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EXECUTIVE DEPARTMENT
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DRAFT
Minutes-Governor's Information Practices Commission Meeting of
September 21, 1981.

The meeting of the Governor's Information Practices Commission was held on September 21, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John Clinton, Mr. Robin Zee, Mr. Donald Tynes, Senator Timothy Hickman, and Mr. Albert Gardner.

The Commission approved as official the minutes from the August 17th meeting. The meeting began with Mr. Drea again welcoming Ms. Beatrice Weitzel, Executive Assistant to the Secretary, Department of Health and Mental Hygiene. Ms. Weitzel informed the Commission that over the past week, she had been able to obtain answers to a number of questions raised by Commission members on September 14th.

First of all, she indicated that the licensing boards receive approximately 600 telephone inquiries per month. Because of the volume of requests, notification of the person in interest is impossible. Ms. Weitzel also observed that she had spoken with Mr. Jack C. Tranter, Deputy Counsel for the Department, regarding the variability of record-keeping practices of the licensing boards. Mr. Tranter had told her that plans do not exist at the present time to reconcile these differences. Concerning the data collected on the back of the licensing renewal cards, Ms. Weitzel stated that this information is collected for the benefit of

research and development of the Comprehensive Health Planning Agency. Thus, this data comes under the protection of Article 43, Section 1-I (a). Regarding the housing of computerized juvenile data, at the Data Center of the Department of Public Safety and Correctional Services, Ms. Weitzel noted that this was simply the most logical site in 1968, the time when the decision was made. However, Maryland Automated Juvenile Information System data is now being handled by the Baltimore Utility. Finally, Ms. Weitzel indicated that she had checked with the administrators of the Division of Vital Records and had found that a father does have access to his child's birth certificate, as long as his name appears on the certificate.

Discussion ensued on the access rights of the person in interest and security pertinent to Laboratories Administration information. Ms. Weitzel stated that the person in interest is permitted access to data, but only on the local level. Thus, access is provided by individual physicians and through local clinics. She noted, furthermore, that physicians do inform patients regarding the purposes behind taking specified tests. Information is not of value to others, Ms. Weitzel maintained, because it is technical in nature. Data housed at the Laboratories Administration is kept in locked files, in rooms that are locked.

In response to a question from Senator Hickman, Ms. Weitzel stated that security of registries records of the Preventive Medicine Administration is not as total as that found in the Laboratories Administration. Although files are kept locked, it is not possible to block off the room housing these files. Senator Hickman inquired as to why there appeared to be more security for some computerized records of the Preventive Medicine Administration than for others. Ms. Weitzel stated that the Baltimore Utility only provides the level of security specified by the user.

Mr. Drea noted that the Preventive Medicine Administration did not permit the person in interest to examine, copy or challenge data appearing in a number of record systems. The position of the Administration, he observed, is that such inquiries should be made at the local level. Mr. Drea stated that he could understand why the Administration would prefer that challenges to this data be directed to the physician or clinic responsible for generating the information. However, he could not foresee any problems to the Administration permitting access and copying of pertinent records. Ms. Weitzel agreed to seek an opinion from the Department regarding this matter.

The Commission then turned to a continuation of the draft report examining the record-keeping practices of the Department of Health and Mental Hygiene. Mr. Dennis Hanratty began discussion of the Mental Hygiene Administration by noting the vast number of sensitive documents appearing in the Central Patient Records file. Of some concern to Mr. Hanratty was the Department's use of a manual to guide custodians in the release of patient data. The manual, "Guide to Release of Information From the Medical Record in Psychiatric Facilities", generally contains guidelines rather than regulations, but Mr. Hanratty noted that it appeared that these guidelines were used widely by records administrators in state psychiatric facilities. This last observation was confirmed by Ms. Weitzel.

In Mr. Hanratty's opinion, the terms "non-confidential information" and "confidential information" were not clearly defined in the manual. It was unclear to him whether patients had a right to restrict the release of all data pertaining to them, or only some items. Mr. Hanratty felt that ambiguities in this section of the manual created a serious problem since it is used to make critical determinations regarding the disclosure of patient data.

Mr. Clinton asked Mr. Hanratty if the manual was in any way related to the information presented to the Commission by Mr. Morgan, Director of the Medical Records Department of Anne Arundel General Hospital. Mr. Hanratty stated that the manual and Mr. Morgan's presentation were related. The manual was the joint product of the Department of Health and Mental Hygiene and the Maryland Medical Records Association. Mr. Morgan was representing that Association during his appearance before the Commission. Ms. Weitzel noted that the Association is attempting to update the manual in the light of the passage of House Bill 1287.

Mr. Drea expressed concern over the fact that guidelines are being used as if they were rules and regulations. Mr. Drea noted that these guidelines are being cited by records custodians as the authority that permits them to make important decisions regarding the release of information. Mr. Drea stated, however, that those guidelines have no legal standing. The Secretary of the Department has the statutory authority, Mr. Drea observed, to adopt the manual verbatim in regulatory form. However, he felt that it was improper to use guidelines in place of regulations. Such an action circumvents an important feature of the regulatory process in that the public has no opportunity to comment about proposed regulations.

In response to a question from Mr. Zee, Ms. Weitzel stated that to the best of her knowledge, no challenges had ever been issued to the manual. Ms. Weitzel noted that, in the event that problems did surface, these could be addressed by the Superintendent of the facility, the Attorney General or the Secretary of the Department. Ms. Weitzel stated that medical records custodians are particularly careful regarding the release of personally identifiable data to the media. Senator Hickman observed that much data was available pertinent to the Arthur Goode case a few years back. Weitzel

noted, however, that such information did not come from the Department.

Ms. Weitzel expressed the view that disclosure of confidential medical records information needs to be made on a case-by-case basis. Mr. Drea disagreed with this position, maintaining that such a policy would permit too many inconsistencies across hospitals or even by the same custodian. He felt that this problem could be addressed by the adoption of regulations. Senator Hickman mentioned that he had served a few years ago as a member of the Governor's Task Force on Mental Health Support System. The Task Force, which was chaired by Dr. Stanley Platman, Assistant Secretary for Mental Health, Mental Retardation, Addictions, and Developmental Disabilities, had recommended that firm rules and regulations be established.

Discussion ensued regarding the fact that personally identifiable information can be released to Blue Cross and Blue Shield without written authorization of the patient. This is permitted because Blue Cross applicants agree to release necessary information to the company as a precondition to membership. Commission members asked Ms. Weitzel to explain what type of information is provided to Blue Cross. She indicated that she would check this issue for the Commission.

The Commission then turned its attention to an examination of the Mental Retardation and Developmental Disabilities Administration. As in the case of the Mental Hygiene Administration, patient records maintained by the Mental Retardation and Developmental Disabilities Administration are both sensitive and extensive. However, Mr. Hanratty stated that unlike the situation pertaining to psychiatric records, mental retardation records are governed by a section of the Code which gives both broad access rights to the person in interest and places strict restrictions on the disclosure of personally identifiable information. Mr. Hanratty expressed the view that Article 59A, Section 17 is an excellent part of the Code; he furthermore

felt that the protections found in this section should be applied to other types of patient records as well. In response to a Commission request, Ms. Weitzel agreed to find out the experience of the Department in administering this section. Ms. Weitzel also agreed to inquire about the experience of the Department in dealing with disclosure logs as required by the statute.

Mr. Hanratty stated that although some of the responses of the Chronically Ill and Aging Administration were not very detailed, there did not appear to be substantive problems. He noted in passing that the person in interest can examine, but cannot copy, data from the Tuberculosis Case Register.

Mr. Hanratty stated that he did not have complete confidence in his description of the Eligibility Records maintained by the Medical Case Programs. He noted that COMAR 10.09.01 delineates the procedure to be followed in determining eligibility to Medical assistance programs. In the report, Mr. Hanratty had observed that while determination of eligibility requires the collection of a significant amount of personal data, eligibility decisions are made by the local social service offices rather than by the Department of Health and Mental Hygiene. Thus, the Department of Health and Mental Hygiene maintains little more than directory information in this file. Ms. Weitzel stated that these observations were correct.

Mr. Hanratty noted that virtually all of the records of the Post Mortem Examiner's Office are disclosable under the Public Information Act. The only restriction is that records pertinent to cases not yet completed are not disclosed.

Mr. Hanratty asked Ms. Weitzel's assistance in obtaining additional information regarding the Public Hearings records file. Ms. Weitzel stated that she would do so, and would also gather the necessary data to enable

the Commission to discuss the record-keeping practices of the Office of Central Commitment and the Drug Abuse Administration.

The Commission thanked Ms. Weitzel for her excellent job in compiling the data pertinent to the Department's record system. The next meeting was scheduled for September 28, 1981.