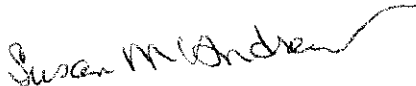




MEMORANDUM

DATE : September 28, 2001

TO : Josefina G. Carbonell
Assistant Secretary on Aging
Administration on Aging

FROM : Susan McAndrew 
Sr. Health Information Privacy Policy Specialist
Office for Civil Rights

SUBJECT: Guidance of the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

This memo provides guidance regarding applicability of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the programs and services administered by Area Agencies on Aging (AAA) or State agencies providing services to seniors pursuant to the Older Americans Act (OAA). The information is provided in response to requests for assistance received by the Department from a number of State agencies providing such services. The Administration on Aging should distribute this information to their agencies and grantees.

The guidance provided below applies only to AAA's and State agencies to the extent that they administer programs and services under the OAA. This memo does not address applicability of HIPAA to these agencies with respect to any other programs.

Background: Older Americans Act Services and Programs

It is our understanding that:

- The purpose of the OAA is to provide supportive services necessary to enable senior citizens to age with dignity. All of the programs authorized by the OAA supported with federal, state, and local funds and voluntary contributions from recipients of services are intended to promote the independence of senior citizens thus delaying the need for institutional care for as long as is practical and safe.

- Most of the OAA programs offered by AAA's and State agencies are social in nature (congregate and home-delivered meals, homemaker assistance, respite/care giver relief for adult care givers, etc.). A few of the services are health-related (e.g., home health aides may provide health services). These health services reportedly represent a small percentage of the time and dollars spent providing services to eligible seniors.

Who Is Covered Under the HIPAA Administrative Simplification Provisions?

HIPAA requires those health care providers who conduct certain financial and administrative transactions electronically, health plans, and health care clearinghouses to comply with the set of final standards for electronic health care transactions, medical privacy, security, and unique identifiers for employers, providers, and health plans. These entities are referred to as "covered entities." Regulations at 45 CFR 160.103 contain the relevant definitions of "covered entity," "health plan," "health care provider," and "health care clearinghouse." Title 45 CFR Part 160, General Administrative Requirements, are the provisions that apply to all the rules implementing the Administrative Simplification subtitle of HIPAA.

Under the law, most of these covered entities have two years to comply with each set of HIPAA standards once the final regulation takes effect. To date, the electronic transactions and privacy regulations have taken effect. Compliance is required by October 16, 2002, for the Electronic Transactions Rule (65 FR 50312), and by April 14, 2003, for the health information Privacy Rule (65 FR 82462). HIPAA provides an additional year for small health plans to comply with these standards.

Are the AAA's or State Agencies that Administer OAA Services and Programs Covered Entities under HIPAA?

Do the OAA programs and services meet the definition of a "health plan"?

Regulations at 45 CFR 160.103 define "health plan" to include group health plans, health insurance issuers, health maintenance organizations, as well as certain government funded programs, such as Medicare and Medicaid. The definition of "health plan" excludes government funded programs (other than those explicitly listed in the definition of "health plan") that do not have as their principal purpose the provision of, or payment for the cost of, health care. The fact that a government program incidentally provides or pays for health care does not make the program a "health plan." Section 160.103 also excludes from the definition of "health plan" government funded programs that have as their principal purpose the provision of health care, either directly to persons or by grant.

Based on the above description of OAA services and programs administered by AAA's and State agencies, the Department has determined that neither the OAA programs and services nor the

agencies that administer them at the federal, state, and local level meet the definition of “health plan” with respect to HIPAA. The Department believes that the programs administered under OAA as provided by these agencies meet the requirements for the exception to the “health plan” definition described above for government funded programs. The preamble discussions and responses to comments regarding the definition of “health plan” in the Privacy Rule (on 65 FR 82479 and 82578, respectively) provide additional discussion relevant to determining whether a particular program falls within the definition or its exceptions.

Are the AAA’s or State Agencies that Administer OAA Programs and Services Covered Health Care Providers?

Do the AAA’s or State Agencies provide “health care” or otherwise meet the definition of “health care provider”?

Regulations at 45 CFR 160.103 define “health care provider” to include entities that furnish, bill, or are paid for health care in the normal course of business. “Health care” is defined to include preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

Home health care agencies are health care providers for the purposes of HIPAA. The AAA’s or State agencies may provide other health-related services that meet the definition of “health care.” If so, the agency furnishing these services would then meet the definition of “health care provider.” The preamble discussions and responses to comments regarding the definition of “health care provider” in the Privacy Rule (beginning on 65 FR 82477 and 82573, respectively) provide additional discussion relevant to determining whether a particular program falls within the definition.

It is our understanding that the AAA’s or State Agencies in some cases may provide case management services, including assessment or measurement of physical or mental capability. Case management activities are considered “health care” to the extent that the underlying activities meet the functional definition of “health care.” For example, to the extent that an agency is conducting an assessment related to the health of an individual, that agency is providing “health care” as defined at § 160.103, and is, therefore, a health care provider. For more information, the responses to comments beginning on 65 FR 82571 of the Privacy Rule address to what extent case management and other activities meet the definition of “health care.”

If the AAA’s or State Agencies are health care providers under HIPAA, do they engage in any of the standard HIPAA transactions?

The HIPAA Administrative Simplification rules, including the Privacy Rule, apply only to those health care providers who engage in any of the standard HIPAA administrative and financial

health care transactions electronically (such as claims, health care payment and remittance advice, referral certification and authorization, and coordination of benefits), for which this Department has adopted standards at 45 CFR Part 162 (65 FR 50312). If any of the AAA's or State agencies providing OAA services for seniors is a health care provider that conducts these transactions electronically, they would be a covered entity for purposes of the HIPAA Administrative Simplification rules.

Additional information on the HIPAA electronic transactions is available on the HHS Administrative Simplification Web site at <http://aspe.hhs.gov/admsimp/>.

Do the AAA's or State Agencies Collect Individually Identifiable Health Information in their Administration of OAA Programs and Services?

AAA's or State agencies that administer OAA programs and services may need to receive individually identifiable health information from covered entities, such as when the agency funds a provider and needs this information for the purposes of paying for the provider's health care services. The covered health care provider's ability to share this information with the AAA or State agency will be subject to the Privacy Rule's requirements.

It is also our understanding that AAA's or State Agencies may receive individually identifiable health information for Congressional reporting purposes. Again, to the extent that the agency receives this information from a covered health care provider, the covered health care provider's ability to share this information with the agency will be subject to the Privacy Rule requirements. In this case, AAA's and State agencies administering OAA programs and services should assess whether or not their activities, with regard to any individually identifiable health information they receive from a covered health care provider, meet the definition of "health oversight agency" (See 45 CFR 164.501 of the Privacy Rule at 65 FR 82804). The Privacy Rule permits a covered entity to disclose protected health information to a health oversight agency that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws. To the extent that an agency does have oversight responsibility and falls within the definition of "health oversight agency", the applicable requirements in 45 CFR 164.512(d) of the Privacy Rule would govern the extent to which covered entities may disclose protected health information to the agency for health oversight purposes.

Additional Information and Resources

We hope that the above information is helpful to the Administration on Aging in assessing applicability of the HIPAA Administrative Simplification provisions to the OAA programs and services, as well as the AAA's or State agencies that administer these programs. Additional information regarding the Privacy Rule may be found on the HHS Office for Civil Rights (OCR) Web site at <http://www.hhs.gov/ocr/hipaa/>. The Department is developing guidance and other technical assistance materials on an ongoing basis to help covered entities implement the Privacy

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Rule and will post these materials as they become available on the Web site. In addition, information regarding the Electronic Transactions Rule, including FAQs, as well as general information regarding HIPAA Administrative Simplification is available at <http://aspe.hhs.gov/admsimp/>.

Please let us know if we can be of further assistance.