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RECEIVED

AUG 18 2021

STATE OF VERMONT  
ATTORNEY GENERAL'S OFFICE

August 11, 2021

State of Vermont  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

Re: Plaintiff/Patient:  
Defendant:  
Patient file

Jessica DiClerico (DOB: 01/22/1971)  
Windham Center/Springfield Hospital


To Whom It May Concern:

This office represents The Estate of Jessica DiClerico in a wrongful death claim against Windham Center and Springfield Hospital. The purpose of this letter is to request certain information and documents pursuant to Vermont's Right-To-Know Law.

The information and documents requested are as follows: (1) copies of any documents or records, hard copy or electronic, received relating to or concerning the Vermont Office of Attorney General's Medicaid Fraud & Residential Abuse Unit's request to Windham Center dated November 4, 2019 (*see attached copy of request*) (2) copies of any documents or records relating to or concerning any action by the Office of the Attorney General, State of Vermont, as a result of documents received from Windham Center regarding Jessica DiClerico.

Please provide the above requested documents as soon as possible and contact the undersigned with any questions.

Sincerely,

  
Arend Tensen, Esq.  
ART/amm  
enclosure

THOMAS J. DONOVAN, JR.  
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STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT  
05609-1001

November 4, 2019

Health Information Management  
The Windham Center  
1 Hospital Court  
Bellows Falls, VT 05101

BY HAND

Re: Patient Files

Dear Sir/Madam:

I write to request that the Windham Center provide certain records to the Medicaid Fraud and Residential Abuse Unit of the Vermont Attorney General's Office ("MFRAU"). This request is made to the Windham Center as a Medicaid provider and a HIPAA "covered entity", as defined by 45 C.F.R. § 160.103, pursuant to state and federal disclosure laws, as provided below, and under the Windham Center's Medicaid Provider Enrollment Agreement.

MFRAU is a Medicaid Fraud Control Unit approved by the Secretary of the U.S. Department of Health and Human Services under 42 C.F.R. §§ 1007.1- 1007.21, *et seq.* and authorized by 42 C.F.R. § 431.107(b) to request that Medicaid providers furnish access to certain records. Furthermore, pursuant to Vermont Medicaid Rule 7105.2 and the Provider Enrollment Agreement, providers agree to keep necessary records as required by Medicaid regulations and to make them available to authorized State and Federal officials upon request, specifically including the Vermont Office of the Attorney General. Medicaid recipients likewise agree upon application and enrollment that the recipient's medical records may be made available to the Medicaid agency and the State.

MFRAU is a "health oversight agency" pursuant to the HIPAA PHI regulations. *See* 45 C.F.R. § 164.501. A "health oversight agency" is an agency or authority of the United States, or a state, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. 45 C.F.R. § 164.501. Medicaid Fraud Control Units are specifically listed as oversight agencies in the preamble of the applicable regulations. 65

F.R. 82492. As a "health oversight agency," MFRAU may request from a covered entity disclosure of protected health information for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensures or disciplinary actions; civil, administrative, or criminal proceedings or actions, or other activities necessary for appropriate oversight. *See* 45 C.F.R. § 164.512(d). This letter requests information in MFRAU's capacity as a health oversight agency that is necessary to further MFRAU's health oversight activities. The information requested is the minimum necessary to achieve the purpose of the MFCU's investigation. *See* 45 CFR § 164.514(d)(3)(iii)(A). My signature and the official MFCU letterhead satisfies the verification requirements of 45 CFR § 164.514(h).

Pursuant to this authority please provide the following: A copy of the entire patient file, hard copy or electronic, for **Jessica Diclerico (DOB 01/22/1971)** to include, but not limited to: emergency room records, physician notes, case notes, admission documents, radiology reports, x rays, care plans, nursing notes, physician orders, MARS, care/treatment plans, OT/PT/SLP assessments and notes, dietary orders, social work notes, psychological assessments, from January 2019 to the present.


If any of the requested documents are not available, please inform the undersigned and provide the reason for its unavailability, and, if appropriate, information as to its present location and when it will be available.

The failure to supply information or to grant MFRAU access to records which might assist MFRAU in its Medicaid fraud investigation could result in exclusion from participating in any state health care program pursuant to 42 U.S.C.A. § 1320a-7(b)(12). Moreover, pursuant to 18 U.S.C.A. § 1518, anyone who attempts to, or willfully does, prevent, obstruct, mislead, or delay communication of information to a criminal investigator relating to a violation of a federal health care law may be fined and/or imprisoned up to five years.

It is requested that the above-mentioned records be made available to MFRAU for review. The review of the records will be conducted both onsite and at our Montpelier office. Please notify us of the records availability before that date so that arrangements can be made for delivery or transfer of the documents.

If you have any questions or concerns, please do not hesitate to contact me at 802-828-5511. Thank you, in advance, for your prompt assistance with this matter.

Sincerely,



Elizabeth Anderson, AAG  
Office of the Attorney General  
Medicaid Fraud & Residential Abuse Unit  
109 State Street, Montpelier, Vt 05609