

PRISON HEALTH CARE SERVICES

**Via Personal Delivery**

November 18, 2010

Chris Theg
Office of Legislation
California Prison Health Care Services
P. O. Box 4038
Sacramento, CA 95812-4038

**Re: Agreement No. ICHC.09556
Health Net Federal Services, LLC**

Dear Mr. Theg:

The purpose of this letter is to present the legal reasoning in support of the redaction of certain portions of Agreement No. ICHC.09556 (Agreement), between the California Department of Corrections and Rehabilitation (CDCR) and Health Net Federal Services, LLC (Health Net).

California Prison Health Care Services (CPHCS) acquires contracts for specialty care services for patient-inmates incarcerated within the CDCR institutions. CPHCS procured the Agreement for this purpose, via Request for Proposal 09340. Health Net is the "designated health care network provider" contemplated by Penal Code section 5023.5.

The California Public Records Act (PRA; Gov. Code, § 6250, et seq.) provides for State agencies to make public records available, except for those records or portions that are exempt from disclosure by express provisions of law. (Gov. Code, § 6253, subd. (b).) CPHCS follows the PRA's provisions regarding disclosure of records, and similarly observes its provisions regarding applicable exemptions from disclosure.

Government Code Section 6254.14

Contracts for health services are exempt from disclosure for a period of one year following execution of the contract, and the rate information contained in those contracts is exempt for an additional three years. (Gov. Code, § 6254.14.) As the Agreement is less than one year old, its entire content is exempt from disclosure. However, the Receiver chose to make certain portions of the Agreement available, with redactions to sections of the Agreement that would disclose information such as rates, negotiation strategy, or trade secret.

Government Code section 6254.14 provides the following exception to the exemption:

"Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Bureau of State Audits. The Joint Legislative Audit Committee and the Bureau of State Audits shall maintain the confidentiality of

the contracts and amendments until the contract or amendment is fully open to inspection by the public.” (Gov. Code, § 6254.14.)

The inclusion of the above language in Government Code section 6254.14 reflects legislative intent that, within the Legislature, only the Joint Legislative Audit Committee is required to have access to an unredacted copy of the Agreement, and even then, under legal obligation to maintain strict confidentiality of the Agreement.

Although Government Code section 6254.14 establishes an exemption to disclosure of the entire Agreement at this time, bases for nondisclosure of other specific portions of the Agreement also exist.

Government Code Section 6254(k) and Evidence Code Section 1060

The Agreement states, in relevant part:

“CDCR/CPHCS shall make every effort to maintain confidential requested information indicated by the Contractor to be confidential within the confines of its authority. In the event CDCR/CPHCS is ordered by a court and/or a determination is made through its authority that information is to be released it will make every effort to provide notification within five (5) working days of the request to the Contractor.” (Agreement, Exhibit A, Provision A, p. 2.)

The PRA exempts from disclosure “... Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” (Gov. Code, § 6254, subd. (k).)

The Evidence Code protects claims of trade secret:

“If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” (Evid. Code, § 1060.)

CPHCS agreed to protect the redacted portions of the contract, which Health Net has asserted are Health Net’s protected trade secrets. However, CPHCS has, with the consent of Health Net, identified portions of the Agreement that CPHCS would make available, consistent with CPHCS’s contractual duty and these statutory exemptions from disclosure.

If you have any questions concerning the reasoning for redaction of portions of the Agreement, please do not hesitate to contact me, at (916) 324-6388.

Very truly yours,



ROSCOE L. BARROW II
Staff Counsel IV