



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2022

Ms. Mary Dougherty
Open Records Attorney
Texas Department of Insurance
P.O. Box 12030
Austin, Texas 78711

OR2022-08211

Dear Ms. Dougherty:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 936908 (Reference No. R014242).

The Texas Department of Insurance (the "department") received a request for two categories of information pertaining to the department's 2020 Senate Bill 1264 Biennial Report. The department states it has withheld or released information regarding category two of the request pursuant to Open Records Letter No. 2021-11382 (2021).¹ The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the department states release of the submitted information may implicate the proprietary interests of several third parties. Accordingly, the department states, and provides documentation showing, it notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the following third parties: Aetna Health, Inc., Aetna Life Insurance

¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Company, Texas Health + Aetna Health Plan, Inc., and Texas Health + Aetna Health Insurance Company (collectively, “Aetna”); Baylor Scott and White Health Plan, Scott and White Care Plans, SHA, LLC d/b/a FirstCare Health Plans, Southwest Life and Health, and Baylor Scott and White Insurance Company (collectively, “BSW”); Blue Cross Blue Shield of Texas (“BCBSTX”); Celtic Insurance Company (“Celtic”); Community First Health Plans, Inc. (“CFHP”); Humana Insurance Company and Humana Health Plan, Inc. (collectively, “Humana”); Memorial Hermann Health Plan, Inc., Memorial Hermann Commercial Health Plan, Inc., and Memorial Hermann Health Insurance Company (collectively, “Memorial Hermann”); Sendero Health Plans (“Sendero”); and UnitedHealth Group (“UnitedHealth”). We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 38.004 of the Insurance Code. In 2019, the Texas legislature enacted Senate Bill 1264, which, among other things, amended chapter 1467 of the Insurance Code and established new dispute resolution programs for out-of-network claims. Section 38.004 of the Insurance Code requires the department to conduct a study and submit a report biennially on the impacts of Senate Bill 1264, portions of which relate to arbitrations and mediations under chapter 1467 of the Insurance Code. *See* Ins. Code § 38.004(a). Section 38.004 provides, in relevant part, as follows:

(b) In conducting the study described by Subsection (a), the department shall collect settlement data and verdicts or arbitration awards, as applicable, from parties to mediation or arbitration under Chapter 1467.

(c) The department may not publish a particular rate paid to a participating provider in the study described by Subsection (a), identifying information of a physician or health care provider, or non-aggregated study results. Information described by this subsection is confidential and not subject to disclosure under Chapter 552, Government Code.

(d) The department:

(1) shall collect data quarterly from a health benefit plan issuer or administrator subject to Chapter 1467 to conduct the study required by this section; and

(2) may utilize any reliable external resource or entity to acquire information reasonably necessary to prepare the report required by Subsection (e).

Id. § 38.004(b)-(d). The department, Aetna, BSW, BCBSTX, Celtic, CFHP, Humana, Memorial Hermann, Sendero, and UnitedHealth assert the information at issue was collected for a study under section 38.004 and consists of the types of information made confidential by section 38.004(c). Based upon these representations and our review, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 38.004(c) of the Insurance Code.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 936908

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 10 Third Parties
(w/o enclosures)

² As our ruling is dispositive, we need not consider the remaining arguments against disclosure of the submitted information.