



August 7, 2000

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Department Of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2000-2985

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137950.

The Department of Insurance (the “department”) received a request for “a copy of all UR Agent Filings from 1998-1999 in regards to PMC - Primary Medical Care, Inc.” You indicate that the department has released to the requestor some of the information that is responsive to the request. You have submitted for our review “a utilization review plan that an agent is required to submit to [the department] for certification or renewal as a utilization review agent.”<sup>1</sup> You assert that this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 4(i) of article 21.58A of the Insurance Code. We have considered the exception you claim and reviewed the submitted information.

Section 4(i) of article 21.58A of the Insurance Code provides:

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<sup>1</sup>You have also submitted “biographical affidavits,” which contain social security number information that the department seeks to withhold from the requestor. Other than the social security number information you have marked, we assume that the department has released the “biographical affidavits” to the requestor. Pursuant to section 552.304 of the Government Code, the requestor has submitted comments to this office which state, in pertinent part, that the requestor has no objection to the redaction of the social security numbers. Because the requestor has clarified that the social security numbers are not encompassed within the scope of information that is responsive to the request, this decision does not address the social security number information that the department has withheld.

Each utilization review agent shall utilize written medically acceptable screening criteria and review procedures which are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, dentists, and other health care providers. Utilization review decisions shall be made in accordance with currently accepted medical or health care practices, taking into account special circumstances of each case that may require deviation from the norm stated in the screening criteria. Screening criteria must be objective, clinically valid, compatible with established principles of health care, and flexible enough to allow deviations from the norms when justified on a case-by-case basis. Screening criteria must be used to determine only whether to approve the requested treatment. Denials must be referred to an appropriate physician, dentist, or other health care provider to determine medical necessity. *Such written screening criteria and review procedures shall be available for review and inspection to determine appropriateness and compliance as deemed necessary by the commissioner and copying as necessary for the commissioner to carry out his or her lawful duties under this code, provided, however, that any information obtained or acquired under the authority of this subsection and article is confidential and privileged and not subject to the open records law or subpoena except to the extent necessary for the commissioner to enforce this article.*

Ins. Code art. 21.58A § 4(i) (emphasis added).

Based on your representations and our review of the information, we agree that the documents at issue are made confidential under article 21.58A § 4(i). Accordingly, the department must withhold the submitted material, pursuant to section 552.101 of the Government Code in conjunction with section 4(i) of article 21.58A of the Insurance Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

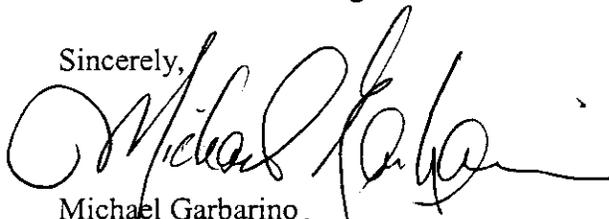
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 137950

Encl. Submitted documents

cc: Mr. Johnny Montgomery  
Killbride & Cullen  
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(w/o enclosures)