

§ 480.138

42 CFR Ch. IV (10–1–04 Edition)

Medicare or medicaid programs, including QIO medical necessity determinations and other information that includes patterns of the practice or performance of a practitioner or institution, when a written request is received from a State or Federal enforcement agency responsible for the investigation or identification of fraud or abuse of the Medicare or Medicaid programs that—

(1) Identifies the name and title of the individual initiating the request,

(2) Identifies the physician or institution about which information is requested, and

(3) States affirmatively that the institution or practitioner is currently under investigation for fraud or abuse of the Medicare or Medicaid programs and that the information is needed in furtherance of that investigation.

(b) *Optional disclosure.* The QIO may provide the information specified in paragraph (a) of this section to Federal or State fraud and abuse enforcement agencies responsible for the investigation or identification of fraud or abuse of the Medicare or Medicaid programs, without a request.

[50 FR 15358, Apr. 17, 1985, as amended at 52 FR 37458, Oct. 7, 1987. Redesignated at 64 FR 66279, Nov. 24, 1999, as amended at 69 FR 49267, Aug. 11, 2004]

§ 480.138 Disclosure for other specified purposes.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the QIO.

(1) *Disclosure to licensing and certification bodies.* (i) A QIO must disclose confidential information upon request, to State or Federal licensing bodies responsible for the professional licensure of a practitioner or a particular institution. Confidential information, including QIO medical necessity determinations that display the practice or performance patterns of that practitioner, must be disclosed by the QIO but only to the extent that it is required by the agency to carry out a function within the jurisdiction of the agency under Federal or State law.

(ii) A QIO may provide the information specified in paragraph (a)(1)(i) of

this section to the State or Federal licensing body without request.

(2) *Disclosure to State and local public health officials.* A QIO must disclose QIO information to State and local public health officials whenever the QIO determines that the disclosure of the information is necessary to protect against a substantial risk to the public health.

(3) *Disclosure to the courts.* Patient identified records in the possession of a QIO are not subject to subpoena or discovery in a civil action, including an administrative, judicial or arbitration proceeding.

(b) *Exceptions.* (1) The restriction set forth in paragraph (a)(3) of this section does not apply to HHS, including Inspector General, administrative subpoenas issued in the course of audits and investigations of Department programs, in the course of administrative hearings held under the Social Security Act or to disclosures to the General Accounting Office as necessary to carry out its statutory responsibilities.

(2) A QIO must disclose information regarding QIO deliberations and quality review study information only as specified in §§ 480.139(a) and 480.140.

[50 FR 15359, Apr. 17, 1985; 50 FR 41887, Oct. 16, 1985. Redesignated at 64 FR 66279, Nov. 24, 1999, as amended at 69 FR 49267, Aug. 11, 2004]

§ 480.139 Disclosure of QIO deliberations and decisions.

(a) *QIO deliberations.* (1) A QIO must not disclose its deliberations except to—

(i) CMS, at the QIO office or at a sub-contracted organization;

(ii) CMS, to the extent that the deliberations are incorporated in sanction and appeals reports; or

(iii) The Office of the Inspector General, and the General Accounting Office as necessary to carry out statutory responsibilities.

(2) QIO deliberations are not disclosable, either in written form or through oral testimony, in connection with the administrative hearing or review of a beneficiary's claim.

(b) *Reasons for QIO decisions.* (1) A QIO may disclose to those who have access to QIO information under other provisions of this subpart, the reasons