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RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

March 2, 2016

Robert S. Cohen, Director and Chief Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Re: Tenet Health Systems North Shore, Inc.
DOAH No: 16-0346MPI

Dear Judge Cohen,

This letter responds to the correspondence to you dated February 25, 2016, from Joanne B. Erde, counsel for the Respondent, Tenet Health Systems North Shore, Inc., requesting that you unseal the file. The Division should deny the request because the file remains confidential and exempt under ss. 413.409(12) and 119.07(1), Fla. Stat. Thus, it is respectfully submitted that no action is required at this time.

The Division properly sealed the case file when the Agency for Health Care Administration (AHCA) referred the matter to the Division of Administrative Hearings (DOAH). As set forth in correspondence from AHCA, dated May 28, 2015, a copy of which is included herein for your reference, the case relates to a Final Audit Report (FAR) undertaken pursuant to s. 409.913, Fla. Stat. The allegations in the FAR, contrary to the assertions of counsel for the Respondent, relate directly to Medicaid billing "abuse" as defined in the statute and quoted in the attached letter. See s. 409.913(1)(a), Fla. Stat.

AHCA specifically takes issue with counsel's statement that the sealing of this file is without basis at this time. Pursuant to s. 413.409(12), Fla. Stat., all information relating to an investigation of a Medicaid provider that relates to an allegation of abuse remains exempt from the Public Records Law until, among other events not applicable here, "the agency takes final agency action with respect to the provider and requires repayment of any overpayment, or imposes an administrative sanction". Respondent suggests that because it made payment, that there is now final agency action and the exemption no longer applies.

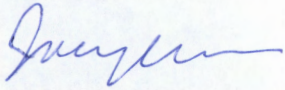
Respondent is plainly in error with the above argument. The fact that this case is still pending here at DOAH and pointing to a final hearing necessarily means that there has **not** been "final agency action". There cannot be final agency action until the final hearing has taken place, a recommended order is entered by the administrative law judge, and then a Final Order is issued by AHCA. Only at that juncture can there be final agency action that would provide for judicial review under s. 120.68(1), Fla. Stat. Had Respondent made all the payments required by the FAR pursuant to a settlement agreement with AHCA which was then incorporated into a Final



Order with appellate rights thereafter, then the exemption would lift. Respondent can't have it both ways: claiming final agency action upon payment while at the same time litigating those very issues to a point of future final agency action with the right of judicial review.

There is no basis to unseal this record. It remains confidential and exempt from public disclosure at this moment in time. AHCA respectfully requests that no action should be taken on that issue and that the sealing of DOAH's file remain.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Hern", with a stylized flourish at the end.

Joseph G. Hern, Jr.

CC: Kevin D. Dewar, Esq.
Joanne B. Erde, Esq.



RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

FILED

May 28, 2015

2015 JUN -1 AM 11:22

Robert S. Cohen, Director and Chief Judge
Division of Administrative Hearings
The DeSoto Building
Tallahassee, Florida 32399-3060

DIVISION OF
ADMINISTRATIVE HEARINGS

15-3116 MPI

Re: Public Record Exemption: TENET HEALTH SYSTEM NORTH SHORE, INC.
C.I. No.: 11-2557-000, Record ID No.: 2015-2431

The Agency for Health Care Administration, Medicaid Program Integrity Division, conducted an investigation of TENET HEALTH SYSTEM NORTH SHORE, INC. In order to determine whether there was reasonable suspicion of Fraud or Abuse as those terms are defined in Section 409.913, Florida Statutes.* That investigation resulted in issuance of a Final Audit Report (FAR) on April 17, 2015, related to program abuse. As a result of a pending administrative petition seeking a hearing before the Division of Administrative Hearings contesting the Agency's sanction, as of this date the Agency has not yet: (a) taken final agency action with respect to the provider which requires repayment of any overpayment, or imposes any administrative sanction; (b) referred the case for criminal prosecution; or (c) determined that allegations of Fraud or Abuse are without merit. Consequently, the FAR, and all information obtained by the Agency pursuant to the complaint or the investigation resulting in the FAR, are confidential pursuant to Section 409.913(12), Florida Statutes, and therefore exempted from the provisions of Section 119.07(1), Florida Statutes.

Thus, the Agency requests that DOAH seal this case.

*Section 409.913, Florida Statutes defines *abuse* as, "Provider practices that are inconsistent with generally accepted business or medical practices and that result in an unnecessary cost to the Medicaid program or in reimbursement for goods or services that are not medically necessary or that fail to meet professionally recognized standards for health care, or recipient practices that result in unnecessary cost to the Medicaid program. *Fraud* means, "an intentional deception or misrepresentation made by a person with the knowledge that the deception results in unauthorized benefit to herself or himself or another person. The term includes any act that constitutes fraud under applicable federal or state law."

Sincerely,

Sonya Graves
Medical Healthcare Program Analyst
Medicaid Program Integrity/ Office of the Inspector General

cc: Richard Shoop, Senior Attorney, Office of General Counsel



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