



STATE OF INDIANA

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June 4, 2008

Jason Smathers
511 Prentiss Way
Avon, Indiana 46123

Re: Your informal inquiry

Dear Mr. Smathers:

This is in response to your informal inquiry dated May 20, 2008. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You write to inquire about records maintained by the Indiana Family and Social Services Administration ("FSSA"). You requested from FSSA information regarding whether an application to the Healthy Indiana Plan ("HIP") is disclosable. You indicate that you understand certain information contained on an application may be exempted from disclosure pursuant to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). But you contend that the application contains more than medical information. You inquire whether FSSA is required to confirm or deny the existence of records and whether any portion of the application is public record.

FSSA responded to the inquiry at my request, by letter dated June 2, 2008 from Deputy General Counsel Jacob McClellan. FSSA indicates that you requested all disclosable elements from any HIP application for a particular individual. FSSA denied the request, contending such information, if it exists, is confidential pursuant to 45 CFR 160 and 164. FSSA further informed you that you could gain access to the information by obtaining a release from the individual. FSSA provides a detailed analysis of its reason in denying access to the record, if such a record exists. That analysis is provided in the following section.

ANALYSIS

The public policy of the Indiana Access to Public Records Act ("APRA")(Ind. Code 5-14-3) states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and

employees, whose duty it is to provide the information." I.C. § 5-14-3-1. FSSA is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of FSSA during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

An agency may not disclose any records declared confidential by state statute or federal law. I.C. § 5-14-3-4(a). A public employee or official who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor. I.C. § 5-14-3-10(a). A public employee or official who unintentionally or unknowingly discloses confidential or erroneous information in response to a request under the APRA is immune from liability for such disclosure. I.C. § 5-14-3-10(c).

Generally, the records of a public agency must be made available for inspection and copying. I.C. § 5-14-3-3. When records are declared confidential by state statute or federal law, those records may not be disclosed unless access to the records is specifically required by a state or federal statute or ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a). HIPAA is a federal law declaring certain records confidential.

Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. The HIPAA privacy rule can be found at 45 CFR 160 and 164. FSSA's Office of Medicaid Policy and Planning is a covered entity for the purposes of HIPAA. The HIPAA privacy rule protects from disclosure all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media. 45 CFR 160.103.

"Individually identifiable health information" is information, including demographic, data, that relates to either:

1. the individual's past, present or future physical health or mental health or condition; or
2. the provision of health care to the individual; or
3. the past, present, or future payment for the provision of health care to the individual;

and that identifies the individual or for which there is a reasonable basis to believe the information can be used to identify the individual. 45 CFR 160.103.

FSSA contends that all information submitted by an applicant to the HIP is "individually identifiable health information," as described in 45 CFR 160.103. FSSA claims the essence of an application for health insurance is that it relates to the future payment for the provision of health care to the applicant. FSSA contends that identifying an individual who has applied to the HIP would be a violation of 45 CFR 160.103.

It is my opinion the records and information you have requested are declared confidential by federal law and are therefore not disclosable pursuant to the APRA. I

agree with FSSA that the information submitted by the applicant identifies the individual and relates to the future payment for the provision of health care to the applicant, and disclosure of such information is prohibited under 45 CFR 160.103. Even acknowledging receipt of an application for enrollment in HIP would constitute a disclosure of “individually identifiable health information,” since it would identify the individual. As such, it is my opinion FSSA may not disclose the requested records absent a release from the individual, a state or federal state statute requiring the disclosure, or order of the court under the rules of discovery.

CONCLUSION

It is my opinion that information received by FSSA in the form of an application for enrollment in the HIP is protected from disclosure pursuant to the APRA and federal law.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Jacob McClellan, Indiana Family and Social Services Administration