



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2017

Ms. Barbara L. Klein
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2017-21076

Dear Ms. Klein:

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# 676199 (DSHS File No. 27313).

The Texas Department of States Health Services (the "department") received a request for all complaints and investigations related to a specific facility. You state you have released some 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.

We note the submitted information contains Centers for Medicare and Medicaid Services ("CMS") 2567 federal deficiency forms. In Open Records Letter No. 2005-04917 (2005), we granted the department a previous determination finding, in part, the identifying information of patients, physicians, other medical practitioners, or other individuals contained in a CMS-2567 form is confidential when the provider being evaluated has had a reasonable opportunity to review the report and other comments. *See* 42 U.S.C. § 1306(e)-(f); 42 C.F.R. §§ 401.126, 401.133; *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, the department must withhold the information you marked in the federal forms under section 552.101 of the Government Code

in conjunction with federal law in accordance with this previous determination.¹ However, we will consider your arguments against disclosure of the submitted information not subject to the previous determination.

Section 552.101 of the Government Code exempts 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 as follows:

(a) A medical review board shall advise the executive commissioner and the department on minimum standards and rules to be adopted by the executive commissioner 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 the 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 [the Act], 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(g) of the Health and Safety Code reads as follows:

¹As we are able to make this determination, we do not address your other argument to withhold this information.

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 marked information that you assert 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 or the medical review board, or constitutes recommendations of the medical review board. The information at issue contains a corrective action plan that is not confidential under section 251.061(g). However, you state the information 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 this information is confidential under section 251.015(c) of the Health and Safety Code. Therefore, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 251.015(c) of the Health and Safety Code.

In summary, the department must withhold the information you marked in the federal forms under section 552.101 of the Government Code in conjunction with federal law in accordance with Open Records Letter No. 2005-04917. The department must also withhold the information you marked under section 552.101 of the Government Code in conjunction with section 251.015(c) of the Health and Safety Code. The department must release the remaining information to the requestor.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 676199

Enc. Submitted documents

c: Requestor
(w/o enclosures)