Records identifying participants in health insur. plan

Number: INFORMAL

Date: November 10, 2008

Subject:
Records identifying participants in health insur. plan

The Honorable Paula Dockery
Senator, District 15
Post Office Box 2395
Lakeland, Florida 33806-2395

Dear Senator Dockery:

You have asked whether sections 112.08(7) and 119.071(4)(b), Florida Statutes, preclude the release of information that identifies school district employees, their dependents, and their health insurance plans. The issue arises in light of a recent circuit court order requiring the Polk County School District to disclose public records regarding the health insurance policy of the Polk County School District and the name, addresses, gender, age, title, and telephone number of employees and dependents covered by the policy.[1] There is also concern that the release of such information may be inconsistent with the federal Health Insurance Portability and Accountability Act (HIPAA). The following discussion will not comment on the application of HIPAA to this matter, however, as this office does not generally interpret federal law.

Section 112.08(7), Florida Statutes, provides that all medical records and medical claims records of current or former county or municipal employees and eligible dependents enrolled in a county or municipal group insurance plan are confidential and exempt from section 119.07(1), Florida Statutes. Such records may not be furnished to any person other than the employee or his legal representative, except as authorized in the subsection. Public school system employee medical records are also recognized as confidential and exempt from section 119.07(1), Florida Statutes.[2]

In *News-Press Publishing Company, Inc. v. Kaune*,[3] the court reviewed whether certain medical physical examination reports and related documents pertaining to a city's firefighters were public records subject to disclosure. The court was primarily concerned with the applicability of the Public Records Law to personnel matters. However, the court also considered the extent of confidentiality provided by section 112.08(7) and (8), Florida Statutes. In *Kaune*, the newspaper had asked to inspect medical physical examination reports and related documents on city firefighters. These records were requested of the Fort Myers Fire Chief, the doctor who had done examinations of the firefighters, and the City of Fort Myers. The appellant, *News-Press* , argued that "the exemptions of section 112.08(7) . . . apply solely to medical records filed in conjunction with an employee's participation in a group insurance plan." However, the court determined that the Legislature intended the exemption to extend to all medical records relating to employees enrolled in a group insurance plan. Thus, according to the *Kaune* court, the exemption in section 112.08(7), Florida Statutes, applies broadly rather than being related solely

to medical records filed in conjunction with an employee's participation in a group insurance plan.[4]

Section 119.071(4)(b), Florida Statutes, exempts from disclosure medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee. Such information may be disclosed if the person or the person's legal representative provides written permission or pursuant to court order.[5] Moreover, every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information is exempt from section 119.07(1), Florida Statutes.[6]

Clearly, information relating to an insurance program participant’s medical condition is protected from disclosure. However, there is no clear statement that such protection extends to the name, address, age, or other non-medical information of such participants. When doubt exists as to whether a particular document is exempt from disclosure under Florida’s Public Records Law, the exemption is to be narrowly construed and any doubt resolved in favor of public access.[7]

Due to the lack of clarity in this matter and in light of the recent decision by the Polk County Circuit Court, it may be advisable for the Legislature to clarify its intent on this issue.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *Chandler v. School Board of Polk County*, Case No. 2008CA-004389, Tenth Judicial Circuit in and for Polk County, Order Granting Plaintiff’s Motion for Summary Judgment, The Honorable Roger A. Alcott, Circuit Judge, October 9, 2008.

[2] Section 1012.31(3)(a)5., Fla. Stat.

[3] 511 So. 2d 1023 (Fla. 2nd DCA 1987).

[4] *See also* Op. Att'y Gen. Fla. 91-88 (1991), citing to *Kaune* and Op. Att'y Gen. Fla. 94-78 (1994) (monthly printout of medical claims paid under city group health insurance plan that identifies the public employees who obtained medical services and the amounts of the claims, together with some account information, is exempt from public inspection); and Op. Att'y Gen. Fla. 94-51 (1994) (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees").

[5] Section 119.071(4)(b), Fla. Stat. *See also* Op. Att'y Gen. Fla. 98-17 (1998) (exemption "appears to extend to governmental employees the protection for personal medical records that

is generally enjoyed by private sector employees").

[6] Section 760.50(5), Fla. Stat.

[7] *See, e.g.*, Ops. Att'y Gen. Fla. 79-75 (1979), emphasizing the resolution of doubt in favor of disclosure, and 80-78 (1980).