

 STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
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August 25, 2008

Adam Karpati, M.D., MPH
Assistant Commissioner
Brooklyn District Public Health Office
485 Throop Avenue
Brooklyn, New York 11221

Dear Dr. Karpati:

This is in response to the inquiry from The City of New York Department of Health and Mental Hygiene (NYCDOHMH) regarding the NYCDOHMH Newborn Home Visiting Program (Program), which offers home visits by paraprofessionals to new mothers. NYCDOHMH wishes to improve the timeliness of the Program by obtaining from hospitals the names and addresses of all new mothers and by visiting the mothers in their hospital rooms. NYCDOHMH contends that they may access patient rooms and that patient consent should not be required for hospitals to disclose patient names and addresses to NYCDOHMH for purposes of recruiting patients for the Program's home visits.

NYCDOHMH's efforts to improve maternal and child health are laudable. We commend the Program's efforts to promote initiation of breast-feeding by new mothers during the important first post-partum days, and understand that the Program wants to overcome avoidable delays.

As New York State Department of Health (Department) staff have discussed with you and your staff, NYCDOHMH could obtain patient names and addresses from hospitals after hospitals obtain consents for such releases. Absent patient consent for release of personal information, issues regarding patient confidentiality arise under state regulation, 10 NYCRR § 405.7(b), and under federal HIPAA requirements since there does not appear to be any statutory or regulatory authority requiring hospitals to comply with NYCDOHMH's request for access to information in patient records. Specifically, Section 405.7(b) requires hospitals to maintain the confidentiality of all information and records pertaining to patients' treatments, except as otherwise provided by law. Regarding HIPAA, there does not appear to be an exception that would allow hospitals to release identifiable information of all new mothers for the type of recruiting activity NYCDOHMH is engaged in, absent the consent of the patient.

Adam Karpati, M.D., M.P.H.

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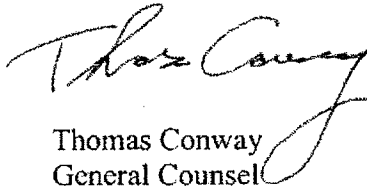
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However, it is the opinion of the Department that a structured agreement between NYCDOHMH and each hospital may accomplish timely access to new mothers for Program recruitment. A HIPAA business agreement permits a hospital to disclose patient information to a third party when the hospital is engaging the party to perform a function on the hospital's behalf. A hospital, if a hospital so chooses, may employ NYCDOHMH staff to ask, on behalf of the hospital, whether or not a new mother wishes to have a home visit by the NYCDOHMH Program after she leaves the hospital. If the agreements between NYCDOHMH and hospitals were accurately drafted and complied with, the Department would construe such activity to be in compliance with the confidentiality requirements of 10 NYCRR § 405.7(b) and HIPAA.

Finally, I also note that it is our understanding that the services to be provided by the NYCDOHMH in this initiative do not include nursing services or any other services which would require Article 36 licensure as a home health agency. In the event the NYSDOHMH did obtain an Article 36 license, the scope of offered services in this context could be expanded.

I trust this clarifies our position on this matter.

Very truly yours,



Thomas Conway
General Counsel

cc: Guthrie Birkhead, M.D.
Phyllis Silver
Barbara McTague