

Official Opinion No. 80-40, Confidentiality of Records of Human Services Center and Access to the Records by Mental Health Centers

July 17, 1980

Mr. James Ellenbecker
Secretary
Department of Social Services
Kneip Building
Pierre, South Dakota 57501

Official Opinion No. 80-40

Confidentiality of Records of Human Services Center and Access to the Records by Mental Health Centers

Dear Secretary Ellenbecker:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

The Office of Mental Health of the Department of Social Services is charged with the obligation of developing, adopting, approving, and administering a coordinated effort in the field of mental health in South Dakota, including cooperation with all governmental departments (SDCL 27A-3-2, 27A-3-5). Part of this effort is to establish standards for the operation and funding of community mental health centers in the State. The Department has adopted ARSD 67:20:01:05, which states, in pertinent part:

A mental health center shall provide at least the following minimum services: . . . to followup care for residents of the assigned service area who have been dismissed from the South Dakota human services center; (See 42 USCA 2689(b)(1)(A)(iii).

To perform this required service, the several mental health centers in the State have liaison staff to work directly with such patients to prepare them for the return to their home and community. In order for the liaison workers to properly perform this function, it is essential that they have a good working relationship with the staff of the Human Services Center.

The administration of the Human Services Center has raised a question as to whether they can, under their confidentiality statutes, release patient records to the mental health center liaison workers. The confidentiality statutes are found at SDCL 27A-12-26 through 27A-12-32, both inclusive.

Based on the above facts, you have asked the following questions:

QUESTIONS:

1. Does SDCL 27A-4-14 mandate the administrator of the Human Services Center to furnish the records of the Center to the liaison worker from a mental health center when a patient is released from the Human Services Center to return to his community?
2. Does SDCL 27A-12-27(4) require the release of records of patients to liaison workers to enable the mental health center to comply with the requirements of ARSD 67:20:01:05?
3. Are the functions performed by the liaison workers and the community mental health centers for released patients of the Human Services Center 'benefits' under SDCL 27A-12-29(1) so as to authorize the Human Services Center, as the holder of the patient's record, to disclose the records to the liaison workers?

IN RE QUESTION NO. 1:

SDCL 27A-4-14 provides:

Any person committed to the South Dakota human services center may be transferred to the care of . . . the mental health center designated as the service center for the county in which the commitment proceeding originated if, in the judgment of the administrator of the human services center, such person would benefit from treatment received there. The administrator of the human services center shall furnish all appropriate information concerning such patient to the mental health center, veterans' hospital or private facility. All charges for treatment at the mental health center shall be in accordance with the procedures of chapter 27A-9.

SDCL 27A-4-14, in my opinion, mandates the Administrator of the Human Services Center to furnish the records of the Center to mental health centers of transfer patients only and does not include discharged patients who will seek help in readjusting to the community. The statute mentions only transfer patients, meaning those

still under care, which Human Services Center administrators say run roughly from 10 to 12 patients a year. This limitation to transfer patients only would seem to be consistent with the content of SDCL 27A-9 to which SDCL 27A-4-14 refers.

IN RE QUESTION NO. 2:

SDCL 27A-12-27 provides:

When requested, information shall be disclosed:

. . .

(4) When necessary in order to comply with another provision of law;

. . .

In my opinion SDCL 27A-12-27(4) would not require the release of patients' records to liaison workers, but in light of the responsibility of workers and mental health centers to provide followup care, the records are necessary in order to comply with ARSD 67:20:01:05 and 42 U.S.C.A. § 2689(b)(1)(A)(iii).

It is uncontroverted by the Department of Social Services and the Human Services Center that the records are necessary for the liaison workers to do their job. However, SDCL 27A-14-27(4) is not without limitation. While it is desirable that mental health centers comply with federal requirements to meet their obligations, it is also a necessity that the Human Services Center comply with the requirements of the United States Department of Health, Education and Welfare with regard to alcohol and drug patients within the Center. Federal regulations maintain strict confidentiality over the records of these patients and in almost no circumstance short of medical emergency will these records be disclosed to anyone without consent of the patient. 40 Federal Register 27805 (1975) (to be codified in 42 CFR Part 2). Therefore, while SDCL 27A-12-27(4) may mandate the disclosure of records when necessary for mental illness patients without their consent, written consent is required for alcohol and drug patients.

IN RE QUESTION NO. 3:

SDCL 27A-12-29 provides in part:

Information may be disclosed in the discretion of the holder of the record:

(1) As necessary in order for the recipient to apply or receive benefits;

...

It is my opinion that the functions performed by liaison workers and mental health centers could be considered 'benefits' under SDCL 27A-12-20(1), broadly construed. However, the statute is again limited by the federal regulations to mental illness patients.

The same restrictions on disclosure of alcohol and drug patient records explained in the answer to question number 2 would be applicable, since 'No state law, may either authorize or compel any disclosure prohibited by this part' (42 CFR Part 2). 40 Federal Register 27810 (1975) (to be codified in 42 CFR § 2.23).

Respectfully submitted,

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Attorney General