



June 4, 1999

Mr. Eric Magee
Staff Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9014

OR99-1571

Dear Mr. Magee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124741.

The Department of Insurance (the "department") received a request for information concerning three utilization review agents: McGregor Medical Association, P.A., American Medical Management, Ltd., and AmMed Management, Inc. You state that the department only has the requested information concerning MacGregor Medical Association. You also state that you have released to the requestor the application submitted by MacGregor Medical Association. You submitted to this office responsive information, and you claim that the responsive information is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 21.58A §4(i) of the Insurance Code. We have considered the exception you claim and reviewed the submitted information.

The department argues that the requested screening criteria and review procedures must be withheld because they are confidential by law under article 21.58A of the Insurance Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 4(i) of article 21.58A of the Insurance Code provides:

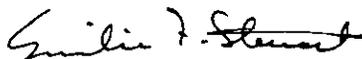
Each utilization review agent shall utilize written medically acceptable screening criteria and review procedures which are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, dentists, and other health care providers. Utilization 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). In this case, the department argues that the information is part of MacGregor's utilization review manual and is the type of information made confidential under Article 21.58A §4(i). After reviewing the submitted material and the arguments, we find that the department may withhold the submitted material.

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.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 124741

encl: Submitted documents

cc: Mr. Marcus W. Waters
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(w/o enclosures)