December 28, 2000 (65 Federal Register 82461). Additional rules have been proposed, while others have yet to be proposed. Although the regulations promulgated on December 28, 2000 establish the Standards for Privacy, they also amended certain definitions that had been promulgated in August and are relevant to the issue at hand.

health agencies, hospice programs, etc. (See 65 FR 82477-82478). In contrast, a VR agency, in arranging and paying for physical and mental restoration services (see 34 CFR §§361.5(b)(40) and 361.48(e)) in certain, limited instances under the VR program, does not “furnish... health care” as the term is used in 45 C.F.R. §160.103. Thus, VR agencies are not “health care providers” as defined in the HIPAA regulations.

Finally, the regulatory definition of a “health care clearinghouse” [“a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, . . . that processes or facilitates the processing of health information”] under 45 CFR §160.103 does not accurately describe the VR program. Accordingly, HIPAA does not obligate VR agencies to adopt the electronic transaction standards in Part 162 when providing health information to, or receiving health information from, a health care provider or other “covered entity” in the course of administering the VR program.

CONCLUSION: In summary, neither HIPAA nor its implementing regulations obligate State VR agencies to conform to the regulatory standards for electronic transmission of health information for purposes of administering the VR program.

While RSA has confirmed this position with HHS, this interpretation does not affect any decision by a State to adopt standards for electronic transmission that would cover the VR agency. The electronic codes or standards that a VR agency is expected to follow when exchanging health information or processing health care transactions is a matter of State discretion.

EFFECTIVE DATE: Upon Issuance

INQUIRIES: Any questions concerning this Information Memorandum should be addressed to Allen Kropp at (207) 865-3785 [allen.kropp@ed.gov].

/s/
Joanne M. Wilson
Commissioner

cc: CSAVR
NORP
NCIL
NAPAS
NRFC