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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



HUMAN RESOURCES
DIVISION

B-133044

AUG 8 1976

BEST DOCUMENT AVAILABLE

The Honorable Richard L. Roudebush
Administrator of Veterans Affairs
Veterans Administration

Dear Mr. Roudebush:

During a review of the Department of Health, Education, and Welfare's (HEW) system for developing and promulgating regulations, we identified an instance where the Veterans Administration (VA) is not in compliance with a legislatively-mandated time limit for the promulgation of regulations regarding the confidentiality of patient records in alcohol treatment and drug abuse programs. In the absence of its own regulations, VA is currently applying regulations on the confidentiality of patient records prescribed by the Secretary, HEW.

Although we did not determine what effect the use of the HEW regulations might have on VA alcohol treatment and drug abuse programs, the HEW regulations are not consistent with certain VA policies and requirements.

TIME LIMITS LEGISLATIVELY
MANDATED

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act Amendments of 1974 (P.L. 93-282) require the Administrator of Veterans Affairs, through the Chief Medical Director, to prescribe regulations under title 38, United States Code, making applicable to VA the HEW regulations on the confidentiality of patient records. In addition, the Administrator is required to submit to the appropriate committees of the House of Representatives and the Senate a full report on the regulations prescribed, including an

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explanation for any inconsistencies with the HEW regulations and the extent, substance, and results of coordination with the Secretary, HEW. The Administrator is required to submit the report not later than 60 days after the effective date of the HEW regulations and publish the report in the Federal Register.

The HEW regulations were effective on August 1, 1975. VA, therefore, should have submitted the report, including the prescribed regulations, to the House and Senate committees by October 1, 1975.

HEW REGULATIONS
BEING FOLLOWED BY VA

In an agencywide memorandum dated August 14, 1975, the Administrator of Veterans Affairs stated that, although VA was responsible for issuing its own regulations, the published HEW regulations would be followed until such time as the VA regulations are promulgated. The memorandum also identified certain provisions of the HEW regulations which were inconsistent with VA requirements and needed revision.

An attorney in VA's Office of General Counsel informed us that VA has neither analyzed the HEW regulations in depth nor compared them in detail to its own requirements. Thus, the extent of inconsistency is not known. However, the attorney identified the following problem areas:

- The HEW regulations separate the alcohol treatment and drug abuse programs from the other activities of an agency or department. Thus, an agency official who is not assigned to an alcohol treatment or drug abuse program has to obtain a patient's written consent even if the patient's record is to be used within the agency. VA, on the other hand, considers any program to be an integral part of the agency. Accordingly, a patient's written consent need not be obtained if the records are to be used within VA.

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--VA allows service organizations, such as the Veterans of Foreign Wars, the American Legion, and the American Red Cross, direct access to patient records, if they have power of attorney. HEW does not recognize the power of attorney as including patient consent for access to his records. Therefore, the HEW regulations require organizations of this type to obtain a patient's specific written consent authorizing access to his records.

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--Except in the case of a discontinued program, the HEW regulations leave the determination of when to destroy patient records to officials of an individual alcohol or drug abuse program. VA has agencywide regulations regarding records retention.

RESPONSIBILITY FOR DEVELOPMENT
OF VA REGULATIONS HAS NOT
BEEN DELEGATED

As of July 1976, VA had not submitted the required report to Congress nor published its own regulations. Because the Chief Medical Director had not delegated responsibility for development of the regulations or preparation of the report, these responsibilities had been assumed by an attorney in VA's Office of the General Counsel. This attorney retired in December 1975 and neither the General Counsel nor the Chief Medical Director have taken any subsequent action.

CONCLUSION

VA has not promulgated the regulations nor the report required by the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974. In addition, VA has, for over 11 months, followed regulations which are not consistent with VA requirements and policies.

RECOMMENDATION TO THE ADMINISTRATOR

We recommend that VA promulgate the required regulations regarding the confidentiality of patient records, submit to the appropriate committees of the House of Representatives and Senate the mandated report, and publish such report in the Federal Register.

We also recommend that VA review and evaluate its procedures and take the effective measures necessary to insure that in the future, legislatively-mandated regulations are promulgated in a timely manner.

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As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Chairmen of the following committees: House and Senate Committees on Appropriations; Veterans' Affairs; Government Operations; House Committee on Interstate and Foreign Commerce; and the Senate Committee on Labor and Public Welfare. A copy is also being sent to the Director, Office of Management and Budget.

Sincerely yours,


Gregory J. Ahart
Director