



Office of the Attorney General  
State of Texas

December 9, 1997

DAN MORALES  
ATTORNEY GENERAL

Mr. Ryan Tredway  
Staff Attorney  
Texas Department of Insurance  
Legal and Compliance  
MC 110-1A  
P.O. Box 149104  
Austin, Texas 78714-9104

OR97-2682

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111023.

The Texas Department of Insurance (the "department") received a request for

[a] generic run from the HMO database, without disclosing enrollee names, detailing the diagnosis of enrollees making complaints to TDI concerning treatment and care from an HMO.

You state that a generic database printout, which does not identify any particular enrollee, has been provided to the requestor without the information detailing the diagnosis of the enrollee. You claim that the requested diagnosis information is excepted from required public disclosure by section 552.101 of the Government Code. You explain that the diagnosis description information at issue exists in two formats. First, the diagnosis description information is contained within the diagnosis field of the Health Maintenance Organization ("HMO") database. You indicate that the information in the diagnosis field was obtained from the records that the enrollees provided to the department with their complaints. Second, the requested diagnosis information or codes exist on medical records or other documents obtained from either the subject HMO or the complainant. We have considered the exception you claim and have reviewed the sample documents you have submitted.

Section 552.101 of the Government Code excepts from required public disclosure information that is deemed confidential by law, including information that is made

confidential by statute. The Seventy-fifth Legislature amended section 17 of the Texas Health Maintenance Organization Act, Chapter 20 of the Insurance Code, to add the following provision to subsection (b):

The Commissioner may examine and use the records of a health maintenance organization, including records of a quality of care assurance program and records of a medical peer review committee as that term is used in Section 1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as necessary to carry out the purposes of this Act, including an enforcement action under Section 20 of this Act. That information is confidential and privileged and is not subject to the open records law, Chapter 552, Government Code, or to subpoena except as necessary for the commissioner to enforce this Act.

Ins. Code art. 20A.17, § 17(b)(4). We believe that this provision provides broad coverage for all records from the health maintenance organizations that the department examined or used in carrying out the purposes of the Health Maintenance Organization Act, including the health maintenance organizations' records of their quality of care assurance program and their medical peer review committees. The provision permits the release of information when "necessary for the commissioner to enforce" the Health Maintenance Organization Act. *Id.* Thus, the department must withhold from public disclosure all information that the department obtained from the health maintenance organization. Gov't Code § 552.101; *see* Ins. Code art. 20A.37, § 37(f) (enrollees' clinical records).

As for any information not obtained from a health maintenance organization or not covered by article 20A.17, section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b (the "MPA"), provides:

(a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

Moreover, section 5.08(j)(3) provides for further release of confidential medical records obtained with a valid consent for release only if the disclosure "is consistent with the authorized purposes for which consent to release the information was obtained." *See* V.T.C.S. art. 4495b, § 5.08(c). *Cf.* Ins. Code art. 20A.37, § 37(f) (enrollees' clinical records confidential and not subject to chapter 552, Government Code, except to extent necessary

to enable commissioner to enforce compliance). The medical records covered by this statute may only be released as provided by the MPA.

In addition, chapter 611 of the Health and Safety Code provides for the confidentiality of mental health records created or maintained by a mental health professional. Section 611.002 provides in relevant part as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. You may release these records only as provided by the statute. Health & Safety Code §§ 611.004, .0045; *see* Open Records Decision No. 565 (1990). We have marked the type of information that must be withheld under section 552.101 in conjunction with these statutory provisions.

Much of the submitted information contains confidential medical information not covered by a confidentiality statute, yet protected from required public disclosure based on the common-law right to privacy. *See Industrial Found of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* This office has determined that common-law privacy protects certain financial information, including information about personal financial decisions. *See* Open Records Decision No. 600 (1992) at 9-12. We believe that the identities of the enrollees here is private information. Therefore, the department must redact any identifying information in the remaining submitted documents, including names, street addresses, telephone numbers, social security numbers, names of family members, names of employers, and individual and group policy numbers.<sup>1</sup> We have marked a sampling of the types of identifying information which must be withheld from disclosure.

Consequently, given the circumstances you have explained, we do not believe that the diagnosis information contained within the HMO database as requested without

---

<sup>1</sup>Common-law privacy may also protect an individual's medical history, although it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). However, in light of our conclusion in the instant case that the enrollees' identities must be withheld from disclosure, such individual determinations regarding medically related information is unnecessary.

identifying information is confidential; therefore, it must be released. As to the remaining medical records and documents you have submitted, we believe that some of this information is confidential. We have marked a sampling the types of information that must be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. We are also denying your request for a previous determination regarding medical records or medically-related information. Therefore, this ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records.<sup>2</sup> If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 111023

Enclosures: Submitted documents

cc: Ms. Deborah C. Hiser  
Advocacy, Incorporated  
7800 Shoal Creek Boulevard, #171-E  
Austin, Texas 78757-1024  
(w/o enclosures)

---

<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.