

MEMORANDUM

TO: ACS Field and NHO

FROM: Office of Corporation Counsel
Sheffield Hale, Associate Chief Counsel

DATE: April 10, 2003

SUBJECT: Recent Guidance/Clarification from Secretary Tommy G. Thompson On Application Of The HIPAA Privacy Regulation To ACS

As many of you know, ACS contacted Tommy G. Thompson, Secretary of Health and Human Services (“HHS”), seeking guidance on the Privacy Regulations promulgated under the Health Insurance Portability and Accountability Act (“HIPAA”) and their impact upon covered entities like hospitals and physicians disclosing cancer patients’ protected health information (“PHI”) to ACS assistance programs. ACS was concerned that hospitals and physicians would no longer provide assistance programs with PHI, like name, address, condition, etc., for fear of violating the Privacy Regulations. Alternatively, hospitals and physicians would require ACS assistance programs to enter into a business associate contract or attempt to obtain an authorization from the patient before disclosing PHI to ACS.

We are delighted to report that ACS was successful in obtaining favorable guidance from Secretary Thompson. The attached document is a cover letter from Secretary Thompson to Dr. Seffrin. Secretary Thompson’s letter encloses a document entitled “Further Clarification for your Consideration.” The guidance and clarifications from Secretary Thompson are in full agreement with a legal opinion ACS obtained earlier.

In the attached letter, Secretary Thompson recognizes that disclosures of protected health information to ACS may, in certain circumstances, qualify as a permissible treatment disclosure or a disclosure to an individual involved in the patient’s care. Although Secretary Thompson does not analyze specific ACS services or programs, the letter provides some guidance about the requirements for each such disclosure under the Privacy Regulations and how they might apply to ACS services. In addition, Secretary Thompson clarifies that the disclosure of lists of patients to a third party to contact the patients about a range of services not related to the patient’s individualized health care needs would require individual authorization under the Privacy Regulations.

The following summarizes our analysis of the application of Secretary Thompson’s letter and guidance to ACS’ services:

- If ACS has a treatment relationship with a particular patient, a hospital or physician may disclose protected health information to ACS for ACS' treatment of the patient.
- A hospital or physician may ask a patient if the patient wants ACS involved in the patient's care. If the patient agrees, the hospital or physician may disclose to ACS the patient's information relevant to ACS' involvement in the patient's care.
- If a physician or hospital wants ACS to provide certain services to its patients, other than for treatment purposes, ACS would be acting as a business associate of the physician or hospital. Secretary Thompson's letter states that "[o]f course, not all services constitute 'treatment' under the Privacy Rule. Some of the ACS assistance services described in your letter may come within the definition of treatment; but we cannot say, as a general matter, that each of the described services always come within the definition of treatment under the Rule. For instance, lodging or transportation services offered for general purposes, and not related to the provision, coordination or management of the individual's health care, would not be treatment under the Rule."

Thus, hospitals and physicians should determine, on a case-by-case basis, whether the disclosure of a particular patient's protected health information is for treatment purposes, meets the requirements for a disclosure to a person involved in the patient's care, or requires a business associate agreement with ACS.

If you have any questions about this memorandum or Secretary Thompson's guidance and clarifications, please do not hesitate to contact ACS.