3375
Library

The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

February 27, 1989

Bobby M. Bowers, Director
Division of Research and Statistical Services
Budget and Control Board
Suite 425, Rembert Dennis Building
1000 Assembly Street
Columbia, South Carolina 29201

Dear Mr. Bowers:

You had requested that this Office review the South Carolina Medically Indigent Assistance Act (MIAA), Sections 44-6-170 and 44-6-180 of the South Carolina Code of Laws in particular, and advise as to several issues facing the Division of Research and Statistical Services of the Budget and Control Board and the Health Care Planning and Oversight Committee. After a review of the relevant statutes, each of your questions will be addressed separately.

Relevant Statutes

Creation of the Medically Indigent Assistance Act (MIAA) was accomplished pursuant to Section 44-6-150 et seq. of the Code of Laws. You are particularly concerned about certain requirements and limitations imposed by Sections 44-6-170 and 44-6-180 of the Code.

The portions of Section 44-6-170 relevant to your inquiry provide the following:

> (A) In order to develop a timely and meaningful data base for the medically indigent population and to assist the commission in its efforts to properly carry out its functions as provided by the South Carolina Medically Indigent Assistance Act, the Division of Research and Statistical Services of the State Budget and Control Board shall require the standardized reporting by hospitals of the following hospital-specific information... [follows a list of economic and other factors and a list of extracts from patients' medical records].

> (B) It is the intent of the South Carolina Medically Indigent Assistance Act and of regulations promulgated pursuant to it to protect the confidentiality of individual patient information and the proprietary information of hospitals. Only the data collected pursuant to the Health Care Planning and Oversight Committee recommendations as provided in this section may be collected, analyzed, and released to the public as directed by that committee. All other hospital-specific information collected pursuant to subsection (A) of this section is confidential and must not be released to any other governmental agency or made public unless release is made of statistical information so that no individual hospital can be identified. However, if the hospital industry exceeds the target rate of increase for a given year, the commission shall have full access to hospital specific data on any hospital which exceeded the target of increase. All meetings of the expert panel and the commission concerning those hospitals which exceeded the target rate of increase are subject to the South Carolina Freedom of Information Act, as are the individual financial statements of the hospitals reviewed. ... [Emphasis added.]

The pertinent portions of Section 44-6-180 provide the following:

> (A) Patient records, received by counties, the commission, or other entities involved in the administration of the fund created pursuant to §44-6-150 are confidential. Patient records gathered pursuant to §44-6-170 are also confidential. This information must not be released or made public unless release is made of statistical information so that no individual person can be identified. Nothing in this subsection may be construed as limiting access to information needed by agencies involved with the administration of the fund, including utilization review and peer review committees. [Emphasis added.]

Violation of this section is deemed to be a misdemeanor, and one found guilty may be fined not more than one thousand dollars or imprisoned not more than one year, or both. This statute and its criminal sanctions are of particular concern in response to your last three questions. Caution should be exercised so that this statute is not violated so that criminal sanctions, or civil liability, should not be incurred.

Also relevant to your inquiry but not a part of the MIAA is Section 44-1-110 of the Code, which provides in pertinent part:

> The Department of Health and Environmental Control is invested with all the rights and charged with all the duties pertaining to organizations of like character and is the sole advisor of the State in all questions involving the protection of the public health within its limits.
>
> It shall, through its representatives, investigate the causes, character, and means of preventing the epidemic and endemic diseases as the State is liable to suffer from and the influence of climate, location, and occupations, habits, drainage, scavengering, water supply, heating, and ventilation. It shall have, upon request, full access to the medical records, tumor registries, and other special disease record systems maintained by physicians, hospitals, and other health facilities as necessary to carry out its investigation of these diseases. No physician, hospital, or health facility, or person in charge of these records is liable in any action-at-law for permitting the examination or review. Patient-identifying information elicited from these records and registries must be kept confidential by the department and it is exempt from the provisions of Chapter 4 of Title 30.... [Emphasis added.]

Rules of Statutory Construction

The MIAA has not yet been construed by judicial decisions in this State. For this reason, rules of statutory construction will thus be used to interpret the various provisions of the MIAA.

In construing a statute, the primary objective of both the courts and this Office is to ascertain and give effect to legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Language used therein should be given its plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where terms of a statute are clear and unambiguous, they must be applied according to their literal meaning. Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977).

With these rules of statutory construction in mind, your questions will now be addressed.

Question 1

Your first question is whether the Division of Research and Statistical Services (DRSS) or the Health Care Planning and Oversight Committee (Committee) may release hospital-specific information as defined in Section (A) of Section 44-6-170 to the providing hospital exactly as the hospital provided the information to the Division. Effectively, an exact copy of the information provided to the Division would be returned to the providing hospital.

Such a circumstance is not covered by the MIAA, nor did research turn up a court decision which would be applicable in this instance. Common sense and logic would dictate that an exact copy of the information provided by a hospital could be returned to the hospital. Such a procedure does not destroy confidentiality of hospital- or patient-specific information and does not give a hospital any more information than it had at the outset.

Question 2

Whether the hospital-specific information as defined in Section (A) of Section 44-6-170 may be provided by the Committee or DRSS to the providing hospital in an edited, patient-specific, unduplicated and corrected form is your second question.

We understand that certain records may be provided to DRSS by hospitals in a tape format, such that as many as three tapes may cover a particular patient's stay in the hospital and subsequent

billing. One of the tasks undertaken by DRSS is to sort this information and recompile it in unduplicated fashion, the goal being one particular record per person per hospital stay. From conversations with members of your staff, it appears that the system is not infallible and the deduplification may actually produce some errors. For example, if a patient's date of birth, other dates, patient number, or similar information should contain a mistake on one or more tapes, the deduplification effort may not correctly match that patient's several records and tapes for a given hospital stay. Thus, inaccurate information may result from recompilation of the tapes in patient-specific, unduplicated, and corrected form.

Again, the hospital supplying the patient-specific information would not be given any information which would violate confidentiality. The risk in this process, however, is that inaccurate information will be returned to the providing hospital; it would be impossible to predict what liability might result to the providing hospital, the Committee, or DRSS, but the risk in providing inaccurate information cannot be discounted.

Question 3

Whether DRSS or the Committee may provide hospital-specific information as defined in Section (A) of Section 44-6-170 to the South Carolina Hospital Association, with the concurrence of the providing hospital in

(a) the original form submitted to DRSS, or
(b) the edited, patient-specific, unduplicated, corrected form

is your third question.

What information may be released to the public, which would include the South Carolina Hospital Association, is referenced in Section 44-6-170(B), supra, which stated in pertinent part that "Only the data collected pursuant to the Health Care Planning and Oversight Committee recommendations as provided in this section may be collected, analyzed, and released to the public as directed by

the committee." 1/ All other hospital-specific and patient-specific information is declared to be confidential and is not to be released except in statistical form so that no individual hospital or patient can be identified.

1/ A part of subsection (A) of Section 44-6-170 provides the following:

> In addition, the division shall collect data as recommended by the Health Care Planning and Oversight Committee pursuant to subsection (C) of this section and other data relative to the medically indigent population, including: demographic characteristics, economic status, utilization of health care services, and fluctuations in the population over time. ...

Subsection (C) of Section 44-6-170 provides:

> Because accurate, comparable data on the costs and usage of health care services is not currently available in South Carolina, it is extremely difficult to make careful policy choices for future health care cost management strategies. Neither the public sector nor private sector purchasers of health care have available sufficient data to enable them to make informed choices among health care providers in the market place. The lack of a uniform system for the collection and analysis of data, and the lack of full participation by providers, purchasers, and payors has led to inadequate and unusable data. In order to remedy this problem, it is necessary to create a uniform system for the collection, analysis, and distribution of health care cost data. The purposes of this data system are to insure that data are available to make valid comparisons among providers of prices for services provided and to support ongoing analysis, of the health care delivery system. Accordingly, after receiving the report from the task force created pursuant to §44-6-208, the Health Care Planning and Oversight Committee shall recommend to the division:

Continued - Page 7

In any event, the MIAA does not contain provisions which would allow a given hospital to waive the confidentiality of hospital-specific information provided to DRSS or the Committee, whether that information be in original form or in unduplicated form. For these reasons, it is the opinion of this Office that DRSS or the Committee should not release such hospital-specific information to the public (including the South Carolina Hospital Association), with or without the concurrence of the providing hospital, except in the forms specified by the MIAA.

Whether a given hospital wishes to provide such information to the South Carolina Hospital Association is a matter between those two parties and is not addressed by the MIAA. There may be other statutes, policies, or protocols which would govern the sharing of that information, but such would not be relevant to the question you have raised, or to your agency.

Question 4

Whether DRSS or the Committee may provide hospital-specific information as defined in Section (A) of Section 44-6-170 to the Department of Health and Environmental Control or to any other State agency, legislative committee, or like entity in any form is your fourth question.

Again, the statutes only make clear the scope of the information which may be released to the public. This question is too comprehensive to provide a direct response, however, as to state agencies across the board, like entities, and legislative committees. For example, a legislative committee working with health care issues may have subpoena powers and may be able to obtain information in that fashion. State agencies and like entities may have certain statutory authority to obtain information of this type; each entity attempting to gain access to hospital- or patient-specific information by virtue of claimed statutory authorization would have to establish its authority before any release of information could be made by DRSS or the Committee.

1/ Continued from Page 6

(1) the data elements to be collected and analyzed. These elements may include, but are not limited to those already listed in subsection (A) of this section;
(2) the format in which the data may be released to the public; and
(3) the frequency with which the data should be collected and released on a routine basis. §44-6-180.

One such consideration, as to the Department of Health and Environmental Control specifically, is Section 44-1-110 of the Code, supra. It has been argued that this Code section authorizes DRSS or the Committee to turn over hospital- or patient-specific information to the Department of Health and Environmental Control. We must respectfully disagree. In relevant part, Section 44-1-110 gives the Department, "upon request, full access to the medical records, tumor registries, and other special disease record systems maintained by physicians, hospitals, and other health facilities as necessary to carry out its investigation" of epidemic and endemic diseases. It is clear and beyond argument that DRSS and the Committee are not "physicians, hospitals, [or] other health care facilities." Thus, this statute is inadequate to compel DRSS or the Committee to release hospital- or patient-specific information under the MIAA to the Department of Health and Environmental Control.

Question 5

Your final question is whether DRSS or the Committee may release hospital-specific information as defined in Section (A) of Section 44-6-170, to any public or private requestor, with the concurrence of the South Carolina Hospital Association or the providing hospital in

(a) the original form submitted to DRSS, or
(b) the edited, patient-specific, unduplicated, corrected form.

As noted above, the scope of information which may be release to the public is covered by Section 44-6-170(B) of the Code. Again, neither hospital-specific nor patient-specific information is to be released except as described in the statute (or unless a particular state agency or entity or legislative committee can otherwise access the information). Section 44-6-170(A) clearly and plainly states that hospitals are required to report specified hospital-specific information to DRSS as specified. Again, as noted, there are no provisions for a hospital to waive the confidentiality of the information so provided, so that DRSS or the Committee could make the information available. Too, there is no provision for the South Carolina Hospital Association to waive the confidentiality of a particular hospital or patient record, so that DRSS or the Committee could release that information.

Should a public or private request be presented to a particular hospital or to the Hospital Association for whatever information either entity may have, that would be outside the scope of the MIAA and would not involve DRSS or the Committee. As noted in response to the third question, there may be other statutes, policies, or protocols which would govern in such an instance. In that event, however, DRSS and the Committee would not be involved.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:

Robert D. Cook

ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS