



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

October 28, 2008

Casey Parks
The Oregonian, East Metro News Bureau
295 N.E. Second St.
Gresham, OR 97030

Andrea Watson
Community Resources Coordinator
Reynolds School District #7
Administration Building
1204 NE 201st Avenue
Fairview, OR 97024

Re: Petition of Casey Parks for The Oregonian received October 17, 2008, to disclose certain records of the Reynolds School District

Dear Ms. Parks and Ms. Watson:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Casey Parks for The Oregonian requests the District Attorney to order the Reynolds School District and its employees to produce a copy or copies of the following records:

[R]eimbursements paid to Terry Kneisler from 2004 until present.

On September 18, 2008, petitioner requested "the full record of any reimbursement paid directly or indirectly to Terry Kneisler." The request included "any supporting documents, including but not limited to invoices, receipts, and reimbursement requests." On September 22, 2008, Reynolds Community Resources Coordinator Andrea Watson provided by email a chart showing reimbursements in various categories. The supporting documents for medical reimbursement were not provided "as that would mean providing personally identifiable information protected by HIPAA."

Ms. Watson followed up the denial with a September 23, 2008 letter from an attorney, Bruce A. Zagar. He advised her that personally identifiable health information is confidential under ORS 192.502(8). There followed telephone and email exchanges between Ms. Watson and Oregonian reporter Les Zaitz, who challenged the District's position that HIPAA barred disclosure.

Petitioner was advised by Ms. Watson that the Reynolds School District has a separate contract with district administrators that allows for reimbursement for deductible costs for medical procedures and co-pay fees. Administrators seek reimbursement under this contract by submitting to the district paperwork showing the amount is unreimbursed. The Human Resources benefit department does the processing and payments.

DISCUSSION

ORS 192.502(8) incorporates the provisions of HIPAA into an unconditional exemption under the Public Records Law. It exempts: "Any public records or information the disclosure of which is prohibited by federal law or regulations." HIPAA protects individuals from the disclosure of personally identifiable health information. There is no question that the sample documents we reviewed are such health information, including both Claims Processing Reports from Blue Cross and bills from health care providers. The question is whether the materials possessed by Reynolds School District fall outside the umbrella of HIPAA.

Petitioner maintains that the Reynolds School District is not a health care district and that the reimbursement benefit is not part of a separate health insurance plan or package. The District takes the position, through its lawyers, that HIPAA's Privacy Standards apply to group health plans, which are defined to include employee welfare benefit plans to the extent that such plans provide medical benefits to employees whether through insurance or reimbursement. 45 CFR §160.103.

With limited knowledge of the full extent of the federal regulations that govern HIPAA, we must proceed with caution. What is clear is that the Reynolds School District agreement with its administrators has established a health plan with two parts: a medical insurance program coupled with a limited recovery of deductible or co-pay costs.¹

The materials sought by petitioner are clearly identifiable health information created or received by a health care provider, health plan, or employer. As such, they are entitled to the unconditional protection of HIPAA. They cannot be disclosed.

¹ As an aside, we were advised by Ms. Watson that the Reynolds School District made total reimbursement to the administrators of \$295,596.41 from July 1, 2002 to June 30, 2008. Records are apparently available from the District for each administrator indicating when the reimbursement was paid and for how much. We would suggest The Oregonian pursue this information in the public interest.¹

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ORDER

Accordingly, it is ordered that the petition of Casey Parks for The Oregonian to disclose certain records of the Reynolds School District is denied.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon