



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2012

Ms. Lisa M. Nieman
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2012-02584

Dear Ms. Nieman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 445764.

The Texas Department of State Health Services (the "department") received a request for the survey results of a specified dialysis center. You state the department has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2

(1977). Because section 552.101 can provide a compelling reason to overcome this presumption, we will address the applicability of section 552.101 to the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as chapter 251 of the Health and Safety Code, which relates to end stage renal disease facilities. Section 251.015 provides:

(a) A medical review board shall advise the [Texas Board of Health] on minimum standards and rules to be adopted under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the department with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a facility information relating to that facility that is made confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

Health & Safety Code § 251.015. Section 251.061 of the Health and Safety Code provides, in relevant part:

(g) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under [the Act], in accordance with that chapter or other applicable law.

Id. § 251.061(g). You assert the information you have marked in Exhibit B1 is confidential pursuant to section 251.015(c) of the Health and Safety Code. You represent this

information consists of quality of care information compiled by the department. We note the information at issue consists of a corrective action plan, which, pursuant to section 251.061(g), is not confidential. However, you assert the information you marked in the corrective action plan also constitutes confidential quality of care information subject to section 251.015(c). Based on your representations and our review of the information at issue, we agree the information you have marked, as well as the additional information we have marked, is confidential under section 251.015(c) of the Health and Safety Code. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 251.015(c) of the Health and Safety Code. As you raise no further exceptions to disclosure, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 445764

Enc. Submitted documents

c: Requestor
(w/o enclosures)