DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

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Antonia C. Novello, M.D., M.P.H., Dr. P.H.   Dennis P. Whalen
Commissioner   *Executive Deputy Commissioner*

October 24, 2006

DQS/DAL: # 06-19
Re: Nurse Aide Registry

Dear Administrator:

Chapter 442 of the Laws of 2005, also known as the Information Security Breach and Notification Act, provides new requirements for State agencies regarding how they collect and process data in systems that include personal identification information. These requirements provide additional protections for an individual's personal identification information, especially Social Security Number (SSN). The Department recently became aware that the new law requires modifications to the public on-line Nurse Aide Registry (NAR) to ensure that the NAR provides the protections intended by the law. This letter notifies you of steps the Department has taken, and will take, to ensure that adequate protections are in place for the NAR.

To ensure compliance with the law, specifically as it relates to SSN, the Department has directed its contractor, Thomson Prometric, the organization that manages the NAR, to disable the SSN capability on the NAR and the interactive voice response (IVR) system (1-800-918-8818) that accesses the NAR, as quickly as possible. Since the required programming changes are very complex and could take several days to complete, the Department directed Thomson Prometric on Friday evening, October 20, 2006, to "shut down" the public on-line NAR and IVR until the SSN capability can be removed without impairing the rest of the system. Users who visit the NAR now see a page that refers them to the Customer Service Hotline (1-800-321-6443). Users who call the IVR will also be referred to the Customer Service Hotline. Mail and faxed requests are still being accepted as they have been in the past.

To guard against the disclosure of an individual's SSN to an unauthorized user, NAR staff will no longer request nor accept the SSN from requestors to the system. Operators have been instructed to neither accept nor use SSNs for any purpose whatsoever. SSNs included in faxes and letters will not be used to verify an individual's status on the NAR. In addition, operators will neither accept nor use addresses to verify NAR status.

We anticipate that the public on-line NAR verification will be restored, *without the SSN capability,* in the near future. Upon reactivation, the IVR also will have SSN

capability deleted. Employers must access the on-line NAR and IVR without using SSN until a permanent solution has been developed.

The following is guidance from the Department to nursing homes and other organizations as they seek to conduct the required verifications during the period when the on-line NAR and IVR are not available. We address verification for CNAs separately from verification for all other employees.

Please note that employers are not prohibited from requiring a potential employee as part of the job application process to provide his/her SSN and additional documentation that the SSN is indeed his/her own. For example, employers can use driver's licenses, bank account or loan documentation, utility, phone, and credit card bills, education loans, etc., to verify names and SSNs. Upon verifying an applicant's name(s), the employer can then use the name(s) to verify the person's NAR status.

<u>Verifying CNA Status Until the NAR and IVR Are Restored</u>

You must obtain verification from the NAR that the individual is a CNA in good standing before the individual can function as a CNA.

While you may **not** submit SSNs or addresses to NAR operators, you may still search on first name, last name and certificate number. If these do not generate a match to an individual on the Registry, be prepared to provide other names that the individual may have used in the past, especially his/her name at the time certification was issued. If you inquire via letter or fax, provide as much such information as possible, but do **not** include SSN or addresses.

If the individual does not have a certificate and cannot be located on the NAR, but nevertheless insists he/she is certified and in good standing, instruct the individual to request a duplicate certificate from Thomson Prometric. The application for a duplicate certificate has a space for social security number and there is currently no prohibition to the individual completing and submitting the application with this information. The individual will have to pay the $15 fee and it is not reimbursable by the State. If the individual is then found on the registry, a duplicate certificate will be mailed to him/her and the CNA can share the information on the certificate with you. Use the certification number to search the registry and ensure that the nurse aide is in good standing.

<u>Verifying All Other Applicants for Employment in Nursing Homes until the NAR and IVR Are Restored for Use</u>

Collect the same information for potential employees as you collect for CNAs, especially documents that show SSN and name, or name and address (both current and past). Again, you cannot provide the SSN or address(es) to NAR operators, but if you have documentation of the name associated with the SSN and ask the NAR operator to search on this name, the possibility of a "false negative" (i.e., failure to match the job applicant to his/her record on the NAR), is less likely.

Maintain a file that documents the information you submitted to the NAR to ascertain the applicant's NAR status. If a match is not found, you may make an offer of employment to the individual contingent upon a second NAR verification to be conducted at some point in the future when the permanent revisions to the on-line NAR verification system have been implemented.

<u>Verifying CNAs and All Other Applicants for Employment After On-line NAR Verification and IVR Have Been Reactivated</u>

Use the same process as is described above. The NAR and IVR will accept only first name, last name and certification number.

For CNAs you must obtain verification from the NAR that the individual is a CNA in good standing before the individual can function as a CNA.

For all other potential employees, maintain a file that documents the information you submitted to the NAR to ascertain the applicant's NAR status. If a match is not found, you may make an offer of employment to the individual contingent upon a second NAR verification to be conducted at some point in the future when a permanent solution has been developed.

<u>Long Term Solution</u>

Currently, the Department is investigating the use of the Health Provider Network (HPN) system to route NAR requests, as well as other potential solutions to protect individual identification information. We will provide more information and direction when a long-term solution has been identified and is ready for implementation. Until then, please follow the guidance provided in this letter.

The Department will continue to post HPN updates on this situation as soon as definitive information is available. **Please share this information with any of your staff who performs NAR verification checks.** Thank you for your patience and understanding as we work to put in place verification processes that provide adequate protections for your employees' identification information.

Sincerely,

Keith W. Servis, Director
Division of Quality & Surveillance
for Nursing Homes and ICFs/MR