

EXHIBIT A



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May 21, 2018

VIA EMAIL FOIA_Request@cms.hhs.gov and VIA OVERNIGHT DELIVERY USPS

FOIA Officer
Centers for Medicare & Medicaid Services
Mailstop N2-20-16
7500 Security Boulevard
Baltimore, MD 21244

Re: Freedom of Information Act Request

Dear Sir or Madam:

Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting that the Centers for Medicare & Medicaid Services (“CMS”), for the timeframe of January 1, 2007 (unless noted otherwise), through the date of its response, provide the following:

FOIA and Other Document Productions

1. All documents¹ that CMS has produced to Petrillo & Powell, P.L.L.C., in response to a January 5, 2015, FOIA Request from Joseph Petrillo Esq. including but not limited to documents produced by CMS in *Petrillo & Powell, PLLC v. U.S. Dep’t of Health and Human Services Centers of Medicare and Medicaid Services* in the United States District Court for the District of Columbia, Case No. 1:17-cv-00663-KBJ.
2. All documents that CMS has produced to Fred Schulte of the Center for Public Integrity, in response to a May 21, 2013, FOIA Request including but not limited to documents produced in *Schulte et al v. U.S. Dep’t of Health and Human Services* in the United States District Court for the District of Columbia, Case No. 1:14-cv-00887-JDB.

¹ The terms “document” or “documents” mean all records and writings of whatever type and description, including but not limited to electronically stored information, research, studies, investigations, electronic mail or e-mail, text messages, correspondence, memorandums, rulings, guidance, policies, manuals, internal or external comments, computations, facsimiles, letters, contracts, agreements, and all other written, graphic, or electronic materials of any nature whatsoever.

3. All documents produced or disclosed by CMS in response to any request made by the Government Accountability Office for the purpose of preparing GAO-16-76, “Medicare Advantage: Fundamental Improvements Needed in CMS’s Effort to Recover Substantial Amounts of Improper Payments” (April 2016).
4. All interrogatory answers, deposition testimony, or other sworn statements, either received by the government or provided by the government or witnesses on behalf of the government, including any deposition transcripts for representatives designated under Federal Rule of Civil Procedure 30(b)(6) by CMS or for any expert witness identified by CMS in any litigation in which the government has asserted that the submission of invalid or unsupported diagnosis codes or Risk Adjustment Payment System (“RAPS”) data by Medicare Advantage Organizations (“MAO”) or MAO providers violated the False Claims Act.
5. All interrogatory answers, deposition testimony, or other sworn statements, either received by the government or provided by the government or witnesses on behalf of the government, including any deposition transcripts for representatives designated under Federal Rule of Civil Procedure 30(b)(6) by CMS or for any expert witness identified by CMS relating to any and all investigations, enforcement actions, and settlements in which the government has asserted that the submission of invalid or unsupported diagnosis codes or RAPS data by MAO or MAO providers violated the False Claims Act.
6. All documents produced or disclosed by CMS in response to any request from a Member of Congress, through a legislative committee, subcommittee, or otherwise, regarding retrospective chart reviews of medical charts by MAOs or providers for Medicare Advantage and any alleged improper payments and/or overpayments to MAOs.
7. All documents that CMS has produced in response to any other FOIA request relating to the topics set forth above and requests from any person and/or entity similar to numbers 1 and 2 above.

“FOIA reflects a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” *Department of Defense v. FLRA*, 510 U.S. 487, 494 (1994). To the extent that any responsive documents are withheld pursuant to any of the exemptions set forth in 5 U.S.C. § 552(b) or for any other reasons, CMS is asked to provide a Vaughn index consistent with *Def. of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 88 (D.D.C. 2009).²

² Under the FOIA, an agency may withhold documents responsive to a FOIA request only if the responsive documents fall within one of nine enumerated statutory exemptions. *See* 5 U.S.C. § 552(b); *see also Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 494 (1994). The agency bears the burden of justifying any withholding. *See Bigwood v. United States Agency for Int’l Dev.*, 484 F.Supp.2d at 74. To enable the Court to determine whether documents properly were withheld, the agency must provide a detailed description of the information withheld through the submission of a so-called “Vaughn Index,” sufficiently detailed affidavits or declarations, or both. *Id.*; *see also Oglesby v. Dep’t of the Army*, 79 F.3d 1172, 1178 (D.C.Cir.1996); *Vaughn v. Rosen*, 484 F.2d at 827–28. The Vaughn

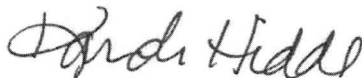
To the extent that certain of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

I request that the information be provided in electronic format and sent to me by email or U.S. mail. In order to help you determine my status for the purpose of assessing fees, you should know that I am affiliated with a private business and am seeking information for use in the company's business. If the fees to respond to this request will exceed \$2,500, please contact me to discuss the fees.

If you have any questions about handling this request, you may contact me by email (khide@fbtlaw.com) or telephone (317-340-0463). Thank you in advance for your assistance.

Sincerely,

FROST BROWN TODD LLC



Kandi K. Hidde

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Index and/or accompanying affidavits or declarations must “provide[] a relatively detailed justification, specifically identif[y] the reasons why a particular exemption is relevant and correlat[e] those claims with the particular part of a withheld document to which they apply.” *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 146 (D.C.Cir.2006) (quoting *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C.Cir.1977)). In the Vaughn Index, the agency should “disclose as much information as possible without thwarting the exemption's purpose.” *Hall v. Dep't of Justice*, 552 F.Supp.2d 23, 27 (D.D.C.2008) (quoting *King v. Dep't of Justice*, 830 F.2d 210, 224 (D.C.Cir.1987)).