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Texas Department of Insurance

333 Guadalupe Street P.O.Box 149104 Austin, Texas 78714-9104
512/463-6169

January 6, 1994

James E. Tourtelott
Assistant Attorney General
Open Government Section
P. O. Box 12548
Austin, Texas 78711-2548

Gov
FILE # ML-23963-94

I.D.# 23963

RQ-661

RE: ID # 18898; OR93-671 - Request for Solvency Indicators for HMOs

Dear Mr. Tourtelott:

On November 8, 1993, this agency received your informal letter ruling advising that the requested materials could be released. At this time, the Texas Department of Insurance (TDI) requests a reconsideration by the Attorney General's Office as to whether that information is subject to required public disclosure under the Texas Open Records Act, TEX. GOV'T CODE ANN., Chapter 552. New Legislation has been passed since our initial request dated February 11, 1993, which we believe makes it unlawful for this agency to release the information discussed in this letter. The TDI is concerned that the requested information is now exempt from public disclosure under the Texas Open Records Act, TEX. GOV'T CODE ANN., § 552.101.

The request at issue was for "copies of indicators your office uses to assess the solvency of HMOs in Texas." Copies of this information, which the agency believed to be exempted from disclosure, were furnished to you on February 19, 1993, and are attached to this request. The request included quarterly reports concerning the solvency of HMOs in Texas. In an effort to be of as much assistance as possible to the requester, compilations of HMO quarterly filings have been furnished to him, and he has been advised of the availability of the complete quarterly filings. The requester has also been told that he can obtain those filings after payment of the usual state fee for copying.

The requested information which TDI contends is exempt relates to the solvency indicators for Texas Health Maintenance Organizations. The requested indicators are utilized in the Texas Department of Insurance's Early Warning System to monitor the financial solvency of HMO's. This information is prepared by and is for the use of this agency.

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Following our initial open records request, the 73rd Texas Legislature enacted Texas Insurance Code art. 1.15B. That statute makes any information relating to the financial solvency of any regulated organization, obtained by TDI's early warning system, confidential and not subject to disclosure under the Open Records Act. See Texas Department of Insurance Sunset Act, 73rd Leg., R.S. Ch. 685, 1993 Tex. Sess. Law Serv 2559 (Vernon) (to be codified as an amendment to TEX. INS. CODE ANN. art. 1.15B). The attached material is obtained by the department's early warning system. This information is a compilation of early warning indicators. We believe this legislation was enacted because release of early warning indicators would allow an HMO to anticipate the surveillance methodology and circumvent it. This would injure the Department's ability to act quickly to avoid HMO insolvencies.

Because the requested information is used by the early warning system, TDI contends that this material is exempt under § 552.101 of the Open Records Act as material considered confidential by law. See Tex. Att'y Gen. OR 91-210 (1991), OR 92-76 (1992), and 92-575 (1992). For the reasons discussed, this agency would appreciate the full committee's reconsideration of the request.

Please forward all correspondence relating to this matter to Alesia L. Sanchez, Legal Assistant, Agency Services Section, M. C. 110-1A.

Sincerely,



Mary Keller
Senior Associate Commissioner

Enclosure