BENCHMEMO: In re Grand Jury Subpoena, 87-00012-A-R

Judge, the Government is seeking Robert Lee Small's medical records which are held by Richmond Metropolitian Hospital and St. John's Hospital. The government suspects that Small was or is enrolled in a drug rehabilitation program. The hospitals have sought to quash the supoena on grounds that the records are protected under 42 U.S.C. §290ee-(3) and 42 C.F.R. §2.65. I believe the Government has satisfied all but one of the conditions established by the statute. I believe the Court should hold off signing the proposed order for only defendant Richmond Metropolitian Hospital until the Government demonstrates that the information is not otherwise available. St. John's Hospital plans on sending an order similar to the one attached.

Facts

Special Agent Irwin Moran has attested to the following facts in a sealed affidavit. Robert Small and Heath Vernon Green each purchased fifteen (15) Intratec 9 mm semi-automatic pistols on October 16, 1987. They completed the requisite purchase forms. On October 19, 1987, the Government interviewed Green about his purchase. Green stated that cocaine traffickers had supplied the money for all thirty (30) guns, and that Small and he had turned the guns over to them. Green stated that the did not know the names of the cocaine traffickers but that he would cooperate with the Government. He also stated that Small was a cocaine addict and that he believed the guns were destined for the black market

in New York. On October 30, 1987 Green's body was found with three gun shots to the head.

The investigation to date has revealed that Green's real name is James Reginald White and that he was allegedly killed by cocaine traffickers to ensure that he would not cooperate with the authorities. Also one of the thrity guns was used in an armed robbery in Richmond.

The Government wants the hospital records to prove that Robert Small was addicted to, and an unlawful user of cocaine, at the time he purchased the fifteen pistols. This would constite a violation of Title 18, U.S.C. Sections 922(a)(6) and 922(g)(3) of the Federal Gun Control Act of 1968. Armed with an indictment and a successful prosecution, the Government believes that it can force Small to assist them in apprehending and prosecuting these cocaine traffickers.

Discussion

Title 42, U.S.C., section 290ee-3(b)(2)(C) provides that the medical records the Government seeks are protected unless disclosure is

> authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services...

42 C.F.R. §2.65(d) provides additional guidelines in addition to the balancing test to be used by the court. That section provides:

> A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:
>
> (1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury...
>
> (2) There is a reasonable likelihood thatthe records will disclose information of substantial value in the investigation or prosecution.
>
> (3) Other ways of obtaining the information are not available or would not be effective.
>
> (4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for disclosure.
>
> (5) If the applicant is a person performing a law enforcement function that: (i) the person holding the records has been afforded the opportunity to be represented by counsel...

Federal Register, Vol. 52, No. 110 at 21813 (June 9, 1987)

(1) The crime is a firearms violation which considered in a vacuum is not an "extremely serious crime." However, the alleged violation resulted in firearms being distributed to drug traffickers to be sold on the black market and to be used in perpetration of their crimes. One gun from this violation has been used in an armed robbery and another possibility used in a murder. Considering the consequences of Small's alleged crime, I believe it satisfies the "extremely serious" prong of the test.

(2) The records requested from Richmond Metropolitian Hospital are from 1984. They of course are not directly helpful in establishing that Small was a drug addict in October 1987. They may be probative to show that he had been a drug addict and

it was a reoccurring problem. Hence the information in these records could be of "substantial value." The records from St. John's purportedly reflect that Small was a patient in October. Undoubtedly the records, if they exist, would be of "substantial value" in the prosecution of Small for firearms violations.

(3) I don't believe the Government has made a convincing showing that the information is not available through some other effective way. Moran's affidavit states that the Government has interviewed Small's mother and that she confirms that Small has a cocaine problem. It resulted in him being fired from Philip Morris. She claims, however, she has no knowledge of his whereabouts. George Metcalf, in his moving papers, states "That no other means are available to the Grand Jury and/or the United States to establish the drug addiction of the defendant." You could accept George's word as an officer of the court and move on to the next prong of the test or ask George to produce futher evidence of a failed investigation.

(4) I believe under the balancing test, the public interest wins. This entire process is kept under seal. Hence the use of the records to prosecute will only become public if the Government uses them at trial. Small will be hurt as will the patient-physician relationship only if he is told of the disclosure. The hospital is not really putting up much of a fight, and I infer from this that it does not believe that the program will be hurt by disclosure. Moreover, the public interest is weighty. A successful prosecution of Small could be

the first link to busting a cocaine trafficking ring and solving a murder case.

(5) The hospitals are represented by counsel.

Therefore, if you feel that the Government has satisfied its burden of showing that there is no other available means for getting this information, you should sign the proposed order. If you don't think the Government has fulfilled its burden, you should order an evidentiary hearing before December 21, 1987. I favor the latter to make sure the Court covers all the bases.

JLW

or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 2.66 may authorize disclosure and use of records to investigate or prosecute qualified personnel holding the records.

§ 2.63 Confidential communications.

(a) A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

§ 2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application mst use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of these regulations) to disclosure or the court has ordered the record of the proceeding sealed from public scrunity.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order.

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

§ 2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records to criminally investigate or prosecute a patient may be applied for by the person holding the records or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 2.66 is sought with an order under this section, the person holding the records must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a person performing a law enforcement function.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within Federal, State, or local government has in fact been

(1) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;
(2) The name of the individual making the disclosure;
(3) The date and time of the disclosure; and
(4) The nature of the emergency (or error, if the report was to FDA).

(Approved by the Office of Management and Budget under Control No. 0930–0099.)

§ 2.52 Research activities.

(a) Patient identifying information may be disclosed for the purpose of conducting scientific research if the program director makes a determination that the recipient of the patient identifying information:
(1) Is qualified to conduct the research; and
(2) Has a research protocol under which the patient identifying information:
(i) Will be maintained in accordance with the security requirements of § 2.16 of these regulations (or more stringent requirements); and
(ii) Will not be redisclosed except as permitted under paragraph (b) of this section.

(b) A person conducting research may disclose patient identifying information obtained under paragraph (a) of this section only back to the program from which that information was obtained and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

§ 2.53 Audit and evaluation activities.

(a) *Records not copied or removed.* If patient records are not copied or removed, patient identifying information may be disclosed in the course of a review of records on program premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and who:
(1) Performs the audit or evaluation activity on behalf of:
(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or
(ii) Any private person which provides financial assistance to the program, which is a third party payer covering patients in the program, or which is a peer review organization performing a utilization or quality control review; or
(2) Is determined by the program director to be qualified to conduct the audit or evaluation activities.

(b) *Copying or removal of records.* Records containing patient identifying information may be copied or removed from program premises by any person who:
(1) Agrees in writing to:
(i) Maintain the patient identifying information in accordance with the security requirements provided in § 2.16 of these regulations (or more stringent requirements);
(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and
(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section; and
(2) Performs the audit or evaluation activity on behalf of:
(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or
(ii) Any private person which provides financial assistance to the program, which is a third part payer covering patients in the program, or which is a peer review organization performing a utilization or quality control review.

(c) *Medicare or Medicaid audit or evaluation.* (1) For purposes of Medicare or Medicaid audit or evaluation under this section, audit or evaluation includes a civil or administrative investigation of the program by any Federal, State, or local agency responsible for oversight of the Medicare or Medicaid program and includes administrative enforcement, against the program by the agency, of any remedy authorized by law to be imposed as a result of the findings of the investigation.

(2) Consistent with the definition of program in § 2.11, program includes an employee of, or provider of medical services under, the program when the employee or provider is the subject of a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section.

(3) If a disclosure to a person is authorized under this section for a Medicare or Medicaid audit or evaluation, including a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section, then a peer review organization which obtains the information under paragraph (a) or (b) may disclose the information to that person but only for purposes of Medicare or Medicaid audit or evaluation.

(4) The provisions of this paragraph do not authorize the agency, the program, or any other person to disclose or use patient identifying information obtained during the audit or evaluation for any purposes other than those necessary to complete the Medicare or Medicaid audit or evaluation activity as specified in this paragraph.

(d) *Limitations on disclosure and use.* Except as provided in paragraph (c) of this section, patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under § 2.66 of these regulations.

Subpart E—Court Orders Authorizing Disclosure And Use

§ 2.61 Legal effect of order.

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290ee–3, 42 U.S.C. 290dd–3 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under these regulations.

(b) *Examples.* (1) A person holding records subject to these regulations receives a subpoena for those records: a response to the subpoena is not permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations.

(2) An authorizing court order is entered under these regulations, but the person authorized does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restricitons of these regulations.

§ 2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under these regulations may not authorize qualified personnel, who have received patient identifying information without consent for the purpose of conducting research, audit or evaluation, to disclose that information

represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment on only that public interest and need found by the court.

§ 2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a program or the person holding the records.

(a) *Application.* (1) An order authorizing the disclosure or use of patient records to criminally or administratively investigate or prosecute a program or the person holding the records (or employees or agents of that program or person) may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a program or the person holding the records (or agents or employees of the program or person) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 2.31 of these regulations) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to the program, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of § 2.64 of these regulations.

(d) *Limitations on disclosure and use of patient identifying information:* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 2.65 of these regulations.

§ 2.67 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a program.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the program are engaged in criminal misconduct.

(b) *Notice.* The program director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The program director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of the program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 2.65 of these regulations.

[FR Doc. 87-11785 Filed 6-8-87; 8:45 am]

BILLING CODE 4160-17-M

Amendments:

1976. Act Mar. 19, 1976, substituted this section for former section which read:

"(a) Drug abusers who are suffering from emergency medical conditions shall not be refused admission or treatment, solely because of their drug abuse or drug dependence, by any private or public general hospital which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

"(b) The Secretary is authorized to make regulations for the enforcement of the policy of subsection (a). Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a hospital has violated subsection (a) and such violation continues after an opportunity has been afforded for compliance, the Secretary is authorized to suspend or revoke, after opportunity for a hearing, all or part of any support of any kind received by such hospital from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which such hospital receives support of any kind, with respect to the suspension or revocation of Federal support for such hospital.".

Redesignation:

This section, enacted as Act Mar. 21, 1972, P. L. 92-255, Title IV § 407, 86 Stat. 78; Mar. 19, 1976, P. L. 94-237, § 6(a), 90 Stat. 245, Oct. 21, 1976, P. L. 94-581, Title I, § 111, (c)(2), 90 Stat. 2852, was redesignated as Act July 1, 1944, ch 373, Title V, Part C, Subpart 2, § 526 by Act Apr. 26, 1983, P. L. 98-24, § 2(b)(16)(B) in part, 97 Stat. 182.

Other provisions:

Reports to congressional committees; publication in the Federal Register superseded. Act Oct. 21, 1976, P. L. 94-581, Title I, § 111(c)(6), 90 Stat. 2852, provided that Act March 21, 1976, P. L. 94-237, § 6(b), 90 Stat. 245, formerly classified as a note to this section, was superseded by the provisions of the amendments to chapter 73 of title 38 [38 USCS §§ 4101 et seq.] made by § 111(a) of the Act of Oct. 21, 1976.

§ 290ee-3. Confidentiality of patient records

(a) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b)(1) The content of any record referred to in subsection (a) may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g).

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Except as provided in subsection (h) of this section, the Secretary, after consultation with the Administrator of Veterans' Affairs and the heads of other Federal departments and agencies substantially affected thereby, shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(h) [Superseded]

(July 1, 1944, ch 373, Title V, Part C, Subpart 2, § 527 [Mar. 21, 1972, P. L. 92-255, Title IV § 408, 86 Stat. 79; May 14, 1974, P. L. 93-282, Title III, § 303(a), 88 Stat. 137; May 14, 1974, P. L. 93-282, Title III, § 303(b), 88 Stat. 138; Mar. 19, 1976, P. L. 94-237, §§ 4(c), (5)(A), (C), 90 Stat. 244; Oct. 21, 1976, P. L. 94-581, Title I, § 111(a)(3), 90 Stat. 2852; Aug. 13, 1981. P. L. 97-35, Title IX, Subtitle H, Ch 2, § 973(d), 95 Stat. 598]; Apr. 26, 1983, P. L. 98-24, § 2(b)(16)(B) in part, (B)(ii)(II) and (III), 97 Stat. 182; Aug. 27, 1986, P. L. 99-401, Title I, § 106(b), 100 Stat. 907.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section was formerly classified to 21 USCS § 1175.

Amendments:

1974. Act May 14, 1974, in subsec. (a), substituted "conducted, regulated, or directly or indirectly" for "authorized or", substituted "by any department or agency of the United States" for "under any provision of this Act or any Act amended by this Act", inserted ", except as provided in subsec. (e)", deleted "may" following "confidential and"; and in subsec. (b), substituted para. (1) for one which read: "If the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed

"(A) to medical personnel for the purpose of diagnosis or treatment of the patient, and

"(B) to governmental personnel for the purpose of obtaining benefits to which the patient is entitled.".

Such Act further in subsec. (b)(2), substituted "Whether or not" for "If" and "gives" for "does not give", and substituted, in subparagraph (B), "management audits, financial audits" for "management or financial audits"; and substituted subsec. (e) for former one which read: "Except as authorized under subsection (b) of this section, any person who discloses the contents of any record referred to in subsection (a) shall be fined not more than $500 in the case of a first offense, and not more than $5000 in the case of each subsequent offense."; and added subsecs. (f) and (g).

1975. Act May 14, 1974 [see effective date note to this section], in subsec. (g), substituted "Except as provided in subsection (h) of this section, the" for "The", and substituted "Secretary of Health, Education, and Welfare" for "Director of the Special Action Office for Drug Abuse Prevention", and substituted "Secretary" for "Director"; and added subsec. (h).

1976. Act Mar. 19, 1976, in subsec. (g), substituted "Office of Drug Abuse Policy" for "Special Action Office for Drug Abuse Prevention".

Act Oct. 21, 1976, provided that subsec. (h) was "superseded by the provisions of the amendments to chapter 73 of title 38 [38 USCS §§ 4131 et seq.]."

1981. Act Aug. 13, 1981, in subsec. (g), substituted "Health and Human Services" for "Health, Education, and Welfare".

1983. Act April 26, 1983, in subsec. (g), deleted "of Health and Human Services" following "section, the Secretary".

1986. Act Aug. 27, 1986, in subsec. (e), added the concluding matter.

Redesignation:

This section, enacted as Act Mar. 21, 1972, P. L. 92-255, Title IV § 408, 86 Stat. 79; May 14, 1974, P. L. 93-282, Title III, § 303(a), 88 Stat. 137; May 14, 1974, P. L. 93-282, Title III, § 303(b), 88 Stat. 138; Mar. 19, 1976, P. L. 94-237, §§ 4(c), (5)(A), (C), 90 Stat. 244; Oct. 21, 1976, P. L. 94-581, Title I, § 111(a)(3), 90 Stat. 2852; Aug. 13, 1981. P. L. 97-35, Title IX, Subtitle H, Ch 2, § 973(d), 95 Stat. 598, was redesignated as Act July 1, 1944, ch