

MEMORANDUM

Texas Department of Human Services * Long Term Care/Policy

TO: Long Term Care -Regulatory
Regional Directors, State Office Section Managers and
HCSSA Program Administrators

FROM: Marc Gold, Director
Long Term Care Policy
State Office MC: W-519

SUBJECT: Regional Survey & Certification Letter #01-01

DATE: May 18, 2001

The attached RS&C Letter is being provided to you for information purposes and should be shared with all professional staff.

- RS&C Letter No. 01-01 -- CONFIDENTIALITY AND PRIVACY OF OASIS DATA;
Contact the OASIS Help Desk, at (512) 438-2100. If you have any questions, please direct inquiries to the individuals or sections listed above.

~Original Signature on File~

Marc Gold

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Division of Medicaid and State Operations, Region VI

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Dallas, Texas 75202
Phone (214) 767-6301
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February 27, 2001

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 01-01

To: All State Survey Agencies (Action)
All Title XIX Single State Agencies (Information)

Subject: CONFIDENTIALITY AND PRIVACY OF OASIS DATA

The purpose of this letter is to provide information and guidance regarding the confidentiality and privacy of OASIS data.

General information

In accordance with the Privacy Act of 1974, the Home Health Agency (HHA) Outcome and Assessment Information Set (OASIS) System of Records (SOR) was published June 18, 1999 in the Federal Register. This SOR defined the allowed uses of the Federal data. The routine use section of the Privacy Act Statement B Health Care Records detailed certain patient rights statements which must be given to each Medicare or non-Medicare patient receiving home care services.

HCFA maintains that the protection of privacy of patient specific information is an important element in using OASIS. No one may release OASIS assessment information that is patient identifiable to the public. At all locations where OASIS data is held, the HHA, the State Survey Agency, or at HCFA, whether the data is hard copy or electronic, it must be secured and controlled in compliance with our requirements for safeguarding the confidentiality of clinical records.

Who "owns" the data?

There are two levels of ownership for this data.

1. At the HHA level, the data is owned by the agency and is subject to the Conditions of Participation. Specifically, the OASIS data and reports are confidential and may be used internally to support the HHAs quality improvement program. The agency is not to release any data to the public.

2. At the State Agency and HCFA, the data become part of a "system of records" and are bound by rules of the Privacy Act of 1974 and the published HHA/OASIS System of Records.

Rules that govern confidentiality of patient data

The rules that govern confidentiality of patient data at the HHA level are:

484.10 (d) Standard: Confidentiality of medical records. The patient has the right to confidentiality of the clinical record maintained by the HHA. The HHA must advise the patient of the agencies' policies and procedures regarding disclosure of clinical records.

484.11 CoP: Release of patient identifiable OASIS information. The HHA and agent acting on behalf of the HHA in accordance with a written contract must ensure the confidentiality of all patient identifiable information contained in the clinical record, including OASIS data, and may not release patient identifiable OASIS information to the public.

The Social Security Act in section 1891(a)(1)(C) establishes the patient's right to confidentiality of the clinical record. Additionally, State laws exist concerning confidentiality of medical records.

We are requiring that the home health agencies keep all information contained in the patient record confidential and maintain safeguards against the unauthorized use of a patient's clinical record information, regardless of the form or storage method.

The rules that govern confidentiality of patient data at the State and HCFA are:

1. The 1864 Secretary's Agreement with each State requires that they maintain the confidentiality of all data.
2. The HHA/OASIS System of Records governs all data held after transmission to the State /HCFA. The penalties are addressed in the SOR found on the OASIS web site. Each State agency or Regional Office surveyor authorized to access and use the OASIS data or reports derived from the OASIS data must comply with the provisions governing the privacy and security of this Federal automated information system. Each user having authorized access to the system, records, and reports must agree to maintain appropriate administrative, technical, procedural and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Each user is required to have an individual valid User ID and a secure password. Each user shall not disclose, release, reveal, show, sell, rent, lease, loan or otherwise grant access to the data to any person. The Privacy Act provides criminal penalties and fines for certain violations.

What information can HCFA release to the public from these reports at this time and in the future?

HCFA will publish public releasable reports when we have developed the report that does not identify any person or persons. This is expected in the summer. The reason the current reports cannot be released now is what we call "cell size." For example, if the Adverse Event Outcome Report relates to a particular outcome to a single patient or all of the patients, you potentially could identify that this particular characteristic applies to those person(s). We will create a report to mask those small or large numbers. When this is developed, we will make this public.

What information can HCFA NOT release from these reports?

1. The "Adverse Event Outcome Report - Patient Listing" because this is patient specific and any patient identifiable information cannot be released to the public.
2. The "Adverse Event Tabular Outcome Report" because of the cell size, as described earlier.
3. The "All Patient's Case Mix Profile" because of cell size, as described earlier.

What information can HHAs release on these reports?

HHAs may not release any information from any outcome report to the public. The OASIS data and reports are confidential and must remain as an internal document to support the HHAs quality improvement program. The agency is not to release any data to the public.

Guidance to State and Regional Surveyors

1. All inquiries from the press are to be referred to the HCFA Press Office at (202) 690-6145. Your words, no matter how brief, accurate, or positive will probably not accurately represent what you said, so do not take the chance.
2. The reports and everything in them are confidential information. States are bound by the 1864 agreement as well as the Privacy Act of 1974 to maintain the confidentiality of all data to which they have access. In the same fashion, HHAs, under the conditions of participation, must maintain the confidentiality of patient information, including the information in the OBQM reports.

As for national data, HCFA will publish it under a publicly releasable report this summer. The national data on these reports varies from report to report based on the time frame that has been selected for review and SHOULD NOT be discussed with the press.

It is recommended that each State agency and Regional Office surveyor review the [Federal Register Notice](#), noted above, and review the [Program Memorandum: Transmittal No.99-2](#), November 1999, Section XIII Protection of the Confidentiality of OASIS data found on page 41-42.

If you have any questions, please contact Dodjie B. Guioa at 214-767-6179 or through E-mail at dguioa@hcfa.gov.

Sincerely,

~Signature on File~

Molly Crawshaw, Chief
Survey and Certification Operations Branch