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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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IN REPLY
REFER TO:

B-157275

[Comments

JUN 15 1979

The Honorable Abraham A. Ribicoff
Chairman, Committee on Governmental
Affairs SEN060600
United States Senate

Dear Mr. Chairman:

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This is in response to your March 22, 1979, request for our views regarding the provisions of S.503, 96th Congress, and any recommendations which we may have concerning possible Committee action. The bill, if enacted, would amend the Privacy Act of 1974 to provide for the confidentiality of medical records, and for other purposes.

The bill would not authorize service providers or their employees to disclose information regarding whether an individual is a patient. Therefore, family, relatives, or friends contacting a service provider could not be told that the individual is a patient at the facility, the individual's condition, or the individual's location in the facility. We believe this would have a substantial negative impact on the public. We believe, therefore, that the bill should authorize disclosure of information that an individual is a patient, the patient's general condition, and where the patient is located, providing the patient does not specifically object to such disclosure. In addition, should this provision be added to the bill, we believe the record of disclosure stipulated in subsection 205(c) should not be required for this type of disclosure because of the time involved and the paperwork burden to the service provider.

We are aware of instances where service providers contract for the typing of medical records which contain confidential information. However, it appears that contracting for services of this type would be precluded under the bill. If it is intended that such contracting should be continued, the bill should be modified to authorize release of confidential information to contractors.

Section 210(a) states that nothing in this title prohibits the disclosure of any confidential information which is not identified with or identifiable as being derived from

MCR-79-1076

Letter
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the health care records of a particular patient or former patient. In our opinion, this section could be interpreted in two different ways--(1) confidential information can be disclosed in a form which does not identify the patient or (2) confidential information can be disclosed, including the identity of the patient, as long as it does not show that it came from a health care record. Since the meaning is no doubt the former, we suggest that lines 11 and 12 on page 28 be changed to read "with or identifiable with a particular patient or former patient."

Sections 207 and 209 of the bill specifically delineate procedures and establish criteria which law enforcement agencies must follow when requesting confidential medical records from a health service provider. Section 211 of the bill, however, exempts certain agencies from these requirements. It reads as follows:

> "Nothing in this title***shall apply to the production and disclosure of confidential information pursuant to requests from a Government authority authorized to conduct foreign counterintelligence or foreign positive-intelligence activities for purposes of conducting such activities."

The modifier "for purposes of conducting such activities" could refer only to foreign positive-intelligence activities or it could refer to both types. It is unclear, therefore, whether section 211 is intended to exempt foreign counterintelligence agencies from the requirements of sections 207 and 209 for all of their activities or only when conducting counterintelligence activities; as written, section 211 may serve to totally exempt the FBI, CIA, DIA, and NSA from complying with the bill's requirements during any of their operations. We believe this could be clarified by changing lines 5 and 6, page 30, of the bill to read "(A) a Government authority authorized to conduct foreign counter-or positive-."

Section 210(f) provides that the entire bill does not apply when confidential information is sought by the General Accounting Office (GAO) pursuant to an authorized proceeding, investigation, or audit directed at a government authority. We believe the phrase "directed at a government authority" may be too restrictive. For example, if GAO should wish to pursue an authorized audit directed at an entity other than a government authority, such as a Federal contractor, it appears that GAO may have difficulty proving the bill does not apply.

Even if it was determined that the bill applies, GAO could obtain confidential information without authorization for purposes of audit and evaluation under section 206(b)(3), subject to the provisions of sections 206(e) and (f). Since specific authority for GAO to obtain confidential information is provided in section 210(f) of the bill, we do not believe it is intended that GAO get its authority from another section of the bill--206(b)(3)--when an audit is directed at other than a government authority. We suggest, therefore, that the words "directed at a government authority" in section 210(f) be deleted.

S.503 contains a number of provisions that have the potential for creating a substantial paperwork burden on the public--principally patients and service providers. The bill would affect thousands of "service providers" as defined in section 202(6), and numerous patients or former patients. The bill's provisions which have the potential for creating the most paperwork burden are:

1. Section 203 which establishes the basic policy for patients' access and correction to their medical records.

2. Section 205 which sets forth policy on how a patient authorizes disclosure of the confidential medical information and establishes recordkeeping requirements on service providers for patient authorization records.

3. Sections 207 through 209 which establish judicial policy on disclosure of patients' medical records.

4. Section 213 which establishes detailed requirements for notifying patients of disclosure of information without their authorization.

5. Section 216(c) which authorizes the withholding of certain Federal funding unless a service provider provides adequate assurances and evidence of substantial compliance with the bill's provisions.

Furthermore, there are other provisions which authorize the Secretary, HEW, to establish rules and regulations as he sees fit to implement the bill's requirements which could

also have paperwork implications but, at this time, are not measurable.

We recognize that the increased privacy for the individual provided for by S.503 probably is perceived as outweighing the paperwork costs associated with it. Nevertheless, those costs seem likely to be substantial and, whether clearly identifiable or not, ultimately will have to be paid by consumers and taxpayers.

We would suggest that the Committee request comments from HEW on potential paperwork costs associated with S.503 and explore alternative ways to achieve the bill's objectives. Perhaps there are none, but we believe the issue should be raised.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States