

The State of South Carolina



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April 23, 1990

Ms. Gail C. Reyes
Executive Director
Barnwell County Office on Aging
Post Office Box 1149
Barnwell, South Carolina 29812

RE: Authority of Commission on Aging to Request or
Require Information About Services to the Aging
Which It Does Not Fund

Dear Ms. Reyes:

I enjoyed talking with you on the sixteenth. As we discussed, and the Attorney General informed you, he referred your March 12, 1990 request for an opinion concerning the above-referenced question to me.

Provisions of both the federal and state enabling legislation, which are set forth below, clearly authorize the Commission to "request" information from other governmental agencies concerning any and all services to the aging, whether there is any contractual relationship or not. A court of competent jurisdiction and the Department of Health and Human Services would probably interpret some of these provisions to require the Commission to obtain this information. Finally, this express authority and responsibility, combined with the express authority to contract, implies Commission authority to require such information as a term of the contract between the Commission and such an agency, as long as no specific statutory provision (such as a confidentiality requirement) prohibits it, and my research reveals none. Neither you nor I are currently aware of any specific information the Commission will request which would violate any confidentiality requirements, and any such issues which may arise in the future would need to be addressed individually and specifically.

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The Commission's authority and responsibility derives from Chapter 21 of Title 43, S.C. Code Ann. (1976, as amended), entitled "Commission on Aging," and the Older Americans Act of 1965, 42 U.S.C.A. 3001 (P.L. 89-73), pursuant to which the Commission is designated the state Agency on Aging through which federal funding of aging programs and services is conducted. In addition to providing for the channeling of state and federal funds for services to the aging, these statutes repeatedly emphasize the Commission's responsibilities to study and plan for services for South Carolina's aging populations, however, and by whomever, provided or not provided.

Section 43-21-40 provides that the Commission is "the State agency to implement and administer all programs of the Federal Government related to the aging. The Commission may accept and disburse any funds available...pursuant to the purposes of the chapter." This provision gives the Commission's express authority to contract with service providers. Further, it is to "study, investigate, plan, promote and execute a program to meet the present and future needs of aging citizens of the state and shall receive the cooperation of other state departments and agencies in carrying out a coordinated program.... It shall consult and cooperate with public...groups, with county and municipal officers and agencies and with any federal or state agency or officer for the purposes of promoting cooperation between state and local plans and programs...to encourage and assist in the development of programs for the aging in the counties and municipalities...." (Emphasis added)

"Without limiting the foregoing, the Commission is specifically authorized to: (a) [i]nitiate requests for the investigation of potential resources and problems of the aging people of the State, encourage research programs, initiate pilot projects to demonstrate new services, and promote the training of personnel for work in the field of aging; (c) [c]ooperate with, encourage, and assist local groups, both public and voluntary, which are concerned with the problems of the aging; (e) [s]erve as a clearinghouse for information in the field of aging; and (g) [e]ngage in any other activity deemed necessary by the Commission to promote the health and well-being of the aging citizen of this State, not inconsistent with the purposes of this chapter or the public policies of the State." (Emphasis added)

Finally, § 43-21-60 requires the commission to submit an annual report to the Governor and General Assembly, which deals "with the present and future needs of the elderly," as well as "the work of the Commission during the year." (Emphasis added)

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As the underlined passages illustrate, these state provisions direct and empower the commission to gather, by any means which are not unlawful, any and all information about services provided to the elderly, particularly by governmental agencies at all levels. These statutory purposes and responsibilities are mirrored by those specified by the state statute's federal counterpart. Section 301 of The Older Americans Act provides that:

It is the purpose of this title to encourage and assist state area agencies to concentrate resources in order to develop greater capacity and foster the development and implementation of comprehensive and coordinated service systems to serve older individuals...

Section 302 provides that, for the purpose of this title:

(1) the term "comprehensive and coordinated system" means a system for providing all necessary support services, including nutrition services, in a manner designed to (A) facilitate accessibility to, and utilization of, all supportive services and nutrition services provided within the geographic area served by such system by any public or private agency or organization; (B) develop and make the most efficient use of supportive services and nutrition services in meeting the needs of older individuals; and (C) use available resources efficiently and with a minimum of duplication. (Emphasis added)

Toward this end of providing comprehensive, coordinated, non-duplicative, cost-effective services for the elderly, Section 307(a) of the Act requires the state to submit a plan which complies with criteria and requirements prescribed by federal regulations, including providing "that the State agency (the Commission) will evaluate the need for supportive services, including legal assistance, nutrition services, and multipurpose senior centers within the State and determine the extent to which existing public or private programs meet such need." (Subsection (3)(A)) (Emphasis added)

Furthermore, the Commission must adopt "such fiscal control and funds accounting procedures" as may be necessary to assure the proper disbursement and accounting for federal funds... (Subsection (7)); i.e. to assure that a provider does not charge two or more funding sources for one unit of service and does not use one funding source to subsidize services reportedly funded by another source.

Section 344 of the Act also contains additional federal prerequisites to funding, the assurance of which require the collection of some of the data in question, to wit:

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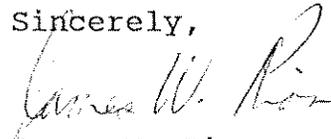
Funds made available under this part shall be in addition to, and may not be used to supplant, any funds that are or would otherwise be expended under any Federal, State, or local law by a State or unit of general purpose local government.

General purpose local government units include area agencies on aging which have in their planning and services areas existing services which primarily serve older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and the families of such victims.

Finally, the federal government's publication, A Guide for State and Local Governmental Agencies; Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government requires, "[i]dentifying all the activities carried on by the department or unit and their attendant costs. All activities must be included regardless of the source of funds used to pay them."

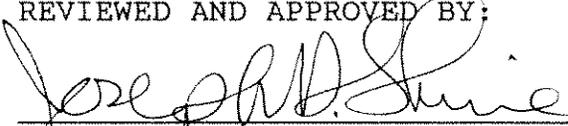
The above provisions clearly authorize or require the Commission to collect information of the type you question. If you have specific relevant questions, confidentiality issues, or statutory or regulatory provisions which these provisions or this opinion do not address, please contact me at 734-3638.

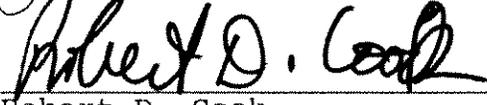
Sincerely,


James W. Rion
Assistant Attorney General

JWR/bl

REVIEWED AND APPROVED BY:


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