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PRIVILEGED AND CONFIDENTIAL

TO: Superintendents and Privacy Officers
FROM: Franklin J. Hickman
DATE: February 14, 2017
RE: HIPAA Notices

The *Ball v. Kasich* lawsuit is in the process of gathering information to be reviewed for possible use in the Federal Court proceedings. The process of gathering data will necessarily include Protected Health Information on individuals served by DD Boards, including PHI for individuals who are not named plaintiffs. The information is subject to a protective order which is compliant with HIPAA, FERPA and other privacy rules.

In order to ensure that everyone is aware of the process and to be sure that HIPAA requirements are met, I recommend that every DD Board amend their Notice of Privacy Practices.

Proposed Language for Change in Privacy Notice

ADDENDUM TO NOTICE OF PRIVACY PRACTICES

The Section of your Notice of Privacy Practices which addresses Sharing your Personal Information without authorization is amended to add the following language

Disability Rights Ohio (DRO) filed a state-wide class action captioned *Ball v. Kasich* Case No. 2:16-cv-282 in the U.S. District Court for the Southern District of Ohio. The suit was filed on March 31, 2016 against the Governor, Department of Developmental Disabilities, Department of Medicaid and Opportunities for Ohioans with Disabilities. The Ohio Association of County Boards Serving People with Disabilities may become a defendant in the lawsuit. The Plaintiffs

PRIVILEGED AND CONFIDENTIAL

Instructions on Addendum to Privacy Notice for Ball v. Kasich

February 14, 2017

Page 2

are represented by DRO and other lawyers from Massachusetts, Illinois, Michigan and Washington D.C.

The action potentially affects all adults with DD. The parties to the lawsuit, through their lawyers, have sought and will continue to seek documentation, including Protected Health Information, on individuals who are or who may be a part of this lawsuit, or who may have information relevant to this lawsuit or who are simply receiving services from DD Boards. The DD Board will comply with requests for information and may provide Protected Health Information on any person served by the DD Board to the lawyers for any of the parties. All information provided in connection with this lawsuit is covered by a protective order issued by the court which complies with HIPAA and other privacy regulations and which ensures that the information about any individual cannot be disclosed outside of the lawsuit without their permission. At the conclusion of the lawsuit, all protected health information which was disclosed or retained by any party in the course of the lawsuit will be destroyed.

For further information on the lawsuit or the Protective Order, contact OACBDD.

How to Distribute the Change in Notice

1. Notice of the change should be placed on the web site – posting the Addendum separately is appropriate but the Addendum should be clearly linked to the Notice of Privacy Practices;
2. Copies of the Addendum attached to the regular notice should be available at the service delivery site for individuals to request to take with them at the time of service;
3. Copies of the Addendum should be posted along with the regular notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the DD Board to be able to read the notice;
4. All new enrollees should receive a copy of the Notice of Privacy Practices with Addendum attached and sign an acknowledgment of receipt;
5. Copies of the full Notice of Privacy Practices with the Addendum attached should be provided as a routine part of the ISP process. The signature page for the ISP should include acknowledgment of receipt of the privacy notice, including the Addendum.
6. As long as the Addendum is stored with the Notice of Privacy Practices and included in any communication regarding the privacy notice, there is no need to incorporate the Addendum into the body of the privacy notice.

PRIVILEGED AND CONFIDENTIAL

Instructions on Addendum to Privacy Notice for Ball v. Kasich

February 14, 2017

Page 3

7. Other than the signatures referenced in paragraphs 4 and 5, there is no need for persons to sign acknowledgement of receipt of the Addendum.

If an individual requests a notice, the notice, with Addendum may be sent electronically with the individual's consent. If the electronic transmission fails, a paper notice must be sent.

Source: 45 CFR 164.520(c)