

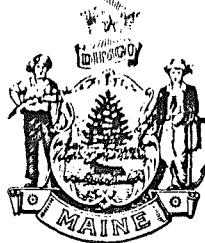
# MAINE STATE LEGISLATURE

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Mental Health Agency -  
Confidentiality of records  
34 M.R.S.A. § 1  
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TO: David H. Brenerman, State Representative, Dist. 21-2  
Maine Legislature, State House, Augusta, Maine

FROM: Richard F. Howard, Assistant Attorney General

DATE: 31 January 1979

SUBJECT: Confidentiality of Mental Health Agency Records

FACTS:

The Department of Mental Health and Corrections contracts with the Area V Mental Health Board to fund and coordinate mental health services provided by a number of agencies licensed by the Department pursuant to 34 M.R.S.A. §2052-A. The Board has developed an information system for gathering client data from all the mental health agencies operating in the area. The data would be coded by a method designed to prevent the Board from identifying the client, but to allow the Board to calculate how many and what type of services are utilized by individual clients. The agency providing particular data would be indicated and the Board would not disclose that data to other agencies. 1/

You have expressed concern about violation of state statutes protecting the confidentiality of client records and have asked the following questions:

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1/ You indicate concern about agencies breaking the code of other agencies. As described by the Director of the Area V Board, this will not be possible because the data will be shared only with the providing agency.

QUESTIONS:

1. May a facility licensed by the Department of Mental Health and Corrections pursuant to Title 34 M.R.S.A. 2052-A disclose medical and administrative records, applications or reports and facts therein pertaining to any person receiving services from such facility to an area mental health board, without the consent of the subject to such records or a court order and still comply with the provisions of Title 34 M.R.S.A. §1-B?
2. If so, does the present proposal for the collection of such data by the Area V Mental Health Board come within the ambit of Title 34 M.R.S.A. 1-B(2), making disclosure of such information by a 2052-A agency to Area V Mental Health Board permissible?
3. In the event such records may be transmitted to the Area V Mental Health Board, must all identifying data first be removed from the records in order for the 2052-A agency to fulfill the requirements of Title 34 M.R.S.A. 1-C(2), or are such requirements inapplicable under such circumstances.
4. Is there any Maine law which prohibits or restricts the transfer of information such as that described in paragraph 1 hereof from a 2052-A agency to the Department of Mental Health and Corrections or an Area Mental Health Board.

ANSWERS:

1. Yes.
2. Yes.
3. Coded data may be transmitted to the Area V Board.
4. No.

REASONING:

As you correctly point out, the confidentiality of community mental health agency records is governed by 34 M.R.S.A. §1-B and §1-C. The principal exceptions to non-disclosure of client records are:

- "1. Consent of individual. As the individual identified or his legal guardian, if any, or, if he is a minor,

his parent or legal guardian, having been given the opportunity to review the information sought to be disclosed shall give his informed written consent;

2. Necessity. As disclosure may be necessary to carry out any of the statutory functions of the department, or the hospitalization provisions of chapter 191; or

3. Court directive. As may be ordered by a court of record subject to any limitations contained within the privileged communication provision of Title 32."

As discussed in earlier opinions of this office, (Opinion from Courtland Perry to Roy Ettlenger, Superintendent, Augusta Mental Health Institute, December 1, 1975; Opinion from Richard Howard to Garrell Mullaney, Superintendent, Augusta Mental Health Institute, September 6, 1978) subsection 2 represents a legislative recognition of an integrated mental health service system, requiring exchange of data between cooperating agencies. The requirement of integrated services is reiterated by the enactment of Chapter 183 of Title 34, Community Mental Health Services, which provides for community mental health services through the cooperative effort of the Department of Mental Health and Corrections and agencies licensed by the Department, 34 M.R.S.A. §2051-2052-A.

Subsection 2 of 34 M.R.S.A. §1-B provides that client records of licensed agencies may be disclosed as necessary to carry out the statutory duties of the Department. Although the details of the intended use of the data by the Area V Board have not been provided, it would appear that disclosure in this case is necessary to carry out the statutory duty of the Department to "provide mental health services throughout the state" and to adopt standards for administration of community mental health services, 34 M.R.S.A. §2052. The gathering and analysis of data on the use of services

for planning purposes would also appear to be necessary for the Bureau of Mental Health, a part of the Department, to carry out its statutory responsibility to guide community mental health programs in the State, 34 M.R.S.A. §2001.

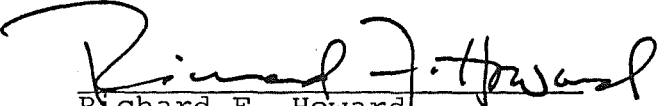
The only other provision which must be analyzed to fully consider the limitations on disclosure is 34 M.R.S.A. §1-C, Access to a transfer of information. Subsection 2 provides that mental health facilities must transmit coded data to the Department for "administration, planning and research" purposes. It also prohibits the Department from releasing the data to other agencies with information which would lead to a client's identification. Since the Department has delegated regional administration, planning, research, as well as funding functions to Area V Board, we read sections 1-B and 1-C together to allow the Area V Board to receive the necessary data in the same manner that the Department would. The section 1-C prohibitions on dissemination of identifiable data would also apply to the Board.

The Mental Health Board's proposal for collection of data does appear to come within the ambit of 34 M.R.S.A. §1-B and 1-C. As described by the Board, the proposal calls for collection of data with a coding system which will allow the Board to pick up use of more than one mental health service by an individual, but not to identify the individual. Furthermore, only the Board will have direct access to the data and will reproduce the data only for the agency which provided it. This system would meet the statutory requirement of allowing disclosure only to the extent

necessary to accomplish planning and coordination by the Board without disclosure to the Board or other agencies. For this reason, the agencies in Area V may transmit data to the Board with the requested coding which allows the discovery of use of multiple services by unidentifiable clients.

After review of the Maine statutes, we have found only one other possible limitation to distribution of the data in question. The Juvenile Code at 15 M.R.S.A. §3308 prohibits inspection of "records of the juvenile proceedings" and subsection 5 includes in the prohibition "all other reports of social or clinical studies." We have found no legislative history on this provision but would interpret it to prevent disclosure, without the consent of the judge, of an actual report prepared by a section 2052-A agency for the juvenile court. Such a prohibition would still allow for reporting the contact with the client to the Area V Board.

I hope this response is helpful.

  
Richard F. Howard  
Assistant Attorney General

RFH/vv