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STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

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OFFICIAL AND FINAL COPY

MINUTES OF THE GOVERNOR'S INFORMATION PRACTICES COMMISSION MEETING OF June 8, 1981

The meeting of the Governor's Information Practices Commission was held on June 8, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Mr. John Clinton, Mr. Robin Zee, Mr. Donald Tynes, Senator Timothy Hickman, Mr. E. Roy Shawn, and Mr. Albert Gardner, Jr.

The minutes from the meeting of April 27th were approved pending any changes by Ms. Cecilia Wirtz and Mr. Robert Veeder, representatives from the Office of Management and Budget who had testified at the meeting. If there were no changes made, the minutes would be adopted as final. In addition, the minutes of May 11th were distributed.

Mr. Drea noted that he and Mr. Hanratty would be appearing before the House Constitutional and Administrative Law Committee to brief them on the Commission's activities, findings and direction. The members of the Commission were invited to attend.

Senator Hickman suggested that a briefing should also be held in the fall with the Senate Constitutional and Public Law Committee. Mr. Drea said that a joint session of both House and Senate Committees would be the ideal, but that the Information Practices Commission would accommodate the wishes of the committees.

It was pointed out that mileage reimbursement forms should be turned in by the end of June so that reimbursement could be made from the 1980 fiscal year budget.

The Commission then discussed the report examining the record-keeping practices of health facilities. Ms. Thea Cunningham referred to the Addendum which had been

distributed to members. She enumerated the findings of the survey that were listed in the Addendum:

1) A lack of guidelines governing the collection of information.

2) Variable policies on the issue of access to the person in interest (now provided by House Bill 1287).

3) Lack of correction procedures (now provided in House Bill 1287).

4) Lack of redisclosure provisions.

5) Uneven security measures.

6) Lack of a written policy on the Public Information Act.

7) Inadequate notification of rights to the person in interest.

Senator Hickman asked if there were notable differences in operations and policies between like facilities. Ms. Cunningham responded affirmatively. Senator Hickman added that a task force had recommended three years ago that comprehensive rules be adopted across health facilities in the areas of records and disclosure and noted that apparently this had not been done.

Mr. Drea added that since House Bill 1287 had passed, the responses of the facilities to several of these questions may have changed. Since they would be involved in developing new access policies, perhaps patient information and other issues would be addressed.

Ms. Cunningham introduced a representative from the Maryland Medical Records Association, Mr. Morgan, to the Commission. Mr. Morgan is also the Director of Medical Records Department for Anne Arundel General Hospital.

Mr. Morgan stated that the Association had supported House Bill 1287 and has developed a set of interpretive procedures which are currently being printed. He offered to send a copy to the Commission. Mr. Morgan explained that the Association has attempted to define such terms as "reasonable time", "psychiatric record" and "medial record", items critical to the implementation of House Bill 1287. The Maryland Hospital Association, he added, has endorsed these procedures and they will be sent to hospitals throughout the state. Mr. Morgan noted that a copy had been sent to

the Licensing and Certification Section of the Department of Health and Mental Hygiene but that a reply had not been received. A copy was also sent to the Medical Chirurgical Faculty of Maryland who also have not responded as of yet.

Mr. Morgan stated that the Association had also sent out a survey on access rights of the person in interest. The responses which they received will be made available to the Commission.

Mr. Clinton referred to the section in House Bill 1287 excluding "legally disabled" persons from the right of access and asked if the Association had defined this term. Mr. Morgan replied that his understanding of the term was that it pertained to physically or mentally impaired individuals as deemed by a court of law. Discussion ensued as to whether a physical impairment should render an individual incapable of accessing his own records.

Mr. Zee asked Mr. Morgan if the guidelines of the Medical Records Association addressed the categories of people who can access their records. Mr. Morgan replied that the Association feels that the law is fairly clear and they have tried to amplify the law. They have focused on defining terms and clarifying the issues relating to minors who can consent to treatment of certain specified conditions. He added that suggested forms were also being included.

Mr. Zee asked if there would be acceptance of the guidelines put out by the Association. Mr. Morgan replied affirmatively, noting that Association guidelines in other areas had been well accepted in the past.

In response to Senator Hickman, Mr. Morgan explained that the Association exists on both the state and national levels. It is comprised of Registered Record Administrators (RRAs) and Accredited Records Technicians (ARTs); there is also an associate membership for non-accredited workers. Every hospital medical record department, Mr. Morgan added, must have someone who is an ART or RRA by virtue of the Joint Commission on Accreditation Guidelines and Federal Medicare and Medicaid program requirements.

Senator Hickman asked if the four state psychiatric hospitals have staff members who belong to the Association. Mr. Morgan replied that they should have at least one

member. He noted that Ms. Ruth Gilmer, a state medical record consultant to all state facilities, is a member of the Association.

Mr. E. Roy Shawn asked Mr. Morgan if Anne Arundel General Hospital had responded to the survey sent out by the Information Practices Commission. Mr. Morgan replied that it had not, and explained that the Maryland Hospital Association had asked private hospitals to defer responding to the survey. Mr. Dennis Hanratty explained that the Maryland Hospital Association had expressed concerns about the workload that the survey would impose on non-state institutions.

Mr. Hanratty asked if Mr. Morgan was satisfied with existing current provisions regarding mental health records. Mr. Morgan replied that he could not speak for the Association, but felt that based on his experience at Anne Arundel General Hospital, current law was satisfactory. He had found that the biggest area of concern regarding psychological records involved patient access to qualitative statements about his condition. Personally, Mr. Morgan stated, there existed a need for a provision for non-interference in psychiatric information.

Mr. Drea stated that if the Commission liked the guidelines put out by the Association, it might decide to recommend their adoption as regulations by the Department of Health and Mental Hygiene. Mr. Morgan thought that the Association would view this possibility in a favorable manner. As far as he knew, the Department of Health and Mental Hygiene had decided not to promulgate regulations but instead would wait and see how the law was implemented by individual hospitals.

Mr. Drea referred to Senate Bill 1044 which states that the clinician can deny access only where there exists substantial risk of imminent psychological impairment or serious physical injury to the client. Mr. Drea observed that from a legal perspective, there existed a significant difference between House Bill 1287 and Senate Bill 1044 in the area of psychological records. House Bill 1287 places the specialist under no burden to permit access to psychological records to the person in interest. In contrast, Senate Bill 1044 would require the specialist to justify a decision to prevent disclosure. Mr. Drea asked Mr. Morgan for his opinion on this issue. Mr. Morgan

replied that in either case the in-between step exists and that the decision rests with the specialist himself; therefore, he would presumably be able to deny access.

Mr. Drea referred to the issue of redisclosure of information by recipients of data. This point is discussed in Senate Bill 1044 but omitted in House Bill 1287. He asked Mr. Morgan if he thought that this was a major gap in House Bill 1287. Mr. Morgan replied that he did and that he felt that he could speak for the Association on this point. The Association is very interested in this issue and would consider any appropriate legislation.. Mr. Morgan added that the issue of redisclosure and its ramifications is rarely considered by hospitals. He pointed out that the survey results illustrated the need to educate hospitals regarding guidelines that should be issued to recipients of data.

Mr. Clinton pointed out that Senate Bill 1044 would have allowed the client to inspect his record within 30 days of receipt of the request while House Bill 1287 states that inspection is to be allowed within a "reasonable time". He asked if the Medical Records Association had arrived at a specified time period. Mr. Morgan believed that the Association had decided on a maximum of 10 days (perhaps 15 days in exceptional cases) and that the Association had also distinguished between the in-house patient and the post-discharge requests.

Senator Hickman referred to the fact that while House Bill 1287 allows the patient to designate a third party to look at his psychological record, the bill does not prevent a patient to designate a third party to look at his records. Senator Hickman cited the case of the individual who is committed to an institution but does not belong there. Such a person both cannot see his own file or designate a third party to see it. Mr. Morgan replied that he did not think that there was anything prohibiting a patient from getting another medical opinion. This is the major safeguard insuring that a same person is not committed without cause or due to error.

Mr. Hanratty pointed out that in Senate Bill 1044, if the person in interest is not allowed direct access to his records, he is allowed to designate an independent

health professional to review the record. This right is not allowed in House Bill 1287. Mr. Morgan stated that it might be appropriate to amend House Bill 1287 to include such a statement.

Mr. Drea brought up the fact that some hospitals disclose personal information (name, address, medical history) to collection agencies and asked Mr. Morgan if he felt that this was necessary. He replied that insurance companies may have a need to know but added that a collection agency would presumably not need this information. Mr. Drea mentioned that if the patient was sued for nonpayment, some information would be needed to prove that the medical care had been provided. Mr. Morgan added that he could see where some people might need to be reminded about specific information regarding their hospital stay. In any event, Mr. Morgan concluded, any medical information revealed should only be general data.

There were no further questions for Mr. Morgan. Mr. Drea thanked him for coming and providing the Commission with additional information on the implementation of House Bill 1287.

The next report discussed concerned the record-keeping practices of the State Ethics Commission. Mr. Hanratty stated that examination of the State Ethics Commission might allow the Information Practices Commission to develop a standard by which to decide what data should be public information and what should be confidential. He explained that the Ethics Commission requires substantial financial disclosure. Those individuals defined as public officials are required to file a disclosure statement which is a public record. Anyone requesting to see a statement must sign a sheet providing his name and address, date of examination, name of subject, and whether the file was copied or examined. The subject of the record can be notified, upon request, regarding the names of all requestors of his file.

Mr. Clinton asked if members of the Governor's Information Practices Commission should file financial disclosure statements. Discussion ensued on this subject. Mr. Hanratty agreed to check on this issue.

Mr. Hanratty pointed out that the practices of the Ethics Commission might set an example for others. Individuals required to file disclosure statements are informed, when they file, that their records are public information. In response to Mr. Gardner, Mr. Hanratty stated that they are not informed on the form that they can request to be notified if someone inspects their record.

Mr. Hanratty stated that the major question regarding the State Ethics Commission revolved around whether or not this information should be public information. Mr. Heckrotte, who was unable to attend the meeting, had asked Mr. Hanratty to express his opinion that the information should not be collected at all and, if collected, should be accorded a confidential status. Discussion followed on this issue. Commission members in attendence generally felt that there was a definite need for disclosure requirements and that this data should be open for public inspection. Mr. Drea concluded that the issue had really already been decided by the General Assembly.

Mr. Hanratty noted that the draft report suggests that agencies might ask two questions in determining their record-keeping practices: 1) Is there a public interest to be served by the collection or disclosure of the information? and 2) Are the collection or disclosure requirements reasonable? Mr. Hanratty felt that the State Ethics Commission met these guidelines. He expressed the view that these questions could also be used to evaluate other agencies.

The Commission then examined the Workmen's Compensation Commission Report. Mr. Hanratty stated that a considerable amount of sensitive data is collected by Workmen's Compensation Commission. He directed the attention of the members to Page 3 of the report, indicating that the existing statute is rather ambiguous concerning the disclosure of information to third parties. The general practice of the Commission is to allow individuals to examine Commission files. The requestor need not justify his right of access; the requestor also is permitted to peruse the entire file. However, Mr. Hanratty noted, if Workmen's Compensation Commission receives a call from an organization requesting information on several people, the information will not be provided. He added that he did not know what would happen if the organization sent a representative

to the Workmen's Compensation office to examine the files. He felt that they would probably be denied but was not sure upon what basis the denial would be made.

Mr. Hanratty stated that he had two major problems with the Workmen's Compensation Commission. First of all, given the sensitive character of the data collected by the Commission, a good case could be made for assigning such information a confidential status. Second, there did not appear to be a uniform standard used by the Commission to determine who shall be granted access to data. Mr. Hanratty suggested that InformationPractices Commission members consider recommending adjustments in the governing statute. He also felt that as an interim and more immediate measure, the Workmen's Compensation Commission should contact the Attorney General's office requesting an explanation of the statute and then develop appropriate regulations. Mr. Gardner stated that he felt that the need to disclose Workmen's Compensation information should be well defined and relatively narrow. Mr. Hanratty agreed.

Mr. Drea pointed out that the ambiguity of the statute was most probably the cause of this problem. The Public Information Act, he added, didn't exempt the type of records held by Workmen's Compensation. Mr. Hanratty explained that the statute governing the records of the Workmen's Compensation Committee had been in effect since the 1950's but the Commission has not yet requested clarification from the Attorney General. Mr. Tynes pointed out that the State Accident Fund collects data similar to that of the Workmen's Compensation Commission but noted that the data of the Fund is considered to be confidential.

Mr. Hanratty added that it was his impression that the Secretary-Director of Administration of the Workmen's Compensation Commission would have no objection to a statute restricting the availability of Commission information. Mr. Drea suggested that such a statute could be written to allow appropriate access to insurance companies and employers. Senator Hickman felt that any person authorized by the claimant should also be granted the right to examine the record.

Mr. Zee brought up the point that the Workmen's COmpensation Commission operates very much like a court. Court records are public records and he suggested that

perhaps Commission records should not be treated any differently. Mr. Hanratty replied that a differentiation could be made between information such as name and amount awarded, and detailed medical information which may not come out in court. The first type of information could be released while the second type could be maintained as confidential.

The next meeting was scheduled for June 22, 1981. Mr. Drea stated that he would be unable to attend and that Mr. Clinton would be Acting Chairman. Mr. Hanratty asked if there were any objections to sending the reports that had been discussed to the departmental liaisons. The members has no objections.