

Exhibit A

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July 11, 2019

VIA EMAIL TO FOIA_REQUEST@CMS.HHS.GOV

CMS FOIA Officer
Centers for Medicare and Medicaid Services
Room N2-20-16
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 (as amended), we hereby request that the Centers for Medicare & Medicaid Services (“CMS”) produce copies of the records described below. Please note that this request is being made in connection with appeals we have filed with the Provider Reimbursement Review Board (PRRB). For one of those appeal, we have a deadline of February 13, 2020 to inform the PRRB that the group is closed, and that we are ready to proceed with the appeal (PRRB Case No. 19-1120G). We would appreciate if we could receive a response to our request before that date.

I. Background

The Medicare statute requires CMS to adjust the labor-related share of IPPS payments to reflect differences in “wages” and “wage-related costs” between geographic areas. 42 U.S.C. §

1395ww(d)(3)(E)(i). To that end, each year CMS calculates the average hourly wage (“AHW”) for every core-based statistical area (“CBSA”) in the United States by dividing the sum of all “wages” (i.e., salaries) and “wage-related costs” (i.e., fringe benefits) for IPPS hospital services by the total hours worked for IPPS hospital services. CMS compares each CBSA’s AHW to the national average to calculate a wage index adjustment for each CBSA.¹ For instance, a CBSA with an AHW that is 105 percent above the national average is assigned a wage index adjustment of 1.05.

In the IPPS final rule for federal fiscal year (FY) 1995 (FY 1995), the Health Care Finance Administration (“HCFA”, the precursor to CMS) published a list of “core” wage-related costs that automatically qualify for inclusion in the wage index. 59 Fed. Reg. 45,330, 45,357 (Sept. 1, 1994). Any cost that is not on the list of core wage-related costs, such as physician malpractice costs, is considered an “other” wage-related cost.

In the FY 1995 final rule, HCFA set forth three criteria that must be met for a hospital to be able to report “other” wage related costs so they will be included in the calculation of the Medicare wage index.

- 1) The wage-related cost must be greater than 1 percent of total salaries after the direct excluded salaries are removed;
- 2) The wage-related cost would be a fringe benefit if reported to the IRS as a fringe benefit in accordance with IRS requirements;
- 3) The wage-related cost has not been furnished for the convenience of the provider; and
- 4) If the cost is malpractice insurance, “only those [malpractice] policies that list actual names or specific titles (for example, President of the hospital) of covered employees may be included in the wage index.” 59 Fed Reg. at 45358.

Id. at 45357-58. On November 1, 1996, CMS updated the cost report instructions with the first three criteria listed above. HCFA Pub. 15-2, Chapter 36, Transmittal No. 1 (Nov. 1, 1996). It does not appear that CMS has ever issued any additional public guidance on the fourth criterion.

¹ Though not relevant to this appeal, the wage index is further adjusted for occupational mix.

II. Requested Documents

We are requesting the production of the following:

- 1) Any and all documents, typed, handwritten, or copied, transmitted between either CMS and its Medicare Administrative Contractors (“MACs”), CMS and providers, or MACs and providers in which CMS or a MAC explained, elaborated, interpreted or applied any or all of the four requirements set forth in the FY 1995 final rule (and described above) to be included in the calculation of the Medicare wage index as an “other” wage-related cost,
- 2) To the extent not already produced pursuant to 1) above, copies of all documents, typed, handwritten, or copied, transmitted between CMS and its MACs, CMS and providers, or MACs and providers regarding the criteria for inclusion or exclusion of Medicare malpractice costs from the calculation of the wage index, and
- 3) To the extent not already produced in 1) and 2) above, all documents, analyses or correspondence that CMS relied upon in issue its proposal to categorically disallow all other wage-related costs (including Medical malpractice costs) from the wage index starting in FY 2020. (This should specifically include the analyses or correspondence supporting CMS’s contention that few hospitals accurately reported other wage-related costs in the Medicare cost reports that were used to calculate the wage index for FY 2019.)²

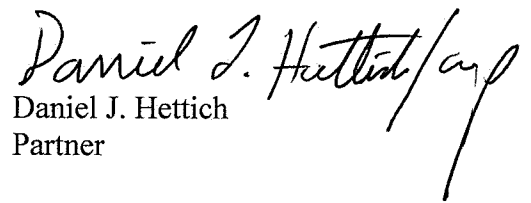
If you deny any or all of this request, please cite each specific exemption you believe justifies your refusal to release the information and notify us of the appeal procedures available under law. Any reasonably segregable portion of a responsive record must be provided after redaction of any allegedly exempt material. *See* 5 U.S.C. § 552(b).

We agree to pay all charges authorized by law or applicable regulations in connect with this request, subject to the condition that you notify us in advance if the charges will exceed \$1,000.00.

Please feel free to contact me with any questions or for further clarification.

² *See* 83 Fed. Reg. 41144, 41366 (“[I]nternal reviews showed that only 8 hospitals out of the more than 3,000 IPPS hospitals in the wage index had other wage-related costs that were correctly reported for inclusion in the wage index....”).

Sincerely,


Daniel J. Hettich
Partner