

OPINION NO. 84-098

Syllabus:

If the Director of Health reasonably finds that the information contained in UB-82 billing formats is necessary to the performance

of his statutory duties, he may, pursuant to R.C. 3701.07(A), require that hospitals provide him with such formats.

To: David L. Jackson, M.D., Ph.D., Director, Department of Health, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1984

You have asked for my opinion concerning your authority, as Director of Health, to collect information from hospitals in the Annual Hospital Registration (AHR) process pursuant to R.C. 3701.07. Your particular question is whether the Director of Health may require that, as part of the AHR process, hospitals provide the Department of Health with copies of certain information from bills relating to their various patients. The information about which you are inquiring is known as a UB-82 billing format. It is my understanding that it consists of data relating to the hospital treatment of a particular patient, and that the data would be carefully screened prior to being furnished to the Department of Health to remove all patient-identifying information. I am, therefore, assuming, for purposes of this opinion, that there would be no objection to the provision of such information based on the physician-patient privilege or other rights of privacy or confidentiality due to patients.

R.C. 3701.07(A) states:

The director of health may define and classify hospitals and dispensaries. Every hospital and dispensary, public or private, shall annually register with and report to the department of health on forms furnished by the director such information as he may prescribe.

You have informed me that, under this provision, hospitals are currently required to file a 40-page Annual Hospital Registration Form, which includes a substantial volume of information, but that they have not been required to file UB-82 billing formats.

R.C. 3701.07(A) expressly provides that "[e]very hospital. . .shall. . .report to the department of health. . .such information as the [director of health] may prescribe." The statutory language is very broad, indicating that the Director of Health may prescribe whatever information he seeks, and that the hospital shall provide such information.

It might be argued that the authority of the Director of Health to require information under the second sentence of R.C. 3701.07(A) extends only to such information as is necessary to the performance of his duties under the first sentence of R.C. 3701.07(A)—that is, to such information as he requires to define and classify hospitals and dispensaries. The second sentence is, however, not expressly limited to information relating to definition and classification, and I find it inappropriate to conclude that such a limitation should be implied. See Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (if the language of a statute is clear, the statute may not be restricted, constricted, qualified, narrowed or abridged). Rather, I give that sentence its plain meaning, and find that it authorizes the Director of Health to obtain such information as he prescribes, whether or not such information is to be used for defining and classifying hospitals and dispensaries. See Baker v. Powhatan Mining Co., 146 Ohio St. 600, 67 N.E.2d 714 (1946). See generally R.C. 1.47; R.C. 3701.04(A) (providing that the Director of Health shall. . ."require such reports and make such inspections and investigations as he deems necessary").

In making a request for information under R.C. 3701.07(A), the Director of Health is, of course, restricted by the implied qualification that he may request only such information as is reasonably necessary to the performance of his statutory powers and duties. See generally Burger Brewing Co. v. Thomas, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975). The Revised Code vests the Director of Health with a wide variety of responsibilities. R.C. 3701.13 states that the Department of Health "shall have supervision of all matters relating to the preservation of the life

and health of the people." R.C. 3701.03 provides that the Director shall perform such duties as are incident to his position as chief executive officer, and that he shall administer the laws relating to health and sanitation and the regulations of the Department. R.C. 3701.09 requires the Director of Health to make an inventory of existing hospitals and medical facilities and to develop a program for the construction and modernization of such facilities as will, in conjunction with existing facilities, "afford the necessary physical facilities for furnishing adequate hospital and medical facilities services to all the people of the state." See R.C. 3701.08; R.C. 3701.39. The Director is given the responsibility of recommending such legislation as he thinks advisable to protect the public health and to provide the public with medical facilities. R.C. 3701.03 (authorizing the Director to submit to the public health council recommendations for new legislation); R.C. 3701.04(F) (providing that the Director shall make an annual report to the Governor, including "recommendations for such additional legislation as he considers appropriate to furnish adequate hospital, clinic, and similar facilities to the people of this state"); R.C. 3701.15. Further, under R.C. Chapter 3702, the Department of Health is designated as the state health planning and development agency and is given responsibility for administering a state certificate of need program that applies to certain activities taken by or on behalf of health care facilities. See R.C. 3702.5(F), (R); R.C. 3702.53. It is, thus, clear that the Director of Health has broad authority relating to the public health and to the provision of hospitals and other medical facilities.

You have informed me that you are considering requesting hospitals to furnish copies of UB-82 billing formats in order to implement one of the strategies developed by the Governor's Commission on Ohio Health Care Costs¹ for approaching the problem of skyrocketing health care costs. The strategy involves the collection of data that will provide the empirical basis for a number of other initiatives in the area of health care cost containment. Representatives of your office have indicated that the data obtained from the UB-82 billing formats would provide a comprehensive clinical/financial health data base that could be used by consumers and purchasers, providers, planners, and policy makers for such matters as developing an epidemiologic data base, developing a statewide patient origin study, producing a consumer oriented hospital price comparison guide, and supplying providers with small area analysis for identifying areas in which the cost effectiveness of delivery of care could be increased.

The determination that particular information is necessary to the performance of statutory duties is one which is within the discretion of the public official seeking that information, and not one which I am authorized to make on behalf of that public official. See generally State ex rel. Copeland v. State Medical Board, 107 Ohio St. 20, 140 N.E. 660 (1923) (if a determination of facts is necessary on a matter which has been assigned by statute to the state medical board, the board must make the determination); State ex rel. Commissioners of Franklin County v. Guilbert, 77 Ohio St. 333, 83 N.E. 80 (1907) (under statute providing that state auditor may not draw a warrant for any claim unless he finds the claim legal, the auditor is not bound in making that determination by the finding of a county prosecutor who certified the claim). It is clear that, in connection with statutory duties relating to the preservation of the public health and the provision of adequate medical facilities for the public, the Director of Health has a responsibility to be concerned with costs of health care that may affect the availability of such care. The collection of information relating to such costs thus

¹ The Governor's Commission on Ohio Health Care Costs was appointed by Governor Richard F. Celeste in May, 1983. Its initial charge was to identify ways to achieve immediate budget savings in the state's Medicaid and general relief-medical programs. Its final report, issued on July 9, 1984, addressed a broader range of issues, affecting both public and private health care programs, and attempted to identify actions that the state government could take to affect the quality and cost of health care services. Strategy #3 of that report states: "Ensure the Availability of Meaningful and Comparable Data that will Facilitate Active Decision-Making by Health Care Consumers." Governor's Commission on Ohio Health Care Costs, Final Report 46 (July 9, 1984).

appears to be within his statutory authority. The particular information about which you have inquired—that information contained in a UB-82 billing format, which details the nature of treatment of a particular patient and charges made by the hospital—is related to the general functions which the Director of Health is authorized by statute to perform. As a result, I am able to advise, as a general matter that, if you, as Director of Health, find that receipt of the information contained in UB-82 billing formats is necessary for the performance of your duties, whether or not for the definition and classification of hospitals and dispensaries under R.C. 3701.07(A), you may, pursuant to R.C. 3701.07(A), require that hospitals provide you with such information. See generally Hocking Valley Railway Co. v. Public Utilities Commission, 92 Ohio St. 362, 110 N.E. 952 (1915) (a court will not substitute its judgment for that of an administrative body, but determinations made by such a body are subject to judicial review for abuse of discretion).

It is, therefore, my opinion, and you are hereby advised, that, if the Director of Health reasonably finds that the information contained in UB-82 billing formats is necessary to the performance of his statutory duties, he may, pursuant to R.C. 3701.07(A), require that hospitals provide him with such formats.