

The State of South Carolina

#1526

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Office of the Attorney General

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April 22, 1985

William S. Hall, M.D.
State Commissioner of Mental Health
S. C. Department of Mental Health
P. O. Box 485
Columbia, SC 29202

Dear Dr. Hall:

In your letter of March 11, 1985, to the Attorney General, you have inquired as to the applicability of the Federal regulations entitled "Confidentiality of Alcohol and Drug Abuse Patient Records", 42 CFR Part 2, to the Earle E. Morris, Jr. Alcohol and Drug Addiction Treatment Center. As you point out in your letter, the Earle E. Morris, Jr. Center is a facility which is operated by the South Carolina Department of Mental Health and provides treatment services to alcohol and drug addicts. You further state that the Morris Center has never received nor is currently receiving any direct Federal funds of any variety.

Section 2.2 of the "Confidentiality of Alcohol and Drug Abuse Patient Records", regulations 42 CFR Part 2, specifically addresses the subject of applicability to treatment programs. Section 2.12(a)(3) states:

(a) In general. Except as provided in paragraph (b) of this section, this part applies to records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any alcohol abuse or drug abuse prevention functions -

(3) Which is assisted by funds supplied by any department or agency of the United States, whether directly through a grant, contract, or otherwise, or indirectly by funds supplied in a State of local government unit through the medium of contracts, grants of any description, general or special revenue sharing, or otherwise, or...

REQUEST LETTER

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In the explanation of §2.12-1 which follows, is the following statement:

(c) With regard to §2.12(a)(3), it seems clear that whenever a State or local government is assisted by the Federal government by way of revenue sharing or other unrestricted grants, all of the programs and activities of the State or local government are thereby indirectly assisted, and thus meet that aspect of the statutory criteria for coverage.

It clearly appears from this language that the regulation is intended to apply to facilities such as Morris Center. It is our opinion that, while Morris Center does not receive any direct Federal funds, it is indirectly assisted by virtue of being under the auspices of the Department of Mental Health, the State's Mental Health authority for purposes of administering Federal funds allotted to South Carolina and grants in aid under the provisions of the National Mental Health Act, and, therefore, is covered by this regulation.

I hope this information answers your question. If we can be of further assistance, please let us know.

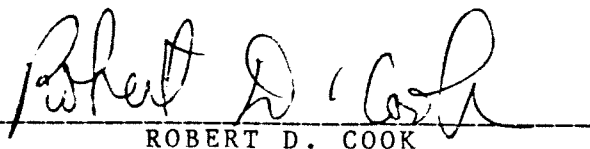
Sincerely,



B. J. Willoughby
Assistant Attorney General

BJW/rho

REVIEWED AND APPROVED:


ROBERT D. COOK

Executive Assistant for Opinions