

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE

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IN THE MATTER OF: )  
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)  
Local Government Center, Inc.; )  
Government Center Real Estate, Inc.; )  
Local Government Center Health Trust, LLC; )  
Local Government Center Property-Liability Trust, )  
LLC; )  
Health Trust, Inc.; )  
New Hampshire Municipal Association Property-Liability ) Case No.: C-2011000036  
Trust, Inc.: )  
LGC – HT, LLC )  
Local Government Center Workers’ Compensation )  
Trust, LLC; )  
And the following individuals: )  
Maura Carroll; Keith R. Burke; Stephen A. Moltenbrey; )  
Paul G. Beecher; Robert A. Berry; Roderick MacDonald; )  
Peter J. Curro; April D. Whittaker; Timothy J. Ruehr; )  
Julia A. Griffin; and John Andrews )  
)  
RESPONDENTS )  

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**PROTECTIVE ORDER PURSUANT TO THE  
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT,  
POOLED RISK MANAGEMENT PROGRAMS AND RIGHT TO KNOW ACT**

On December 14, 2011 the presiding officer granted the BSR’s request for an on-site examination of certain financial records and information maintained by the LGC in written, recorded and digitalized form. In furtherance of the purposes of that order, the respective parties were instructed to meet and confer to facilitate the actual logistics and conduct of that examination. On December 19, 2011 the parties met for that purpose and while apparently able to agree on some logistical steps, the LGC asserted that certain impediments existed preventing its disclosure of some information. On December 19, 2011 the BSR filed a motion for protective order. After review of this request, the presiding officer issued an instruction to the BSR to initiate contact with respondents’ counsel to attempt to reach agreement on a consent order or assented to motion to accomplish the purposes of a protective order. On December 21, 2011 the presiding officer was informed that the parties’ attempts to reach agreement on a proposed order had failed. In consequence thereto, the petitioner BSR and the respondent LGC have submitted separate proposed orders for consideration of the presiding officer. Both parties address impediments caused by the Health Insurance Portability and Accountability Act (“HIPAA”) and RSA 5-B:7, Pooled Risk Management Programs (pooled risk statute”). Only the LGC’s proposed order includes reference to the RSA 91-A:5, Right-to-Know law.

BSR, as the party seeking information that may be determined to be “protected health information” under the Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-191, §264, 110 Stat. 1936 (“HIPAA”), has moved for issuance of a qualified protective order under 45 CFR § 164.512(e). “Protected health information” means “individually identifiable health information” transmitted by or maintained in electronic media or “[t]ransmitted or maintained in any other form or medium.” 45 CFR 160.103. Some of the more common individual identifiers are names, addresses, birth dates, social security or other identifiably assigned numbers, and may extend to even the identity of the employer or other demographic reference.

However, without finding specifically that LGC is a so-called “covered entity” under the provisions of HIPAA, that federal law states that if provided with the required assurance, LGC may disclose protected medical information in response to a proper discovery request by BSR. That proper assurance under HIPAA can be demonstrated in one of two ways. One, BSR and LGC can agree to a qualified protective order and jointly submit it to the [administrative tribunal]. The second way is if the BSR has made reasonable efforts to secure a qualified protective order from the [administrative tribunal]. Id. § 164.512(e)(iv)(a),(b). It is by this second method through submission of its motion of December 19, 2011, and the submission of its proposed order of December 20, 2011 that the BSR has established the proper assurance sufficient to allow the LGC to disclose the “protected health information” it believes is “inextricably linked to and contained within LGC’s electronic data.”

Notwithstanding having established a sufficient basis to disclose such information, a ruling at this time will serve to protect the disclosed information and will allow discovery in this case to proceed in compliance with HIPAA. This order should also avoid any reasonable additional filing related to any protections of information pertaining to claims analysis or claims management provided by RSA 5-B:7, and avoid additional argument related to exemptions arising under RSA 91-A:5 related to these specific administrative proceedings.

By my previous order and this instant order the BSR has been granted the responsibilities of *de facto* custodian of information that is extremely personal to many individuals who are not parties to these proceedings. Protected health information related to the many participants in programs at issue in these proceedings is at hand and the risk of disclosure has become enhanced with the possible transfer of such information to the BSR, an agency that does not handle such information on a regular basis. The presiding officer believes the BSR would be well served by the development of an internal agency protocol for the handling of such information. Any further disclosure, beyond that required by these proceedings, inadvertent or otherwise will be addressed accordingly.

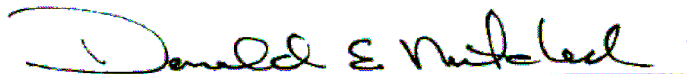
Therefore, it is ordered as follows:

- A. The BSR may review such protected health information governed by HIPAA and such claims analysis and claims management information of any pooled risk management program as governed by RSA 5-B:7, without redaction, during the on-site examination and consistent with the scope of the on-site examination previously ordered in accord with this instant order.
- B. For purposes of this order, the term “BSR” applies to any individual examining or using the information referred to herein on behalf of the Bureau of Securities Regulation, including its own attorneys and personnel necessary to its preparation and participation in this

administrative proceeding and any other attorneys, experts, or consultants acting as its agents, independent contractors, or employees who are necessary to that same preparation and participation.

- C. All parties are prohibited from using or disclosing the protected health information for any purpose other than these administrative proceedings for which such information was requested.
- D. Before any public use or disclosure, the BSR shall first redact any protected health information as defined under HIPAA to avoid public disclosure.
- E. The BSR shall return all protected health information obtained from LGC or any other source prior or subsequent to the filing of its petition in this matter that is subject to HIPAA considerations to the LGC at the end of this administrative proceeding or shall destroy such information, and all copies of same, and provide demonstrable evidence to the LGC that it has done so.
- F. Also, before any public use or disclosure and to avoid public disclosure, the BSR shall first redact any privileged and confidential information pertaining to claims analysis or claims management of any pooled risk management program as governed by RSA 5-B:7.
- G. The BSR shall return all information considered privileged and confidential under RSA 5-B:7 obtained from LGC or any other source prior or subsequent to the filing of its petition in this matter to the LGC at the end of this administrative proceeding or shall destroy such information, and all copies of same, and provide demonstrable evidence to the LGC that it has done so.
- H. The disclosure of any of the information subject to this protective order shall not be considered as precedent for any other administrative or judicial proceeding, nor be interpreted to have eliminated any exemption LGC or BSR may have under the provisions of RSA 91-A:5 IV.
- I. LGC's disclosure of such protected health information and claims analysis and claims management information under the terms of the orders issued to date in these proceedings shall not constitute a waiver of any right to seek different treatment of similar information in any future and separate proceedings.

So ordered, this 23<sup>rd</sup> day of December, 2011



Donald E. Mitchell, Esq.  
Presiding Officer

#### SERVICE LIST

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