

April 4, 2003

DIRECTIVE:	JOB CORPS PROGRAM INSTRUCTION NO. 02-19
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TO: ALL JOB CORPS

FROM: RICHARD C. TRIGG
National Director
Office of Job Corps

SUBJECT: The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
and Health Privacy Regulations

1. Purpose. To provide information on HIPAA and policy changes.
2. Background. In 1996, Congress passed The Health Insurance Portability and Accountability Act (HIPAA). HIPAA required the Secretary of Health and Human Services (HHS) to adopt standards for certain types of electronic health care transactions in order to make these transactions administratively simpler. However, enabling efficient electronic communication of health care information also increased privacy risks by facilitating broad dissemination of that information. For this reason, HIPAA gave Congress until August 21, 1999, to pass comprehensive health privacy legislation. HIPAA provided that if Congress did not enact such legislation by that date (which it did not), HHS was to adopt these protections via regulations.

On December 28, 2000, HHS issued the first comprehensive federal regulations that protect personal medical information, limiting the ways in which individually identifiable health information may be used and disclosed. On August 14, 2002, HHS issued modifications to those regulations. The new requirements are set forth at 45 C.F.R. Parts 160 and 164, and may also be found on the HHS website (<http://www.hhs.gov/ocr/hipaa/>). The requirements are commonly referred to as the "Privacy Rule." Entities covered by the Privacy Rule (except small health plans) must be in compliance by April 14, 2003.

3. Who must comply with the Privacy Rule

A covered entity is any one of the following:

- A health plan,
- A health care clearinghouse,

- A health care provider who transmits any health information in electronic form in connection with a covered transaction. A covered transaction is a transaction for which there is a HIPAA standard promulgated by HHS (these include standard data elements – code sets – to enable health information to be efficiently exchanged electronically). Covered transactions include a variety of transactions described in 45 C.F.R. Part 162. Health care providers who have another entity perform a covered transaction electronically on their behalf are counted as covered entities; e.g., Job Corps Health and Wellness staff may provide information to other center staff in order to complete and transmit the electronic CA-1. Covered transactions include the following:
 - Health claims or equivalent encounter information
 - Health care payment and remittance advice
 - Coordination of benefits
 - Health care claim status
 - Enrollment and disenrollment in a health plan
 - Eligibility for a health plan
 - Health plan premium payments
 - Referral certification and authorization
 - First report of injury
 - Health claims attachments

Standards governing the above transactions are set forth in 45 C.F.R. Part 162.

Job Corps Health and Wellness Centers transmit protected health information electronically through SHIMS and SPAMIS using the International Classification of Disease Codes for Medical Separations. Therefore, Health and Wellness Centers are considered a covered entity. A health care provider is covered if it has engaged in even one electronic transmission in connection with one of the covered transactions. Faxes, e-mail correspondence with patients, and maintaining electronic medical records however do not count as electronic transmissions.

4. Privacy Rule Requirements

Each contractor or subcontractor covered by the Privacy Rule has an independent responsibility to comply with all parts of the Rule, including designating a covered health care component (the Health and Wellness Centers), designating a Privacy Officer, designating a contact person or office for receiving complaints and providing information, conducting required training of all employees of the covered entity (or designated component), implementing safeguards for protected health information, providing a complaint process and documenting complaints, implementing employee disciplinary policies for violations, keeping an accounting of disclosures, issuing Notices, obtaining Authorizations, and many other requirements. Contractors and subcontractors are urged to consult legal counsel in establishing systems and procedures for compliance with the Privacy Rule.

5. Job Corps National Office Assistance

The national office must ensure that centers are able to share student health information necessary to comply with Job Corps operational requirements (such as sharing drug-test results to enforce the Zero Tolerance Policy). Some of this information-sharing requires student Authorization under the Privacy Rule, while other types of disclosures do not, as long as the student has received a Notice that such disclosures may occur. The national office is requiring the centers to use the attached standard Authorization and Notice for all students. (Attachments A and B) These documents cover common needed uses of student health information, and if needed can be updated.

The standard Job Corps Notice and Authorization are intended to protect Job Corps programmatic interests and may or may not be sufficient to substitute for the Notice or Authorization that HHS otherwise would require of the covered entity. Each Health and Wellness Center must review the standard Notice and Authorization and compare them with their actual information practices to determine if a supplemental Notice or Authorization is needed or if their sharing of protected health information needs to be modified.

6. Job Corps and HHS Requirements that Apply to Authorizations

The standard Job Corps Authorization **MUST** be signed at the admission counselor's office and forwarded to the center **PRIOR** to the applicant's arrival on center. This requirement is effective immediately upon receipt of this directive. An applicant's departure must be delayed if the Authorization has not been received by the center. Centers will be responsible for having students currently on center sign the Authorization. Work is in progress to incorporate the Authorization into OASIS.

Since the Authorization is very detailed, a pamphlet explaining the Authorization has been developed to be given to each applicant. Also, a script, which will be available on OASIS, has been developed for admission counselors to help explain the Authorization.

If an applicant refuses to sign the Authorization, admission to the Job Corps program will be denied (65 Fed. Reg. 82462 at 82658). The student may revoke his or her Authorization at any time; however, this action may result in the student's separation from the program. If a student is separated from the center for revoking his/her Authorization, the student may reapply to the Job Corps program after 1 year. The Job Corps Data Center (JCDC) has developed a code to use for this type of separation, "withdraw HIPAA consent".

If protected health information not described in the Authorization (and not otherwise permitted or required by the Privacy Rule) is shared, a separate Authorization must first be signed by the student (or parent/guardian). The elements required for valid Authorizations are listed in 45 C.F.R. § 164.508, and include the following: 1) a description of the information to be shared; 2) identification of the person(s) authorized to make the requested use or disclosure; 3) identification of the person(s) with whom the information may be shared; 4) a description of

each purpose for sharing the information; 5) an expiration date; and 6) the signature of the student (or parent/guardian) and date. In addition, Authorizations must include the following information: 1) the individual's right to revoke, and how that may be done; 2) the fact that the Health and Wellness Center may not condition treatment on whether the student signs the Authorization; and 3) the potential for redisclosure of shared information. Authorizations must be written in plain language, and a copy of the signed Authorization must be given to the student. Attachment C is a sample of a supplemental Authorization.

It is important to note that protected health information will only be shared on a need-to-know basis, and that nothing in the Authorization allows anyone to share information if it is not lawful to share that information.

7. Job Corps and HHS Requirements that Apply to Notices

The Health and Wellness Manager, or individual acting on his or her behalf, will give students the standard Job Corps Notice during their first visit to the Health and Wellness Center. The Notice informs students how personal medical information can be shared without their consent for purposes of treatment and other reasons identified in the Privacy Rule. The Notice will be thoroughly explained to the students. The students will sign the Notice, acknowledging that they have been informed. The signed Notice must be placed in the student's medical folder along with the signed Authorization, which should already be there. Students are not required to sign the Notice. If they refuse, the efforts to obtain the signature must be documented in the medical folder, and the unsigned Notice must be placed in the medical folder. A copy of the Notice must be posted in a prominent location in the Health and Wellness Center where students can easily read it, and Notices must be available for students to take with them.

If the Health and Wellness Center needs to disclose health information that is not included in the Notice (or Authorization) and, under the Privacy Rule, student authorization is not required for those types of disclosures, the Health and Wellness Center must revise the standard Job Corps Notice and add the additional uses. The Privacy Rule Notice requirements are found at 45 C.F.R. § 164.520. Covered entities should consult their legal counsel in determining whether and how to revise the standard Job Corps Notice. If the Notice is revised, a copy of the revised Notice must be posted in the Health Center and made available to students as of the effective date of the revision. Students who signed the original Notice do not need to sign the revised Notice. Students arriving after the revision date must be given the revised Notice.

8. Accounting for Disclosures (45 C.F.R. § 164.528)

In addition to the Notice and Authorization, another key component in complying with the Privacy Rule is documenting disclosures of protected health information, and providing an accounting for those disclosures upon request. Present and former students may formally request an accounting of disclosures of their protected health information for a period covering up to six years prior to the date of the request. This accounting must be provided to the requester in writing and include all disclosures EXCEPT the following instances: 1) for treatment, payment, or health care operations; 2) made to that individual about themselves; 3) incident to a use or

disclosure otherwise permitted or required by the Privacy Rule (for instance, if someone in the waiting room accidentally overhears a conversation); 4) pursuant to an Authorization; 5) for the facility's directory or other limited notification purposes described in the Rule; 6) for certain national security or intelligence purposes; 7) to correctional institutions and other law enforcement custodial situations; 8) as part of a "limited data set", in accordance with 164.514(e); or 9) which occurred prior to April 14, 2003. (Limited data sets exclude direct identifiers like names, photos, addresses, social security numbers, drivers' license numbers, etc.)

Accountings must include the following information for each disclosure listed: 1) the date of the disclosure; 2) the name of the person or entity receiving the protected health information; 3) a brief description of the protected health information disclosed; and 4) a brief statement of the purpose of the disclosure that reasonably would inform an individual of the basis for the disclosure. Health and Wellness Centers must respond within 60 days of the receipt of the request. One 30-day extension can be obtained from the requester, if the reason for delay is stated in writing along with the date the information will be sent.

In order to comply with these accounting requirements, centers must document the information required to be included in an accounting (for each disclosure that is subject to an accounting). In addition, centers must maintain a hard or electronic copy of any written accounting that is provided to a requester. The centers also must document the title(s) of the person(s) or office(s) responsible for receiving and processing requests for an accounting. **This information must be kept for 6 years from the date of its creation or the date when it was last in effect, whichever is later.**

9. Policy

By April 30, 2003 the national office will release a PRH Change Notice that will incorporate HIPAA requirements in the Job Corps Policy and Requirements Handbook.

10. Technical Assistance

The Privacy Rule contains many requirements with which all covered health care providers must comply, and this Directive discusses only a few of them. Health and Wellness Centers will be receiving additional information which will include a sample Authorization, the Notice, a sample of a supplemental authorization, training modules, and "Frequently Asked Questions" taken from the HHS website at <http://www.hhs.gov/ocr/hipaa/privacy.html>. Contractors and subcontractors are encouraged to refer to the HHS web site and other HHS technical assistance materials offered through the web site in determining compliance with the Privacy Rule.

A question board is available on www.jobcorpshealth.com. Questions will be answered on a weekly basis.

12. Reference. 45 CFR Parts 160 and 164, 45 CFR Part 162.

13. Action. Each center's first action should be to conduct a staff meeting with all appropriate staff affected by these changes to make certain they understand the changes and to begin developing a plan of action. Centers should develop a plan of action in order to be complaint with HIPAA by April 14, 2003. The plan of action should also be shared with the regional director.

Centers should immediately inform students about the privacy rule and emphasize that it is not just a rule for Job Corps, but one for all covered health care providers. For those students on center who refuse to sign the Authorization, the center director must review each student's concern(s) and determine whether or not that student can remain in the program. Center directors should be aware that a student's protected health information then cannot be shared with Job Corps staff outside of Health and Wellness services. Following April 14, 2003, **NO** health care information can be shared with any staff on center without a signed Authorization unless it is a health or safety emergency. For example, drug test results from a student who has refused to sign the Authorization, cannot be shared with Job Corps staff outside of Health Services.

Below are action items:

- a. Centers will designate a Privacy Officer who will be responsible for developing and implementing Privacy Rule policies and procedures under 45 C.F.R. § 164.530, including designating a contact for student complaints.
- b. Centers will develop a plan of action to have all students on center sign an Authorization and Notice by 4-14-03.
- c. Centers will submit compliance status reports weekly online at www.jobcorpshealth.com. The health support contractor will compile these reports and send weekly updates to each regional director.
- d. Training is to be conducted by the Health and Wellness Manager for all health and wellness staff. This training should be conducted as soon as possible, and annually thereafter. Training modules are available at www.jobcorpshealth.com. Nurse Consultants will coordinate with the regional directors regarding training for the admission counselor managers.
- e. Beginning April 14, 2003, all centers will maintain records of all protected health information disclosures.

14. Expiration Date. Until superseded.

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. Inquiries. Direct any inquires to Barbara Grove (202) 693-3116, e-mail bgrove@doleta.gov, John W. Chowning (202) 693-3102, e-mail jchowning@doleta.gov or to Marcus J. Gray (202) 693-3092, e-mail mgray@doleta.gov.

Attachments:

A: Authorization

B: Notice

C: Supplemental Authorization