

## INSURANCE

INSURANCE—NONPROFIT HEALTH SERVICE PLANS AND INSURANCE COMPANIES ARE PROHIBITED FROM RELEASING MEDICAL RECORD INFORMATION WHICH REVEALS THE IDENTITY OF ITS INSURED WITHOUT CONSENT.

November 22, 1978.

*Honorable Edward J. Birrane, Jr.,  
Insurance Commissioner.*

You have requested our advice on certain questions that have arisen regarding the furnishing of information to employers with respect to medical claims of employees and their dependents covered under an employer's group health policy. Specifically you have asked whether nonprofit health service plans and insurance companies who write group health policies may release personal medical record information, without the consent of the individuals, to employers who sponsor and maintain group health plans. The purpose of such disclosure would be to satisfy the employer's legitimate interest to audit and verify the past experience assessed against the policies which in turn affects the premium renewal rate. Prohibitions on revealing medical information can be found in Article 48A, Sections 354-0 and 490E, Annotated Code of Maryland (1978 Cum. Supp.), which state:

Section 354-0

(a) A nonprofit health service plan may reveal specific medical information contained in a subscriber's medical records to the subscriber or his agent or representative.

(b) A nonprofit health service plan may not reveal specific medical information contained in a subscriber's medical records to any person unless:

(1) It is authorized by the subscriber; or

(2) It is providing information requested by or in furtherance of the purpose of a medical review committee, accreditation board, or commission, or in response to legal process; or

(3) It is furnishing information to another nonprofit health service plan or Blue Cross or Blue Shield plan for the purpose of coordinating benefit payments under more than one sickness and accident, dental, or hospital medical contract; or

(4) It is providing information to governmental agencies in the performance of their lawful duties as authorized by an act of the General Assembly or the United States Congress; or

(5) When providing information at the request of a researcher for the purpose of medical and health care research pursuant to a protocol approved by an institutional review board.

(c) A nonprofit health service plan which knowingly violates this section shall be liable to any plaintiff for any damages recoverable in law or equity including reasonable attorney's fees.

(d) This section does not prohibit the use of medical records, data, or statistics if the use does not disclose the identity of a particular subscriber.

Section 490E

(a) An insurance company or other insurer may reveal specific medical information contained in an insured's medical records to the insured or his agent or representative.

(b) An insurance company or other insurer, or an insurance service organization whose functions include the collection of medical data, may not reveal the contents of a person's medical records to any person unless:

(1) It is authorized by the insured; or

(2) It is providing information requested by or in furtherance of the purpose of a medical review committee, accreditation board, or commission, or in response to legal process; or

(3) It is furnishing information to a nonprofit health service plan or a Blue Cross or Blue Shield plan for the purpose of coordinating benefit pay-

tedly and significantly dissimilar from the language of Section 354-0 which permits disclosure of medical data that does not reveal the identity of the person. Therefore, in the absence of any consent to disclosure, no medical information, data or statistics may be released by the insurance company even if the identity of the insured is not disclosed. The Legislature made specific provisions in Section 354-0 (d) for the release of such non-identifying information and the failure to include similar terms in Section 490E is indicative of the intent of the Legislature that no disclosure is permitted by an insurance company of an insured's medical records without his consent. The intent of the Legislature as to disclosure by insurance companies to employers must be determined by the language they did or did not use. Language cannot be inserted where the Legislature has failed to insert it during enactment of a statute, *Patapsco Traveler Service & Sales, Inc. vs. Eastern Freightways, Inc.*, 271 Md. 558 (1974). Therefore, the difference between Section 354-0 (d) and Section 490E must be deemed deliberate on the part of the Legislature and Section 490E must be construed as requiring an insurer to obtain the consent of the insured prior to the release of any portion of the insured's medical records to his employer. Therefore, unless the expressed consent of the individual is obtained, an insurance company cannot disclose medical records to employers even if the insured's identity is withheld.

The differing interpretations of Sections 354-0 and 490E is dictated by the clear language of those sections as we have shown. However, we are not aware of any cogent need for disparate statutory treatment of nonprofit health plans and insurance companies for the purpose of disclosure of medical information. Such disparate treatment has the counter-productive result of denying to employers whose employees are insured for medical care by an insurance company the means to determine whether the coverage is cost effective as well as ways to improve the coverage. The imbalance between nonprofit health plans and insurance companies in the disclosure provisions of the statute should be brought to the attention of the Legislature for consideration of an appropriate amendment that would establish parity among insurers where a legitimate need for medical information is established.

Additionally, you have asked whether an employee may

authorize disclosure of health service plan and insurance medical records to an employer. Section 354-0 (b) (1) and Section 490E (b)(1) specifically state that contents of the records may be revealed if consent to disclosure is granted by the subscriber or insured.

Such consent must be informed, voluntary and specific. The consent form should inform the individual in clear and concise language the nature of the information to be disclosed and the purposes for which the information will be used. The form should be dated and it should contain the disclosing party's name and the employer who will be receiving the information. An expiration date may be included, a reasonable period being not more than a year from the date the form is signed.<sup>3</sup>

This consent of the employee to disclose information may also include one's spouse and dependents who may be covered under the employer's health plan. The employee, if authorized to act on behalf of other beneficiaries, may sign the disclosure form on their behalf. A parent or spouse may be empowered to act as an agent or representative to bind others covered under the policy, see *Doyle v. Guinacci*, 62 Cal. 2nd 606, 401 P.2nd 1 (1965).

Any unauthorized disclosure knowingly made by a health plan or insurer would constitute a violation of the law for which damages as provided in the statute may be claimed.

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<sup>1</sup> These Sections were both added to Article 48A by Chapter 728 of the Laws of 1978. Also added was § 54L of Article 43, which forbids health care providers from making similar disclosures.

<sup>2</sup> Even seemingly non-confidential data and information which might betray the identity of the patient should be released with care.

<sup>3</sup> Such an authorization form reads as follows:  
 "I, (name) —, hereby authorize (insurer) — to release to my employer, (name and address) —, for his confidential use a summary of claims incurred on my behalf of my covered members. Such information is to be limited to the identification of the person for whom services were provided, the date services were rendered, the provider, and the amounts of the claims incurred. I consent to the release of the above information only to my employer, as named above, and only for the purpose of verifying the claims submitted under my group health plan. Any other use or disclosure is unauthorized and prohibited. This authorization expires one year from this (date) —."

Signature"