



ALABAMA QUALITY ASSURANCE FOUNDATION
Medical Quality Assurance

Two Perimeter Park South, Suite 200 West
Birmingham, Alabama 35243
Telephone (205) 970-1600

Toll Free 1-800-760-4550
Administration FAX (205) 970-1616
Quality Improvement FAX (205) 970-1624

QIO GENERAL MEMORANDUM 0205-05

TO: Administrators – Hospitals
Home Health Agencies
Hospice
Skilled Nursing Facilities
Ambulatory Surgery Centers
Medicare + Choice organizations

FROM: Henry W. Koehler
Chief Executive Officer

DATE: May 9, 2003

SUBJECT: Update on HIPAA Requirements regarding Business Associate Agreements

This General Memorandum is to provide an update to Medicare providers in Alabama regarding the requirements of Business Associate Agreements.

Alabama Quality Assurance Foundation (AQAF) has been advised that health care providers, i.e. hospitals/nursing homes/home health agencies/hospice do not need a Business Associate Contract with AQAF, the Quality Improvement Organization (QIO) for the State of Alabama.

The Health Insurance Portability and Accountability Act (HIPAA) has the following impact on QIOs:

- 1) HIPAA's Privacy Rule does not impact the transfer of medical records and Protected Health Information (PHI) to AQAF because AQAF is entitled by law to receive patient records and data from providers. Sections 1153 and 1154 of the Social Security Act direct the Secretary of Health & Human Services to establish contracts and develop procedures with the QIOs for the purpose of reviewing care provided to Medicare beneficiaries. In order to conduct these reviews, the QIOs must obtain from the providers health information that identifies individuals and that would be included in the definition of PHI under the HIPAA Privacy Rule. Providers are required to disclose the information to the QIOs and do not have the discretion to withhold requested information on services for which payment may be made under Medicare. The Memorandum of Agreement that providers sign states that medical records and data will be transferred to AQAF so that we can carry out our contractual obligations to the Centers for Medicare and Medicaid (CMS).

- 2) AQAF, as the QIO, is a health oversight agency, rather than a covered entity as defined by HIPAA (45 CFR, 164.501). The Privacy Rule states that “health oversight activities do not give rise to a business associate relationship, and that protected information may be disclosed by a covered entity (to a health oversight agency) pursuant to 45 CFR §164.512(d).” This section describes the uses and disclosures permitted for health oversight activities. (See also 65 Fed Reg. 82643, 82476).
- 3) AQAF, as the QIO, is under contract with CMS and/or the Alabama Medicaid agency to provide services for them, rather than to or on behalf of the providers, therefore a business associate relationship is not triggered. (See also 65 Fed Reg. 82476, 45 CFR 160.103).

The Social Security Act provides in Section 1157 that no person providing information to a QIO will be held, by reason of having provided such information, to have violated any criminal law or to be civilly liable under any State or Federal law, unless the information provided is unrelated to the performance of the contract of the QIO or the information is false and the individual knew or had reason to believe that the information was false.

If you have questions regarding General Memorandum 0205-05, please contact Joy King, Privacy Officer at (205) 970-1600, ext. 3314, or Donnie Olis, Vice President-Review Operations, at (205) 970-1600, ext. 3201.

cc: AQAF Board of Directors, Project Officer-Region VI, AlaHA, MASA, Alabama Nursing Home Association, Alabama Association of Home Health Agencies, BCBS, and MoO