

EXHIBIT B



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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:

Attestations and Compliance

1. All documents¹ in CMS’s possession related to the following statement: “Our RADV [Risk Adjustment Data Validation] methodology does not change our existing contractual requirement that Medicare Advantage (“MA”) organizations must certify (based on best knowledge, information, and belief) the accuracy, completeness, and truthfulness of the risk adjustment data they submit to CMS. Further, this decision does not change the long-standing risk adjustment data requirement that a diagnosis submitted to CMS by an MA organization for payment purposes must be supported by medical record documentation.” 79 Fed. Reg. 29,843, 29,921–22 (May 23, 2014).
2. All documents, letters, or memoranda received by CMS modifying, qualifying, or otherwise related to the annual attestation submitted by Medicare Advantage

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.

Organizations (“MAO”) under 42 C.F.R. 422.504(*l*) regarding risk adjustment data accuracy, and any responses sent by CMS, including but not limited to:

- a. CMS policies, procedures, rules, guidelines, interpretations, and opinions relating to the requirement that MAOs annually certify that their risk adjustment submissions are “accura[te], complete[], and truthful[]” under 42 C.F.R. 422.504(*l*);
- b. CMS policies, procedures, rules, guidelines, interpretations, and opinions relating to MAOs’ obligation to undertake “due diligence” to ensure the accuracy, completeness, and truthfulness of encounter data submitted to CMS under 65 Fed. Reg. 40,170, 40,268, (June 28, 2000); and
- c. any documents relating to attestations submitted by MAOs in connection with their bid submissions, including but not limited to any records, letters, or memoranda received by CMS modifying or qualifying such attestations.

Fee-For-Service Adjuster

3. All documents in CMS’s possession related to the assessment of the application of the applicability of the Fee-For-Service Adjuster, CMS, Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation Contract-Level Audits (February 24, 2012), to the statements and regulations referenced in request 1 above, including the proposed and final regulation 42 C.F.R. § 422.326.
4. All documents in CMS’s possession related to the calculation of the Fee-For-Service Adjuster and/or data files underlying such calculations, including but not limited to, the comments referenced in CMS’s Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation Contract-Level Audits (February 24, 2012).
5. All documents reflecting any RADV-like studies, audits, or analyses of records submitted to support Fee-For-Service claims data, as referenced in CMS’s Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation Contract-Level Audits (February 24, 2012).
6. All documents regarding any analyses conducted or calculations or estimates made by the Office of the Actuary relating to the Fee-For-Service Adjuster.
7. All documents regarding CMS’s forecasting, budgeting, and/or appropriating payments or funds related to insuring the Medicare Fee-For-Service population.

Reconciliation Payments

8. All documents relating to CMS’s determinations regarding final reconciliation payments.

9. All documents relating to CMS's final reconciliation payments for 2015 dates of service that occurred prior to receiving attestations from MAOs.
10. All documents related to the CMS release of the September 28, 2017 "Medicare Advantage/Prescription Drug System (MARx) October 2017 Payment – INFORMATION."
11. All documents related to the CMS release of the October 20, 2017 "Announcement of Deadline for Second Final Reconciliation of Payment Year (PY) 2016."
12. All documents related to the CMS release of the December 20, 2017 "Phase III Version 3 MAO-004 Report Release Date and Announcement Regarding Final Encounter Data Deadlines for Payment Years 2016 and 2017."
13. All documents related to the CMS release of the February 16, 2018 "Updated Announcement Regarding Encounter Data Deadlines for Payment Years 2016 and 2017 Final Reconciliation" and February 20, 2018 "CORRECTION - Updated Announcement Regarding Encounter Data Deadlines for Payment Years 2016 and 2017 Final Reconciliation."
14. All documents that CMS has produced in response to any other FOIA request relating to the topics 1-13 set forth 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 *Defs. of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 88 (D.D.C. 2009).²

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

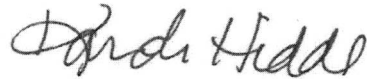
² Under the FOIA, an agency may withhold documents responsive to a FOIA request only if the responsive documents fall within one of nine enumerated statutory exemptions. See 5 U.S.C. § 552(b); see also *Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 494 (1994). The agency bears the burden 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 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)).

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

A handwritten signature in black ink that reads "Kandi K. Hidde". The signature is written in a cursive, flowing style.

Kandi K. Hidde

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