



HR & BENEFITS UPDATE

Inapplicability of HIPAA Privacy To Disability Insurer Not License To Impose Unreasonable Proof Of Loss Requirements

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While finding the Privacy Standards imposed by the Health Insurance Portability & Accountability Act (HIPAA) inapplicable to disability insurers, a recent Louisiana Court of Appeals nevertheless ruled that the insurer was not entitled to dismissal of the lawsuit challenging the denial of disability benefits brought by a state employee for failure to meet proof of loss requirements based on his failure to sign insurer required medical authorization. Disability insurers and plan fiduciaries should heed the decision as a reminder that exemption from HIPAA does not amount to a license to impose unreasonable proof of loss or requirements inconsistent with a reasonable reading of the terms of the applicable plan or policy, or other applicable regulations.

Harris v. Metropolitan Life Ins. Co., --- So.3d ----, 2010 WL 415262, 2009-0034 (La.App. 1 Cir. 2/5/10), involved a lawsuit challenging the continuing refusal of Metropolitan Life Insurance to and its designates to approve the disability benefit claim of Louisiana Supreme Court employee Jack Harris. Metropolitan repeatedly asked insisted that Mr. Harris submit to a physical examination and sign various medical and other authorizations including an "Attending Physician's Statement" and an "Employee Authorization," and sign certain other documents. While Mr. Harris sent the "Attending Physician's Statement" to his treating physician, he declined to sign the Employee Authorization and certain other subsequently requested consents on the grounds of HIPAA. While he provided to a HIPAA-compliant authorizations to his medical providers to release all medical records, medical opinions, and medical reports relating to Mr. Harris' past and current treatment for purposes of the claim, he declined and instead filed suit contending that the information and releases already provided met the proof of loss requirements of the policy.

Upon motion of Metropolitan, the trial court found that Mr. Harris' failure to sign the authorizations and submit to the medical examination required by Metropolitan rendered his claim "premature." Upon appeal, however, the Court of Appeals overruled this determination. While the Court of Appeals agreed with the trial court that the special authorization rules imposed by HIPAA did not apply to a disability insurer such as Metropolitan, it also ruled that its right to require a claimant to sign authorizations, submit to medical examinations or meet other proof of loss conditions must be reasonable in light of the terms of the policy. Accordingly, although the Court of Appeals agreed that the proof of loss and other provisions of the disability policy authorized Metropolitan to require a disability claimant to undergo an independent medical examination "as often as reasonably required," the Court of Appeals ruled that Mr. Harris' submission to the independent medical examination was not a condition precedent to the initiation of litigation by an insured and that the "medical authorization" demanded by Metropolitan was far broader than what the policy allowed as reasonably required for the

independent medical examination. Accordingly, the Court of Appeals overruled the trial court's dismissal of the disability claim and remanded the action to the trial court for hearing.

While affirming that the HIPAA Privacy Standards don't directly apply to disability insurers, the *Harris* decision also demonstrates that disability insurers should not over-estimate the effect of this exemption. While HIPAA may not apply, disability insurers generally remain bound by the reasonable construction of their policy terms, taking into account otherwise applicable laws and regulations. Accordingly, disability and other HIPAA-exempt insurers and plans should not confuse the inapplicability of the HIPAA authorization requirements for carte blanche to impose unreasonable authorization or other proof of loss requirements inconsistent with their policy terms.

If you have questions about or need assistance evaluating, commenting on or responding to this invitation or other employee benefit, employment, compensation, employee benefit, workplace health and safety, corporate ethics and compliance practices, concerns or claims, please contact the author of this article, Curran Tomko Tarski LLP Labor & Employment Practice Group Chair Cynthia Marcotte Stamer. Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization, Chair of the American Bar Association RPTE Employee Benefits & Other Compensation Group, and a Council Member on the ABA Joint Committee on Employee Benefits, Ms. Stamer has more than 22 years experience advising and assisting employers, employee benefit plan and their fiduciaries, insurers, administrators, and others about policy and plan, process, and product design, administration, documentation, risk management and defense under ERISA, COBRA, HIPAA, labor and employment, tax, state banking and insurance, and other laws. Her work includes extensive experience advising and defending employee benefit plan fiduciaries and insurers about the investigation of disability, health and other claims and appeals. She also advises, assists, trains, audits and defends employers and others regarding the federal and state Sentencing Guideline and other compliance, equal employment opportunity, privacy, leave, compensation, workplace safety, wage and hour, workforce reengineering, and other labor and employment and defends related audits, investigations and litigation, charges, audits, claims and investigations by the IRS, Department of Labor and other federal and state regulators. Ms. Stamer also speaks, writes and conducts training extensively on these and other related matters. For additional information about Ms. Stamer and her experience, see [here](#) or to access other publications by Ms. Stamer see [here](#) or contact Ms. Stamer directly. For additional information about the experience and services of Ms. Stamer and other members of the Curran Tomko Tarski LLP team, see [here](#).

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