

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO <i>Roberts/FOIA</i>	DATE <i>6-25-14</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <p align="center">000425</p>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Cox, Mullis Cleared 7/11/14, letter attached.</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____
	<input checked="" type="checkbox"/> FOIA DATE DUE <i>7-10-14</i>
	<input type="checkbox"/> Necessary Action

APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	COMMENT
1.			
2.			
3.			
4.			

Brenda James

From: Rick Hepfer
Sent: Tuesday, June 24, 2014 1:03 PM
To: Brenda James
Subject: FW: FREEDOM ON INFORMATION REQUEST

Please log this back to the OGC for handling.

Rick Hepfer
Attorney IV
Hepfer@scdhhs.gov
803.898.2791
www.scdhhs.gov



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From: Tony R. Megna [mailto:tmegna@gmail.com]
Sent: Saturday, June 21, 2014 10:58 AM
To: Rick Hepfer
Cc: Jim Griffin; Ryan Heiskell; A. Camden Lewis; John Milling
Subject: FREEDOM ON INFORMATION REQUEST

Freedom of Information Request made pursuant to the SC Freedom of Information Act

Rick-

I have become aware of orders of the Department's Division of Hearing and Appeals as well as the the Administrative Law Court and the SC federal District Court (Judge Anderson) that are obviously relevant to the matters related to the Department's due process and other legal obligations to providers and beneficiaries, the availability of deposition testimony of Mr. Keck, the impact and precedential value of the ALCs decisions on the Department, the Department's legal inability to rely on informal, non-verbalized, vague and/or otherwise nebulous interpretation of its' obligations and policies and procedures of matters related to the SC Medicaid program. After reviewing them, I have a greater appreciation of the reasoning of the Department's objections to the obligations of discovery in appeals before the Department's Division of Hearing and Appeals and the SC Administrative Procedures Act.

While it appears you may have interpreted my previous requests for production of documents via the FOIA very narrowly, I am now making very specific requests under the Freedom of Information Act for **ALL** orders or decisions of the Department's Division of Hearing and Appeals, the state

Administrative Law Court, the state circuit court, the SC Court of Appeals, the SC Supreme Court, and/or the Fourth Circuit Court of Appeals, or any other venue, formal or informal, (CMS guidance, internal guidance and emails or correspondence relating to these matters, etc) that **relate in any manner whatsoever to any of the legal and/or factual issues being** litigating in the Genesis Healthcare, Inc. and Pee Dee Health Care, P.A. litigation that is on-going with the Department.

This FOIA request includes all decisions of all courts or other venues that relate to the Department's obligations to beneficiaries and/or providers as well as the limitations and authority of the Department to promulgate and utilize regulations, policies and/or any decision-making methods or methodologies (formal or informal) under state and/or federal law.. This request also includes any other regulatory or legal authority or guidance on which the Department relies or believes it is entitled to rely in making decisions and or polices related to the state Medicaid plan - whether internal to the Department or from any external source or sources that the Department relies upon or is bound by. Please consider this request under the FOIA to be as broad and inclusive as legally and factually possible for all documents that may be relevant and/or lead to documents or other information that may be relevant (in the broadest sense of the word) to any and all issues in the Genesis and Pee Dee litigation.

To make responding to these requests as easy and least burdensome on you and the Department as reasonably possible, please send me the actual documents the Department believes or reasonably may believe are related to the request, and if you wish, a list of all other documents that you may be relevant (again, relevant be defined in its' broadest sense) with a detailed description of each document and I can determine which documents actually need to be produced pursuant to this Freedom of Information request.

In addition to the foregoing, I request you notify and provide a copy of the recent order of Judge Anderson of the SC federal district court that denied the Department's request for a protective order to prevent the deposition of Mr. Keck to both the SC Court of Appeals and the Department's Administrative Division of Hearing and Appeals (and, in particular, Mr. Smith). It is only just and proper that all parties have access to the order of the federal court and all other relevant information as required under state and federal law and the rules of court.

If you have questions, please email me as I am often out of the office. I will return your email promptly and/or call you at a time of your convenience. Please include a number that is best for me to reach you. In closing, and again, please construe this request as broadly as allowed under the FOIA, and produce and/or identify the document as noted above. If there is any doubt whatsoever as to any document, please identify as I have requested above or produce it.

Thanks, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.254.3676

This message is intended for the use of the person or entity to which it is addressed and may contain

information, including legal and/or health information, that is privileged, confidential, and the disclosure of which is governed by applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is **STRICTLY PROHIBITED**. If you have received this in error, please notify us immediately and destroy the related message. Thank you.

Nikki Haley GOVERNOR
 Anthony Keck DIRECTOR
 P.O. Box 8206 > Columbia, SC 29202
 www.scdhhs.gov

TO:

FROM:

SUBJECT: Cost of Processing FOIA Request #

The South Carolina Department of Health and Human Services has received and processed your FOIA request. The cost for processing this information is as follows:

Staff processing time at \$10.00 per hour	_____ Hours	\$_____
Pages copied at \$.10 per page	_____ Pages	\$_____
Pages faxed at \$.20 per page	_____ Pages	\$_____
Shipping and Handling Costs		\$_____
Other costs associated with the FOIA request:	_____	\$_____
Total Amount Due SCDHHS:		\$_____

Please remit the above amount to the following address:

Bureau of Fiscal Affairs
 South Carolina Department of Health and Human Services
 Post Office Box 8297
 Columbia, South Carolina 29202-8297

Please contact _____ should you have any questions.

 Signature

 Date:

July 11, 2014

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203

Re: FOIA Request of June 21, 2014.

Thank you for your above referenced request. Our understanding of the state FOIA is that the public is entitled to records held by the agency. We do not understand either the rules of discovery or the FOIA to require:

1. The agency staff to review and make legal conclusions or interpretations regarding public documents it holds.
2. The agency staff to search court orders for potentially responsive documents, when these documents as well as methods for searching the documents for cases, that are relevant, are available from other sources (such as Westlaw, Lexus, and Pacer) that are much more convenient, more precise, less burdensome and less expensive. The agency has already cited to the cases that it, so far, sees as relevant to the issues thus far put forth.
3. The agency staff to review its own administrative decisions and make legal conclusions and interpretations about which decisions would be responsive. The agency decisions are filed by type, such as eligibility, audit, program integrity, pharmacy, etc. and by petitioner name, so that cases of a particular type during a particular time period can be pulled, but they are not searchable by issue or by holding. We could, for example, pull all cases involving financial issues, and provide them to you for your review. If we reviewed them we would do so with our preconceptions and probably inadvertently skew your research.
4. The agency staff to interpret state and federal directives in such a way as to pick out directives that may be relevant "in the broadest sense" to the issues set forth in the Petitioner's position. The Respondent has already cited the federal and state program guidance that it sees as relevant to the issues thus far advanced. All federal and state guidance are available at the federal Medicaid website (<http://www.cms.gov/>) or at the State website (<https://www.scdhhs.gov/>). To some degree these documents are searchable.

As to e-mails, we could do a search for the terms "FQHC" and "reimbursement" or "TPL" for the past, say three (3) years. I'm thinking that would catch most of the relevant communications.

Tony R. Megna
July 11, 2014
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However, please feel free to suggest other terms or subjects. Let us know how you would like us to proceed.

Since you specifically asked for Judge Anderson's ruling on the agency's recent Motion for a Protective Order, it is enclosed. However, we point out that this Order is available through PACER and federal and State decisions are researchable in a number of venues.

Please contact me if there are any questions. My direct is (803) 898-2791.

Sincerely,



Richard G. Hepfer
Deputy General Counsel

Enclosures