

# H.E.W. Must Answer Subpoena On Hospital Certifying Report

By NANCY HICKS

Special to The New York Times

WASHINGTON, Nov. 9—The Secretary of Health, Education, and Welfare must answer this week a Congressional subpoena made necessary by a recent out-of-court agreement by the department to keep confidential the very information sought by a House investigating subcommittee.

The subcommittee is looking into the way in which the Joint Commission on the Accreditation of Hospitals, a private, professional group, certifies hospitals as safe and competent dispensers of medical care. Commission certification allows a hospital to qualify automatically for Medicare reimbursement. About 5,000 hospitals approved as competent by the commission received \$12 billion in Medicare funds last year.

The Health, Education and Welfare Department has been spot-checking hospitals approved by the commission and is finding that most of those studied do not meet Federal hospital standards.

Of 105 hospitals reviewed in 1974, 68 had deficiencies serious enough to lose their participation status, unless corrections were made. While medical services in the hospitals were found to be satisfactory, the studies showed, most hospitals had serious violations of safety codes.

## No Social Services

A large number also did not provide satisfactory social service departments, which are vital to many elderly patients who use Medicare to pay their hospital bills.

The House Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce became aware of these disparities in certification earlier this year and asked the H.E.W. Department in August to give its findings and the summaries of the hospital surveys to the subcommittee staff.

The surveys themselves are confidential by law. But the department had classified the summary as "official reports," which are public under the law, and it issued copies of the summaries to a consumer group that asked for them under the Freedom of Information Act.

The joint commission sued the department in June over the matter, and last month H.E.W. agreed in an out-of-court settlement to keep confidential the summary reports as well.

"We became convinced that the joint commission was correct in saying that the con-

fidentiality stated in the statute applied to these reports, too," St. John Barrett, acting general counsel of the department, said in an interview last week. "If the confidentiality statute didn't apply here, it didn't apply at all."

## Would Be Co-Defendant

The agreement also contained the stipulation that the joint commission would enter as a co-defendant any suit filed against H.E.W. over disclosure of the information.

The H.E.W. Secretary, F. David Mathews, answered the subcommittee request two weeks ago with a letter saying he could not release the summary reports because they were confidential. He said he was seeking a ruling on the matter from the Attorney General.

Last week, the subcommittee, which is headed by Representative John E. Moss, Democrat of California, served Mr. Mathews with a subpoena. Under it, he must turn the information over by Tuesday or appear at a hearing Wednesday to explain his actions.

Mr. Mathews is not answering questions about the issue but is referring them to Mr. Barrett.

The hospital survey reports, which are requested and paid for by the hospitals, must be confidential, the joint commission maintains, because disclosure of deficiencies could lead to malpractice lawsuits, which drive up the cost of medical care.

## Could Drop Out

In its suit, the commission also asserts that public disclosure of information that its customers—the hospitals—believe to be confidential will cause many to "cease to utilize the services of the joint commission"—which derives most of its income from surveying hospitals.

The H.E.W. Department agrees with the commission, which is made up of representatives of the American Medical Association, the American Hospital Association, the American College of Physicians and the American College of Surgeons, because the hospitals are giving the summary reports to the department on a voluntary basis.

By law, if the department does not agree to keep the actual surveys confidential—and it has acknowledged that the summary reports are part of the surveys—then the hospitals have the right to withhold all information from the agency and still qualify for Medicare, Mr. Barrett said.

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