



Tuesday, February 17, 2009

Cindy Ehnes
Director
California Department of Managed Health Care
980 9th Street, Suite 2450
Sacramento, CA 95814

Via Facsimile, Return Receipt Requested

Re: Amended Public Records Act Request

Dear Ms. Ehnes,

Please accept the following in response to the Department's February 13, 2009 letter denying Consumer Watchdog's February 4, 2009 Public Records Act request related to communications between certain Department officials and health plan representatives regarding issues of autism coverage. This letter modifies our February 4 request with clarifications requested by the Department.

The Department's February 13 letter cites *Rogers v. Superior Court*, 23 Cal. Rptr. 2d 412, 418 (1993) as requiring Public Records Act requests to be "focused and limited." However, *Rogers* also provides "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. . . . In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." *Rogers*, 23 Cal. Rptr. 2d at 414 (internal citations omitted). Further, exemptions from disclosure must be "construed narrowly, and the burden is on the public agency to show that the records should not be disclosed." *Rogers*, 23 Cal. Rptr. 2d at 415.

Pursuant to California Government Code § 6253(b) of the Public Records Act, and Article 1, section 3 of the California Constitution, Consumer Watchdog hereby requests any communications, or records of communications, between either Amy Dobberteen or Kevin Donohue of the Department and representatives, agents, attorneys, or employees of either Blue Cross of California (aka Anthem Blue Cross or aka WellPoint, Inc.), Kaiser Permanente (aka Kaiser Foundation Health Plan), California Physicians' Service (aka Blue Shield of California), Health Net of California, Inc., Aetna Health of California, or PacificCare of California. We request all documents responsive to this request for the time period January 1, 2007 through February 17, 2009.

The communications and information we seek as a matter of public record are those described above concerning the medical treatment, diagnosis, or coverage issues related to autism, including whether health plan contracts provide for, or should provide for, the treatment of autism.

This request includes, but is not limited to:

- All communications, including all writings and correspondence that are printed, typed, hand-written, facsimiles or computer generated e-mail, including any documents attached to email;
- All recorded voice messages and records of phone communications, including phone logs; and,
- All records of meetings, including calendars and meeting notes.

Any public records withheld from production for inspection should be separately identified and should be accompanied by the claimed justification for withholding as provided by Gov. Code § 6255, stating the nature of the document withheld, the specific exemption under which the document is being withheld, and the public interest served by withholding said document. We reserve the right to appeal your decision to withhold any materials.

Should you contend that a portion of a particular document is exempt from disclosure due to confidentiality, we also request pursuant to Gov. Code § 6253(a) that the exempt portion be redacted and the remaining portion be produced for our inspection.

Consumer Watchdog is prepared to pay reasonable search and duplication fees in connection with this request. However, agencies have discretion to waive fees in order to provide greater access to public records pursuant to Gov. Code § 6253(e). (*See North Co. Parents Organization v. California Dept. of Educ.*, 28 Cal. Rptr. 2d 359, 361 (1994)). As the information which is the subject of this request is of primary benefit to the public to inform how taxpayer dollars are being spent, we ask that you waive all search and duplication fees.

Consistent with § 6253(c), we expect to hear from you within ten days. If you have any questions concerning the scope of our Public Records Act request, please contact the undersigned at (310) 392-0522 ext. 319.

Sincerely,



Jerry Flanagan