

TO: Local District Commissioners, Medicaid Directors

FROM: Betty Rice, Director
Division of Consumer & Local District Relations

SUBJECT: Chapter 442 of the Laws 2005 Breach of Information Security

EFFECTIVE DATE: Immediately

CONTACT PERSON: James F. Botta, Privacy Coordinator, Office of Medicaid Management, (518)473-4848

This GIS is being issued to correct errors in GIS 06MA/002 issued on 01/06/06. Chapter 442 of the Laws of 2005, enacted on August 9, 2005, with an effective date of December 7, 2005, entitled the "Information Security Breach and Notification Act," amends the State Technology Law Section 208. These provisions require all Local Department of Social Services offices to notify Medicaid enrollees, applicants and respective governmental offices (i.e., Attorney General, Consumer Protection Board and the Office of Cyber Security & Critical Infrastructure Coordination) of the unauthorized acquisition of private information which resulted from a breach of information security. Local departments of social services (LDSS) must enact policies to perform required action described below. Penalties are established by the Federal Office of Civil Rights for failure to notify Medicaid enrollees and applicants and respective government offices of the unauthorized acquisition of private information due to a breach of information security.

The law was enacted on August 9, 2005 and had an effected date of December7, 2005.

REQUIRED ACTION

State and local district Medicaid offices maintain Medicaid Confidential Information (MCI) on Medicaid enrollees and applicants. This includes all personal enrollment information, financial information, social security number, Medicaid enrollee identification number and other confidential information. Medicaid regulation requires that this information be kept secure and released only for purposes directly related to the administration of the Medicaid program.

Chapter 442 of the Laws of 2005 applies only to disclosures involving a personal identifier (e.g. name, address) and either: (1) a social security number or (2) a driver's license number or non driver's I.D. or (3) bank information and an access code/pin. If a disclosure involved only a Medicaid enrollee's or applicant's name and medical information (e.g., hospital record number; diagnosis; etc.) this law does not apply.

All staff must be informed by written notice of their responsibility to report to their supervisors or program directors suspected breaches of private confidential information.

The LDSS must have the following:

- Written directives that inform their staff about the importance of reporting a breach, how to report such a breach and to whom it must be reported.
- A privacy/security officer to receive reports of a suspected privacy breach. The privacy security officer may be the same person as the HIPAA Officer.
- A log for recording all suspected, but not confirmed, breaches of security.

By April 30, 2006, the LDSS must adopt a notification policy consistent with Chapter 442 of the Laws of 2005 or, alternatively, adopt a local law which is consistent with Chapter 442 of the Laws of 2005.

If a breach is confirmed, the LDSS Commissioner must authorize written notification, without delay, to each person whose information has been illegally disclosed, as is required by law. This notification must be made expeditiously, unless notification impedes a criminal investigation. Such notification must be provided, except when notice costs over \$250,000 or over 500,000 persons are to be notified or insufficient contact information exists. In such cases, posting, alerting the local media and c-mailing to Medicaid applicants/recipients (to the extent possible) must occur.

Without delaying written notification to affected New York Medicaid applicants/recipients, the LDSS Commissioner must also notify:

- State Attorney General
- Consumer Protection Board
- State Office of Cyber Security and Critical Infrastructure

This notification must include the timing, content and distribution of any notices to the Medicaid applicants/recipients, as well as the approximate number of affected persons.

Finally, if the breach involves the information of 5,000 or more Medicaid applicants/recipients, consumer reporting agencies (e.g. Equifax) must be notified of the breach.

Local district offices should provide to Mr. James F. Botta within 30 days of receipt of this release, the name of your LDSS Privacy/Security Officer. Mr. Botta can be reached via email at jfb04@health.state.ny.us, or by telephone at 51 8-473-4848.

The attached is a list of the agencies that must be contacted if a breach occurs:

**State Attorney General
Executive Offices**

Albany

The Capitol
Albany, NY 12224-0341
(518) 474-7330

New York City

120 Broadway
New York City, NY 10271
(212) 416-8000

Regional Offices:

Binghamton

44 Hawley Street, 17th Floor
Binghamton, NY 13901-4433
(607) 721-8778

Brooklyn

55 Hansen Place
Brooklyn, NY 11217-1523
(718) 722-3949

Buffalo

Statler Towers
107 Delaware Avenue
Buffalo, NY 14202-3473
(716) 853-8400

Hauppauge

300 Motor Parkway
Hauppauge, NY 11788-5127
(631) 231-1400

Harlem

163 West 125th Street
New York, NY 10027-8201
(212) 961-4475

Mineola

200 Old Country Road
Mineola, NY 11501-4241
(516) 248-3302

Plattsburgh

70 Clinton Street
Plattsburgh, NY 12901-2818
(518) 562-3282

Poughkeepsie

235 Main Street, 3rd Floor
Poughkeepsie, NY 12601-3194
(845) 485-3900

Rochester

144 Exchange Boulevard
Rochester, NY 14614-2176
(585) 546-7430

Syracuse

615 Erie Blvd. W., Suite 102
Syracuse, NY 13210-2339
(315) 448-4800

Utica

207 Genesee St., Room 504
Utica, NY 13501-2812
(315) 793-2225

Watertown

317 Washington Street
Watertown, NY 13601-3744
(315) 785-2444

White Plains

101 East Post Road
White Plains, NY 10601-5008
(914) 422-8755

New York State Consumer Protection Board
5 Empire State Plaza, Suite 2101
Albany, New York 12223

E-Mail Address: webmaster@consumer.state.ny.us

Consumer Assistance Hotline: Toll-Free 1-800-697-1220
Local 518-474-8583
Fax 518-486-3936

Executive Offices:

Albany Office
Phone 518-474-3514
Fax 518-474-2474

New York City Office
Phone 212-459-8850
Fax 212-459-8855

**New York State
Office of Cyber Security & Critical Infrastructure Coordination
30 S. Pearl Street
Albany, New York 12207-3425**

Phone: 518-474-0865
Fax: 518-402-3799
E-Mail: info@cscic.state.ny.us