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Subject: HMS&C News Alert - Granholm Signs New Laws regarding Medical Records

January 2, 2007

Granholm Signs New Laws for Maintaining and Retaining Medical Records and for Exempting Certain Health Information from FOIA Requests

On December 22, 2006, Governor Granholm signed into law two bills one of which impacts the maintenance and retention of medical records, and the other of which affects the disclosure of certain patient health information in response to Freedom of Information requests. These new laws provide greater protection for patients and will require health care providers, facilities and agencies to review and modify their medical record retention policies and procedures. These new laws take effect immediately.

Senate Bill 465-Maintenance and Retention of Medical Records

Highlights of the new requirements include the following:

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Health care providers who are licensed under the Michigan Public Health Code are required to maintain a medical record for each patient. Note: Previously, this law applied only to health facilities and agencies.

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Health care providers, health facilities and agencies must maintain medical records for a minimum of seven years, unless federal or state laws or regulations or generally accepted standards of medical practice require a longer retention period. Note: It is important to be familiar with the record retention requirements under such other laws, regulations and standards, some of which are longer than seven years.

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Health facilities, agencies, or providers that sell or close their facility or practice, or otherwise cease to operate or practice must provide notice to the Michigan Department of Community Health

specifying who will have custody of the records and how a patient may request access to or copies of his or her medical records. Note: This requirement is important, for example, when physicians sell their practices to another entity.

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Individual providers applying for a license or license renewal are required to include an affidavit with the application stating that he or she has a written policy for maintaining and protecting medical records and for otherwise complying with the requirements imposed by Senate Bill 465. Note: This requirement underscores the importance of having in place a detailed medical record retention policy.

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If a provider, health facility or agency is unable to comply with these new requirements, the provider, facility or agency may contract with another entity to facilitate and ensure its compliance. Note: It is important to reflect any such arrangements in a written contract.

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Failure to comply with these medical records maintenance and retention requirements could result in an administrative fine of \$10,000.00. Note: Taking the time to ensure compliance now can help avoid substantial penalties for violating these laws in the future.

Senate Bill 468-"Protected Health Information" Is Exempt from FOIA Disclosure

Under Michigan's Freedom of Information Act ("FOIA"), a person has a right to inspect, copy or receive copies of a public record upon a written request that describes a public record sufficiently to enable the public body to find the requested record. Senate Bill 468 amends Section 13 of the FOIA to add "protected health information" as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") to the list of information and documents a public body may exempt from disclosure.

These new laws create an important opportunity for providers, health facilities and agencies to review and modify their medical record retention policies and procedures to ensure that they comply not only with these new laws but with other applicable laws as well. For assistance, please contact any member of the Honigman Health Care Department listed below.

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