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SPRINGFIELD

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FILE NO. S-1364
PUBLIC RECORDS AND INFORMATION:
Disclosure of Information Con-
cerning Medicaid Recipients

Honorable Michael J. Bakalis
Comptroller
201 State House
Springfield, Illinois 62706

Dear Comptroller Bakalis:

I have your letter wherein you ask whether section 3 of the State Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.6) requires you to make Medicaid filing statements available for public inspection. You state that all vouchers submitted by the Department of Public Aid to the Comptroller for vendors enrolled in the State's medical assistance program are accompanied by the filing statements which physicians, dentists, pharmacists and other participating professionals have submitted for individual medical assistance recipients. These filing statements contain

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information concerning a patient's diagnosis, treatment, medical history and the pharmaceuticals which he or she has received. It is my opinion that section 3 does not require you to make these filing statements available for public inspection.

Section 3 of the State Records Act reads as follows:

"Reports and records of the obligation, receipt and use of public funds of the State are public records available for inspection by the public. These records shall be kept at the official place of business of the State or at a designated place of business of the State. These records shall be available for public inspection during regular office hours except when in immediate use by persons exercising official duties which require the use of those records. The person in charge of such records may require a notice and may require that such notice specify which records are to be inspected. Nothing in this section shall require the State to invade or assist in the invasion of any person's right to privacy. Nothing in this section shall be construed to limit any right given by statute or rule of law with respect to the inspection of other types of records.

Warrants and vouchers in the keeping of the State Comptroller may be destroyed by him as authorized in 'An Act in relation to the reproduction and destruction of records kept by the Comptroller', approved August 1, 1949, as now or hereafter amended."

Section 3 recognizes the public's general right to inspect records of the use of public funds of the State. The section, however, does not open every such record to public inspection. Section 3 expressly states that the State is not required to invade any

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person's right to privacy. In addition, the general right to inspect public records, recognized in section 3, does not open to public inspection information that specifically is made confidential by law.

Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.) provides for the appropriation of money as grants to the States for medical assistance programs, commonly known as Medicaid. In order to participate in Medicaid, a State must submit and have approved by the Secretary of Health, Education and Welfare, a plan. The State plan must meet certain requirements. The Secretary has approved the plan submitted by Illinois, and Illinois is now participating in the Medicaid program.

One of the requirements that a State plan must meet concerns the use of information about the recipients of medical assistance. A State plan must provide safeguards which restrict the use or disclosure of information concerning the recipients of medical assistance to purposes directly connected with the administration of the State's medical assistance programs. (42 U.S.C. § 1396a(a)(7).) 45 C.F.R. 205.50 describes the types of information that are safeguarded and the conditions under which

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such information may be released or used:

" * * *

(i) Types of information to be safeguarded include but are not limited to:

(A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (e) of this section);

(B) Information related to the social and economic conditions or circumstances of a particular individual;

(C) Agency evaluation of information about a particular individual;

(D) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.

(ii) The release or use of information concerning individuals applying for or receiving financial assistance or services is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance or services programs.

* * *

As the State agency charged with administering the Medicaid program, the Department of Public Aid is responsible for safeguarding information about Medicaid recipients. Rule 7.05 of the Department states in pertinent part:

"RULE 7.05 CONFIDENTIALITY OF CASE INFORMATION

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For the protection of clients, any information about a client or case is confidential and shall

be used only for purposes directly related to the administration of the assistance programs. The following shall be considered as included in the administration of the programs:

- The establishment of a client's initial or continuing eligibility for public assistance;
- The establishment or the extent of an individual's need for financial assistance, medical assistance or other services; and
- The establishment of procedures assuring the health and safety of the client.

Use of information for commercial, personal, or political purposes is specifically prohibited.

Local office staff shall inform all agencies and governmental departments to whom information is furnished that this material is confidential and must be so considered by the agency or governmental department.

Any information received from other agencies or persons which includes the express statement that the information is not to be released to the client, or to any other person or agency under any circumstances, shall be prohibited from release as case information.

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Rule 7.05 specifically assures Medicaid recipients that information about them will be kept confidential. This assurance may not be betrayed. Thus, the general right to inspect public records, recognized by section 3 of the State Records Act, may

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not be construed to include information that is specifically made confidential by Rule 7.05. The inclusion of such information within the general provisions of section 3 would deceive Medicaid recipients and would undermine this State's commitment to the requirements of the Medicaid program.

It is, therefore, my opinion that section 3 of the State Records Act does not require the Comptroller to make Medicaid filing statements available for public inspection.

Very truly yours,

A T T O R N E Y G E N E R A L