



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 25, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-0792

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113595.

The Texas Department of Health (the "department") received a request for all documentation related to survey conducted after a specific incident at the Glen Oaks Hospital on June 24, 1997. You contend that the requested information is excepted from disclosure by section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from required public disclosure information deemed confidential by law, either constitutional, statutory, or by judicial decision. Where a child is the victim of alleged or suspected abuse or neglect, section 261.201(a) of the Family Code may be applicable. Section 261.201(a) provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You assert that the requested information submitted to this office is related to an incident of alleged child abuse or neglect, and are records developed in an investigation under chapter

261 of the Family Code. We believe that a portion of this information is confidential, and must be withheld under section 552.101 of the Government Code.¹ We have marked the information that must be withheld.

We do not believe, however, that the remaining information is confidential under section 261.201. Fam. Code § 261.201(a)(2). The information consists of statements of deficiencies and plans of correction for a particular hospital which were prepared for purposes of a Medicare or Medicaid complaint investigation survey, the HCFA 2567 forms. In Open Records Letter No. 97-2843 (1997), we stated that federal law requires the department to release deidentified HCFA 2567 documents. Open Records Letter No. 97-2843 (1997) (*citing* Open Records Letter Nos. 1514(1997), 1492 (1997), 1472 (1997), 1388 (1997), 1230 (1997)). We stated that in most instances, a patient's medical condition or diagnosis does not identify that patient when the name is redacted from the HCFA form. *Id.* We also found that because the federal provisions govern the public disclosure of the HCFA 2567 forms, the federal law prevails to the extent it may conflict with the Texas Medical Practice Act regarding information obtained from medical records. *Id.* (*citing English v. General Electric Co.*, 110 S.Ct. 2270, 2275 (1990) (state law preempted to extent it actually conflicts with federal law)). In accordance with federal regulations, you must release these HCFA 2567 documents provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. 42 C.F.R. §§401.126, .133; Open Records Decision No. 487 (1988).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 113595

¹As we resolve the disclosure of this particular information under section 261.201, we need not address your other arguments against disclosure.

Enclosures: Submitted documents

cc: Mr. Tom Rourke
CEO/Managing Director
Glen Oaks Hospital
301 East Division Street
Greenville, Texas 75402-4199
(w/o enclosures)