

Administrative Rules Committee

September 15, 2015 – 9:30 am

Recommended Changes to subsection 6 of North Dakota Administrative Code
Section 33-03-24.1-23

My name is Darleen Bartz, PhD, and I am the Health Resources Section Chief with the North Dakota Department of Health. At the June 10, 2015 legislative rules committee meeting, the request was made to revise subsection 6 of North Dakota Administrative Code Section 33-03-24.1-24 to omit the names of the residents who have elected hospice when a basic care facility reports that they have a resident that has elected hospice. I have worked with Rep. Koppelman and John Walstad from legislative council, and also met with the Health Council members, and propose the following change in language:

33-03-24.1-23. Optional end of life care services.

6. The facility shall notify the department within 48 hours of the election that a resident ~~the name of the resident~~ that has elected hospice, the date hospice was elected, and the name of the hospice agency serving the resident.

The intent behind this change is to ensure the privacy of the individual who has elected hospice. Their privacy is also ensured through both federal and state requirements as follows:

§ 164.508 Uses and disclosures for which an authorization is required.

(a) Standard: Authorizations for uses and disclosures

(1) Authorization required: General rule. Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.

This federal requirement prohibits release of protected health information unless the individual has authorized that release. The exceptions include release of information for treatment, payment, healthcare operations, public health, or health care oversight.

NDCC 23-01.3-02. Disclosure of protected health information – In general. Protected health information in possession of a public health authority may be disclosed only as authorized by this chapter or another law of this state explicitly authorizing the disclosure of that information, except that protected health information received or maintained under chapter 23-01.1 (Health Care Data Committee) may be disclosed only as authorized by that chapter.

This North Dakota Statute prohibits disclosure of protected health information by the department unless there is a state law which explicitly authorizes the disclosure of that information. As there is no state law that authorizes the department to disclose protected health information related to the residents/patients in the facilities for which we provide health care oversight, the department cannot release to the public the names of individuals who have elected hospice.

During a survey of a basic care facility, as the health care oversight agency, we would have access to the names of the individuals who have elected hospice care. Hospice care is considered a skilled nursing service. The role of the department is to review the care these individuals are receiving to ensure that they are receiving the care and services they need to respond to their health care needs.

The change recommended provides for the privacy for the individual who has elected end of life care in a basic care facility. Both the federal and state requirements provide protections for all protected health information that may be obtained through the survey process to ensure the ongoing privacy of the residents/patients, while allowing the department access to the information necessary to ensure that residents/patients are receiving the appropriate care and services to meet their ever changing needs.

I would be happy to respond to any questions you may have.