

Second Round of Funding Available Through NASCSA's Prescription Drug Monitoring Program (PDMP)

NASCSA's Prescription Drug Monitoring Program (PDMP) Grant Program has a total of \$40,000 in funding remaining to award to states not to exceed \$20,000 per state. The Program is funded by an initial grant from Purdue Pharma, LP to support the operation, expansion and awareness of appropriately-designed state prescription drug monitoring programs.

Grant criteria and a full description of the program are currently posted on NASCSA's website. The deadline for grant submissions is **March 15, 2010**. As with the first round of grants (details below), NASCSA will manage the solicitation, review and funding of grant proposals. State government agencies or departments will be selected based on an independent review by the NASCSA Special Projects Committee, which consists of association members with expertise in the field of prescription drug abuse and diversion and prescription drug monitoring. Purdue Pharma will not participate in the selection process.

NASCSA Receives Clarification on HITECH Act Question

NASCSA recently received the following correspondence from Sherry Green from the National Alliance for Model State Drug Laws (NAMSDL) based on questions raised by the state of Oklahoma. The text of the correspondence is below:

"Don Vogt brought to my attention an issue about whether a change to the HIPAA Privacy Rule made by the HITECH Act of the American Recovery and Reinvestment Act affects PMPs. I know that an article written by Apgar & Associates out of Portland, Oregon suggests that Section 13405 of the HITECH Act of the ARRA might apply to PMPs.

Below is the information that I provided to Don. Because I am still receiving questions about the issue, I thought it might be helpful if I shared the information that I gave to Don with other people in case the information might be helpful to other PMP officials.

Attached is the actual language of Section 13405. Until the amendments made by the ARRA, Section 164.522 of the Privacy Rule outlined instances in which an individual had a right to request of a covered entity certain restrictions on the disclosure of PHI. The covered entity did not have to comply with the request. With the ARRA amendment, there are circumstances listed in Section 13405 when an individual can request a restriction on disclosure and the covered entity has to comply.

The section applies to a covered entity under HIPAA. Most state counsel have determined that the state's PMP is not a covered entity under HIPAA. SAMSHA staff has also told me verbally that the Office of Civil Rights (OCR) staff at HHS which enforce HIPAA have also said that they do not consider PMPs to be covered entities under HIPAA.

Even if a state PMP was to be considered by state counsel as a covered entity, the application of Section 13405 to PMP operations would be limited. As you can see above, the amendment of that Section to 164.522 of the Privacy Rule now says that a covered entity has to generally comply with a request to restrict disclosure of protected health information (PHI) if the disclosure pertains to a

disclosure to a health plan for payment or healthcare operations AND the disclosure is solely related to an item or service for which the health care provider has been paid out of pocket in full. The covered entity does not have to comply with the request if the disclosure is otherwise required by law.

I hope this information helps. Because of the confusion being generated by the Apgar article, I have asked SAMSHA to obtain some type of official clarification from OCR about the impact of Section 13405 to PMPs.

I'll let you know what I hear from OCR.

Thanks,

Sherry Green, NAMSDL

Note: a copy of the applicable section of the HITECH Act of the American Recovery and Reinvestment Act is posted on the NASCSA website at www.NASCSA.org

In the Spotlight - State Regulatory Developments

NASCSA maintains a list of recent regulatory actions of both proposed and final regulations related to recordkeeping and security, controlled substances and other news of interest to members. This listing is updated on a regular basis. Visit NASCSA's Website at www.NASCSA.org and click on "News" for the latest updates.