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Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C-10-22-ALL

DATE: **July 2, 2010**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Questions Related to State Agency (SA) Records Management Policy for Paper and Electronic Formats

Memorandum Summary

- **Release of Records and Posting 2567s on State Website** -- Answers questions regarding documents that can be released by States and policy on what documents States can post on their State website.
- **Paper & Electronic Record Retention --** Provides SAs with interim guidance regarding paper and/or electronic record retention policy until the Centers for Medicare & Medicaid (CMS) revises the State Operations Manual (SOM).
- **Provides cross-references and links** to establish CMS electronic file management and other guidance for use by SAs.
- **Guidance Only Applies to State** paper and electronic records and does not include ASPEN data.

SAs requested that CMS provide guidance regarding records management for paper and electronic Federal records that are maintained by States. CMS recognizes that as SAs create, use, and maintain records in electronic format they are challenged to operate in a heterogeneous records environment that only envisioned paper-based procedures. Further, we acknowledge that the current SOM, which provides records management guidance to SAs, does not fully address the retention of electronic records. In order to promote administrative efficiency and consistency of practice, CMS is providing SAs with advance guidance before the SOM is updated. This guidance is consistent with current practices within the Agency. Additionally, a set of Questions and Answers related to Records Management for Paper and Electronic format is attached to this memo. This guidance applies to the State's maintenance of paper and electronic records and does not include ASPEN data.

We anticipate that SA staff may have additional questions beyond what is included in the attachment. If you have further questions contact Susan Joslin at susan.joslin@cms.hhs.gov.

/s/
Thomas E. Hamilton

Attachments

cc: Survey and Certification Regional Office Management

Attachment

1. Posting of Certification Information on State Web Sites

Q. Is it permissible for States to post both Statement of Deficiencies and Plans of Correction (PoC)?

A. It is permissible under existing requirements to post the Form CMS-2567, Statement of Deficiencies, and the subsequent POC on a State Web site. This is consistent with §1819(g)(5) and 1919(g)(5) of the Act and 42 CFR 488.325, that require the SA, the State Medicaid Agency, or CMS must make the CMS-2567 and the subsequent POC available to the public, upon the public's request.

Public disclosure of the CMS-2567, including posting to the State web site, can only be made after the provider has been afforded "a reasonable opportunity…to review such report and to offer comments," as required by Section 1106 (f) of the Social Security Act. Ordinarily, the provider's "comments" take the form of a POC. Per CMS policy, for all provider types except skilled nursing facilities, the CMS-2567 can be released 30 days after the provider receives the CMS-2567, or when CMS or the SA receives the POC, whichever comes first. (If no POC is received within 30 days, the CMS-2567 can be released without a POC.) For skilled nursing facilities only, a special rule in Section 1819 (g)(5)(A)(i) of the Social Security Act requires that CMS-2567s be made available to the public within 14 days.

Under Section 6103 (Nursing Home Compare) of the Affordable Care Act, States will be required to post the CMS-2567 and POCs on their own consumer-oriented website.

Q. When a State posts the Form CMS-2567, is it mandatory to post the plan of correction as well?

A. For Nursing Homes:
No, it is not mandatory under current requirements. Currently, a State may post the CMS-2567 even if it chooses not to make the plan of correction available electronically. Note that if either the CMS 2567 or the PoC contains the name of any individual, medical information about any identifiable resident, the identity of a complainant, or the address of anyone other than an owner of the facility, that information must be blocked out before releasing to the public. In the future, States will be required by the Affordable Care Act (1902(a)(9)(D)) to make the CMS 2567 and subsequent PoC available on a State consumer-oriented website. CMS will issue further guidance on this at a later date.

The CMS-2567 and the PoC are contained side-by-side on one form, Form CMS-2567. The Statement of Deficiencies can be released before the facility has completed the PoC portion or receives a separate PoC within 14 days of the date the CMS-2567 is released to the facility. Once an approvable plan of correction is submitted the two portions of the CMS-2567 or a separate PoC (which contains the deficiency statement as well as the provider's plan to correct) can be released simultaneously . Please note, however, that it is not now a requirement for the PoC to be posted in an electronic format. Once the provisions of the Affordable Care Act are implemented, States will need to post PoCs.

All Other Provider Types:
For other provider types the CMS-2567 can be released 30 days after the provider receives the CMS-2567, or when CMS or the SA receives the POC, whichever comes first. In addition, note that the POC can be released regardless of whether it has been approved.

Q. May States post the name of the provider owner and name of the facility administrator on the website?

A. Yes. This is public information and does not violate any disclosure requirements.

2. Electronic format in lieu of Paper Copies See SOM Change Document

Q: Can the retention requirement with respect to any records be met by retaining electronic images instead of paper original? (In other words destroy paper copies once they are electronically captured and stored.)

A: We would not require duplicative systems, i.e., both electronic and paper. (State Responsibilities for Records and Reports SOM 4003.1). The current SOM does not specifically address scanning and retaining electronic images. It is our intention to update the SOM to address this and other related electronic document management practices. During the interim CMS expects the same requirements for both the electronic and paper records.

Q. Does CMS have any requirements or expectations about how extensively the electronically recorded documents should be indexed?

A. The current SOM does not include specific guidance for indexing of electronic records. SAs will follow the guidance on records management practices for Fiscal Intermediaries & Carriers (Pub 100-01 30.20). CMS will update the SOM to include this guidance.

Q. Does CMS have any requirements or specifications about maintaining electronic back-ups?

A. Yes, but specific requirements are dependent upon what type of information is contained in the file. SAs must follow Federal requirements for systems that retain "Federal data" e.g., MDS data, OASIS data. CMS uses the FIPS 199 to categorize all information types and this categorization is found at http://www.cms.hhs.gov/InformationSecurity/downloads/ssl.pdf Personal health data requirements are found under "Moderate" designation. CMS has defined required controls in alignment with the HHS controls and the NIST requirements as established in NIST SP 800-53. These requirements can be found on the CMS IS web pages at www.cms.hhs.gov/informationsecurity in the CMS Policy for the Information Security Program (PISP) and the CMS IS Acceptable Risk Safeguards (ARS) found under "Policies" and "Standards".

3. Security, Privacy, and Confidentiality

Q. Irrespective of whether originals are destroyed or maintained, does CMS have any requirements or specifications about electronic security of image files containing personally identifiable information or other confidential information?

A. SAs should retain identifiable data within the S&C area, either in their office or designated data warehouse. Access to this area should be restricted and the data, electronic or paper copy should be kept in a locked area. For electronic storage, a password should be used to access the information. Under the 1864 Agreement the S&C staff is the "only" staff with authority to use the data without a Data Use Agreement. CMS identifiable data must be duplicated under the restrictions of the Privacy Act and the specific system of records. ALL identifiable data using any portable media (e.g., CDs, DVDs, Cartridges, Diskettes and External Hard Drives) require encryption. CMS uses Pointsec encryption software. More information can be found at http://www.cms.hhs.gov/InformationSecurity/.

4. Record Retention Policy

Q. The definition of provider certification file excludes, "*surveyor notes, rough copy survey report forms, and other work papers that are merged into and superseded by a final product.*" Documents copied by surveyors while in the facility would seem to fit this category, but they are not explicitly mentioned here or anywhere else in the policy. Documents copied in facilities are often used in facility appeal hearings and are of great interest in civil litigation against providers. How long these documents should be retained?

A. Retention of supporting documentation is found in Section IV of the CMS Records Schedule available on the CMS website at http://www.cms.gov/home/regsguidance.asp. Supporting documentation and\or data should be kept until the later of:

- *One survey cycle*
- *During the pendency of a hearing; or*
- *The time period for filing an appeal has elapsed.*

After the later of these time periods, the supporting documentation can be destroyed after the official Form CMS-2567 is established, provided that the 2567 captures the information from the supporting documentation.

5. CMS Retention Policy

Q. Current policy states: "Maintain the two most recent certification actions at all times. Destroy all other records when 4 years old." Does CMS mean to instruct SAs to destroy records that have reached a certain age?

A. Keep the 2 most recent records even if they are over 4 years old. Destroy all others that are not "the most recent and 4 years+ old".

Q. Does the destruction schedule apply to electronic records?

A. Yes. The same schedule for paper applies to electronic records.

Q. Is there an expectation that there will be a continuous effort of record destruction as documents age or may States periodically purge records that have exceeded a certain age?

A. The schedule of record destruction is up to the State. Either annual or continuous efforts are acceptable as long as records are kept the minimum amount of time.

Attachment

4003.1 - SA Responsibility for Records and Reports
(Rev. 1, 05-21-04)

The SA establishes and maintains basic records and prepares operating reports to reflect essential administrative and fiscal data of mutual concern to the SA and CMS. These records and reports provide:

Evaluation of the effectiveness of program operations;

Analysis of workloads;

Identification of administrative or technical problem areas;

Development and justification of budget estimates; and

Supporting documentation for the expenditure of Federal and State funds.

For the most part, the SA responsibility for records and reports, on a continuing or special request basis, is limited to those pertinent to the managing of agency operations and those that reflect the agency's workload. To the extent possible, these will be designed to fit within the framework of the SA operations. The CMS requirement for a minimum of specific records and reports is not intended to limit in any way the SA fiscal and administrative practices.

Records Retention

Paper records can be replaced with electronic images. If paper records are not imaged, the original paper document must be retained. States that image paper records:

1. *Must always be able to demonstrate the imaged version is an exact copy of the paper document,*
2. *Document the steps taken to image the original document,*
3. *Establish and implement a certification/quality assurance process to ensure the imaged information is an identical replication of the paper document in every way,*
4. *Retain the scanned image as the "recordkeeping copy" for the required retention period, and*
5. *Maintain accessibility and the ability to read the document in accordance with changes in technology.*

The methods used in imaging files may vary. These variations depend on the type of equipment used and methods used to prepare documents for imaging. All imaged documents shall be tamper proof. Once an image is verified as an exact copy of the original paper document, only then can the original paper document be destroyed and the imaged copy is certified as the "recordkeeping copy".

Certifying images as an exact copy of the paper document means there is a "quality assurance" process in place that verifies that the images are good. Each State is responsible for establishing their own "quality assurance" procedures.

Below is an example of a certification/quality assurance process.

1. *The staff member performing the actual scan will:*

    a. *Observe that all pages successfully pass through scanner and that image displayed on the imaging software preview screen appear accurate.*

    b. *Affix a sticker marked "Scanned" to the top page, write the current date on the sticker and place on top of a pile of scanned material.*

2. *The staff member(s) responsible for these records will have immediate access to the images, from their desktops, using the imaging software. They will have 30 days to use and review the images. If any problem is detected, the paper will be retrieved and rescanned. After 30 days, the paper copies are subject to proper disposal. (Reference Fiscal Intermediaries & Carriers Pub 100-01 30.30.1.4)*

File Management Program

States establish an appropriate program for the management of its files. The following actions are generally basic to such a files management program.

A. Standardize classification and filing schemes to:

    1. Achieve maximum uniformity and ease in maintaining and using program records;

    2. Facilitate disposal of records in accordance with applicable records disposal schedules; and

    3. Facilitate possible later consolidation of identical type files presently maintained at different locations.

B. Formally authorize official file locations. Prohibit the maintenance of files at other than authorized locations.

C. Standardize reference service procedures to facilitate the finding, charge-out, and refilling of records.

D. File accumulations of papers received at file locations on a daily basis.

E. Audit periodically a representative sample of the files for duplication, misclassification, or misfiles.

As part of the normal course of business, the State Agency will take the necessary actions to ensure: hardware and software maintenance, backup procedures, security measures, and compliance with the rules and regulations pertaining to the maintenance of public records. Backup procedures must protect against information loss and be able to:

- *Be backed up on a regular basis to safeguard against the loss of information due to equipment malfunctions or human error.*
- *Provide for recovery of the records that have been copied during the backup.*
- *Allow duplicate copies of permanent or unscheduled records to be maintained in storage areas separate from the location of the records that have been copied.*