



Office of the Attorney General
State of Texas

February 23, 1998

DAN MORALES
ATTORNEY GENERAL

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

OR98-0512

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# 112785.

The Texas Department of Health (the "department") received a request for all health facility compliance reports from January 1, 1992 through present concerning Sun Glo Home Health Services, Inc. The requestor also seeks any information concerning the current enforcement actions against the same company. You state that you have released most of the requested information to the requestor. You claim, however, that portions of the requested information are protected from disclosure by section 552.101 of the Government Code. You have marked the information that you contend must be withheld. You also ask two questions concerning the requested information. The information you have submitted consists entirely of federal HCFA 2567 forms. We have considered your arguments and have reviewed the documents.

Federal regulations require the department to release the HCFA 2567 statements of deficiencies and plans of correction, 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. See 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 (1988) at 5. Here, the reports are signed by a provider representative and the "provider's plan of correction" portion of the report appears to contain the provider's comments to the report. Thus, we believe that the provider has had a reasonable opportunity to review and comment on the report. Consequently, the requested reports must be released.

You explain, nonetheless, that the department does not necessarily object to release of the forms. Rather, you question whether a patient's diagnosis or medical condition specifically identifies the patient. You ask if the diagnosis or medical condition must be

redacted in order to insure that no information identifying individual patients is released. You also ask whether the federal regulations outlined above supercede state laws such as the Medical Practice Act (the "MPA").

We have previously answered your questions. 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)). We also opined in that decision that the deidentification required by federal law is sufficient to protect the privacy interests of the patients. *See Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995). Accordingly, you must release all of the requested records with deletions of information that identifies the persons specified in the regulations.

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# 112785

Enclosures: Submitted documents

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(w/o enclosures)