



Office of the Attorney General

State of Texas

July 6, 1998

DAN MORALES
ATTORNEY GENERAL

Mr. Ryan Tredway
Staff Attorney
Legal and Compliance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-1577

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116418.

The Texas Department of Insurance (the "department") received a request for "copies of the documents listed on 'attachment A' concerning" several Health Maintenance Organizations ("HMOs"). You state that the department has released to the requestor some of the information. The department's position is that the remaining information is public information. You ask that we consider whether the information is excepted from disclosure based on section 552.101 of the Government Code in conjunction with article 20A.17(b)(2) of the Insurance Code. You also ask whether the public disclosure of the information implicates the privacy or proprietary rights of Prudential Health Care Plan, Inc. and Prucare, Inc. ("Prudential").¹

Since the property and privacy rights of Prudential were potentially implicated by the release of the requested information here, this office notified Prudential of this request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Prudential responded to our notification by asserting that portions of the information are excepted from disclosure based on sections 552.101 and 552.110 of the Government Code.

¹Counsel for Prudential informs us that Prudential Health Care Plan, Inc. and Prucare, Inc. are the same entity. Counsel also states that as the Prudential Insurance Company of American is not an HMO and as Pruco is no longer in existence, these entities have provided no documents to the department.

The department states that three categories of information are at issue: contract samples and forms, quality assurance information and the printout of the department's complaint database. The department maintains that the contract samples and forms and the quality assurance information are deemed public by article 20A.27 of the Insurance Code, which reads as follows:

All applications, filings, and reports required under this [HMO] Act shall be treated as public documents, except that examination reports shall be considered confidential documents which may be released if, in the opinion of the commissioner, it is in the public interest.

Article 20A.27 requires the disclosure of all information contained in an application for certificate of authority to operate an HMO. Open Records Decision No. 275 (1981). When considering the applicability of the predecessor provision of section 552.110 to information contained in the application for certificate of authority filed by two HMO's, a prior decision of this office concluded that the Open Records Act does not authorize the withholding of any information which is otherwise required to be disclosed under article 20A.27. *Id.* at 1-2. Article 20A.04 of the Insurance Code sets forth the information an HMO must submit in its application for certificate of authority. You indicate that Prudential submitted to the department the contract forms pursuant to article 20A.04(a)(4), which requires an applicant for certificate of authority to submit "a copy of any independent or other contract made or to be made between any provider, physician, or persons listed in Paragraph (3) hereof and the applicant."² You indicate that Prudential submitted to the department the quality assurance information pursuant to article 20A.04(a)(12), which requires an applicant for certificate of authority to submit "a description of the procedures and programs to be implemented to meet the quality of health care requirements set forth herein."

Prudential contends that the contract forms and samples are excepted from required public disclosure based on section 552.110.³ Prudential does not oppose disclosure of a description of its quality assurance program submitted in accordance with article 20A.04(a)(12).⁴

²The persons listed in Paragraph (3) include "members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partnership or members in the case of a partnership or association." Ins. art. 20A.04(a)(3).

³Section 552.110 excepts from disclosure two categories of information: (1) "[a] trade secret" and (2) "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision."

⁴Prudential states that if the request is interpreted to request "additional information," such information is excepted from disclosure pursuant to section 552.110. The department is apparently not interpreting the request to include "additional information." Prudential also contends that article 20A.04 of the Insurance Code does not require an applicant to submit to the department the samples and forms and thus, the request as written

As you indicate that Prudential submitted to the department the contract forms and samples as well as the quality assurance information in its application for a certificate of authority to operate an HMO, we conclude that this information is made public by statute.⁵ *See id.* Thus, we need not consider Prudential's arguments under section 552.110 of the Government Code.

We turn to the printouts concerning complaints against Prudential. This office has recently concluded that Insurance Code article 20A.17 does not make confidential HMO complaint information. *See* Open Records Letter No. 98-1197 (1998). The printouts contain no information that identifies an individual. Accordingly, we agree that the printout is public information.

Prudential states that, to the extent request items 5, evidence of coverage to be issued to the enrollee, and 6, group contracts, include information required to be filed for certification of authority pursuant to article 20A.04(a)(5) and (a)(6), it does not oppose the disclosure of the information. To the extent request items 5 and 6 include information other than information filed pursuant to article 20A.04(a)(5) and (a)(6), Prudential asserts that the information is excepted from disclosure based on section 552.110. The department has not asked this office to rule on information responsive to request items 5 and 6. We assume the department has released to the requestor information Prudential filed pursuant to article 20A.04(a)(5) and (a)(6).

Prudential maintains that request items 18, disclosures relating to types of compensation arrangements, and 20, written description of compensation arrangements (e.g., for service, risk-sharing, or capitation), are duplicative. Prudential asserts that the requested information is excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with article 20A.04(a)(15) of the Insurance Code. Article 20A.04(a)(15) requires an applicant to submit a written description of the types of compensation arrangements made or to be made with physicians and providers in exchange for the provision of or an arrangement to provide health care services to enrollees, including any financial incentives for physicians and providers, and makes such information confidential. However, the department has not submitted information it maintains was submitted pursuant to article 20A.04(a)(15). We therefore need not address the applicability of this provision.

does not include the samples and forms. However, item 14 of the request is for "[s]ample contracts between the HMO and its officers and directors, physicians, medical groups, association of physicians, and subcontractors." Apparently, the department considers the submitted contract forms and samples to be responsive to both request items 4 and 14.

⁵As you represent that the company did not submit to the department the contract forms as a "written description of compensation arrangements" pursuant to article 20A.04(a)(15), and that the department does not consider an unsigned contract or sample to be a "contract, agreement, or arrangement between an HMO and a physician or provider" that Prudential submitted pursuant to article 20A.17(a)(2), we find that the forms are not deemed confidential by either of these provisions.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 116418

Enclosures: Submitted documents

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