



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

March 7, 2000

Jim Ryan
ATTORNEY GENERAL

FILE NO. 00-007

PUBLIC RECORDS AND INFORMATION:
Intra-Agency Disclosure of
Mental Health Records

The Honorable George Ryan
Governor
State of Illinois
207 State Capitol
Springfield, Illinois 62706

Dear Governor Ryan:

I have a letter from your chief counsel wherein she inquired, on your behalf, whether certain records maintained by the Department of Children and Family Services (DCFS) are subject to the restrictions upon disclosure imposed by the Mental Health and Developmental Disabilities Confidentiality Act (hereinafter referred to as the Confidentiality Act) (740 ILCS 110/1 et seq. (West 1996)), and, if so, whether such records may be disclosed by DCFS child welfare caseworkers to DCFS's Division of Child Protection in connection with investigations of abuse or neglect. For the reasons hereinafter stated, it is my opinion that written reports generated by therapists or treatment facilities providing

The Honorable George Ryan - 2.

mental health or developmental disability services to DCFS clients, and notes prepared by a child welfare caseworker reporting on information given to the caseworker by a therapist or treatment facility providing mental health or developmental disability services to a client, are "records", within the purview of the Confidentiality Act, and are subject to its restrictions upon disclosure. A child welfare caseworker's notes on observations of a client or the caseworker's recommendations or actions in referring the client to a therapist or treatment facility, however, are not "records", for purposes of the Act. Further, it is my opinion that the sharing of mental health records between administrative divisions of DCFS does not constitute the disclosure of those records, as limited by the provisions of the Confidentiality Act.

Section 2 of the Confidentiality Act (740 ILCS 110/2 (West 1997 Supp.)) defines the terms "record" and "therapist" as follows:

" * * *

'Record' means any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided.
* * *

* * *

The Honorable George Ryan - 3.

'Therapist' means a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services or any other person not prohibited by law from providing such services or from holding himself out as a therapist if the recipient reasonably believes that such person is permitted to do so. Therapist includes any successor of the therapist."

Section 3 of the Confidentiality Act (740 ILCS 110/3 (West 1996)) provides that "records" are confidential and may not be disclosed except in accordance with the provisions of the Act. Section 4 of the Act (740 ILCS 110/4 (West 1996)) provides for disclosure of records to a recipient and his or her parent or guardian. Section 4 does not specifically prohibit the re-disclosure of records obtained thereunder. Section 5 of the Act (740 ILCS 110/5 (West 1996) as amended by Public Act 90-655, effective July 30, 1998) permits the disclosure of records to third parties upon the written consent of the recipient or his or her parent or guardian, as the case may be. Section 5 generally prohibits re-disclosure by persons who receive records based upon the consent of another.

The materials received with respect to this inquiry indicate that records maintained by DCFS may include information provided to DCFS by therapists or treatment facilities in the course of providing mental health or developmental disability

The Honorable George Ryan - 4.

services to DCFS clients. The first issue concerns whether the Confidentiality Act is applicable to DCFS records that include a written report or other written record generated by a therapist or treatment facility providing mental health or developmental disability services to DCFS clients.

A written report of a therapist is clearly a "record" kept by a therapist or by an agency in the course of providing mental health or developmental disabilities services to a recipient concerning the services provided, within the purview of the Confidentiality Act. In the event that DCFS has acquired the report pursuant to section 4 of the Act as the legal guardian of a child under the age of 12, there is nothing in the Confidentiality Act which prohibits DCFS from re-disclosing that report in accordance with its internal policies or rules. If DCFS has acquired the report pursuant to section 5 of the Act, by consent of the recipient of services or the recipient's parent or guardian, however, then the report may be re-disclosed only with the further consent of that recipient or his or her parent or guardian.

A similar conclusion appertains to records consisting of notes by child welfare caseworkers reporting on information provided to the caseworker by a therapist or treatment facility providing mental health or developmental disabilities services to

The Honorable George Ryan - 5.

a DCFS client. These records differ from those discussed above only because the caseworker has received a verbal report from the therapist, rather than a written report, which he or she has recorded. Whether transcribed by the therapist or the caseworker, the report constitutes a record made by a therapist, is therefore within the purview of the Confidentiality Act and should, in my opinion, be subject to the same disclosure limitations as other records.

With respect to whether the Confidentiality Act applies to DCFS records that consist of notes or other information regarding a child welfare caseworker's observations of a DCFS client's mental health or developmental disability condition, or the child welfare caseworker's recommendation or actions in referring the client to a therapist or treatment facility for mental health or developmental disabilities services, the mere fact that a person may possess some knowledge of another's mental health status or treatment does not make that person a therapist or bring the information within the purview of the Confidentiality Act. Thus, in Suarez v. Pierard (1996), 278 Ill. App. 3d 767, it was held that a pharmacist who dispensed drugs prescribed by the plaintiff's physician was not a "therapist", for purposes of the Act, and was not providing mental health services. It has also been held that alcoholism treatment does not constitute

The Honorable George Ryan - 6.

mental health treatment, for purposes of the Act. Maxwell v. Hobart Corporation (1991), 216 Ill. App. 3d 108, 111.

Child welfare caseworkers would not ordinarily be included in the class of "psychiatrists, physicians, psychologists, social workers or nurses who provide mental health or developmental disabilities services", or persons otherwise holding themselves out as therapists. According to the information provided, these caseworkers have primarily administrative responsibilities, collecting information and making referrals or arranging for services needed by clients. They are not necessarily trained or qualified to provide therapy. Consequently, the notes and observations of these caseworkers would not constitute records kept by a therapist or agency in the course of providing mental health or developmental disabilities services to a recipient. It is my opinion, therefore, that caseworker's notes or observations do not constitute mental health records, for purposes of the Confidentiality Act, and may be disclosed in accordance with the rules applying to other information obtained by DCFS.

The question of whether the forwarding of records protected by the Confidentiality Act from one division of DCFS to the Division of Child Protection is a "disclosure", which is subject to the restrictions of the Confidentiality Act, has also

The Honorable George Ryan - 7.

been raised. The Act does not address such intra-agency sharing of information. It does, however, address interagency disclosures.

Section 7.1 of the Confidentiality Act (740 ILCS 110/7.1 (West 1996) as amended by Public Act 90-608, effective June 30, 1998) provides for disclosures between agencies or departments of the State, based upon interagency agreements, for the purpose of jointly providing or coordinating the provision of or funding of mental health or developmental disabilities services. The information covered by section 7.1 is limited, and does not include disclosure of individual clinical or treatment records. Section 9.2 of the Act (740 ILCS 110/9.2 (West 1996)) provides for disclosure of recipient information for the purposes of continuity of care between the Department of Human Services and community agencies funded by the Department. Disclosures may be made for the purposes of admission, treatment, planning or discharge, and agencies may not re-disclose personally identifiable information, except for those purposes.

The Division of Child Protection, however, is not an independent State agency. It is a unit within DCFS formed pursuant to section 7.2 of the Abused and Neglected Child Reporting Act (325 ILCS 5/7.2 (West 1996)). While the special unit is required to perform functions assigned by that Act, and to

The Honorable George Ryan - 8.

maximize continuity of responsibility, care and service, the Act clearly states that the Department remains solely responsible for receiving and investigating reports of child abuse or neglect made under the Act, except where criminal investigations are warranted. (325 ILCS 5/7.3 (West 1996).) The Division of Child Protection is merely the administrative subdivision of DCFS through which it carries out these functions.

The General Assembly, in enacting the Confidentiality Act, anticipated the need for special arrangements to be made for the sharing of information between separate agencies. Evidently, however, the General Assembly did not foresee any need for specific authority for the sharing of information among various divisions or bureaus of the same agency. In fact, when the Act was amended by Public Act 89-507, effective July 1, 1997, which created the Department of Human Services, references in section 7.1 to the Department of Alcoholism and Substance Abuse and the Department of Rehabilitation Services were deleted. Because those former agencies, along with the former Department of Mental Health and Developmental Disabilities, are now part of the Department of Human Services, the interagency agreement requirement for the sharing of information under section 7.1 of the Confidentiality Act is no longer applicable to them. Presumably, the General Assembly believed that information held by one part

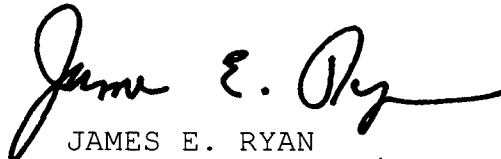
The Honorable George Ryan - 9.

of the new agency would be available to the other parts of that agency, without the necessity for consents or agreements.

Similarly, in my opinion, mental health records held by one division or bureau of DCFS may be made available to other divisions or bureaus of the Department without the necessity of obtaining the consent of the subject of those records.

Because it is my opinion that mental health records held by other divisions of DCFS may be shared with the Division of Child Protection without the consent of the subject of those records, no response is necessary to the further questions posed in your correspondence concerning the scope of the exception in section 11 of the Confidentiality Act (740 ILCS 110/11 (West 1997 Supp.)) permitting disclosures related to the Abused and Neglected Child Reporting Act and the form release currently in use by DCFS.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Ryan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

JAMES E. RYAN
ATTORNEY GENERAL