

# **EXHIBIT N**

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**From:** Gilmore, Hugh P. (CMS/OSORA) <Hugh.Gilmore@cms.hhs.gov>  
**Sent:** Tuesday, September 18, 2018 4:17 PM  
**To:** Hidde, Kandi K.  
**Cc:** Dutton, Vendetta (CMS/OSORA)  
**Subject:** RE: FOIA Advance payment

Thank you for your email. We are to be receiving electronic information responsive to your requests shortly. Once we have the records, it is necessary to convert them to a pdf format from the native in order to conduct the FOIA analysis necessary. Production will be conducted on a rolling basis and we hope to have the first one to you soon.

Thanks again for the update query.

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**From:** Hidde, Kandi K. [mailto:[khidde@fbtlaw.com](mailto:khidde@fbtlaw.com)]  
**Sent:** Monday, September 17, 2018 2:45 PM  
**To:** Gilmore, Hugh P. (CMS/OSORA) <Hugh.Gilmore@cms.hhs.gov>  
**Cc:** Dutton, Vendetta (CMS/OSORA) <Vendetta.Dutton@cms.hhs.gov>  
**Subject:** RE: FOIA Advance payment

Hi Mr. Gilmore--Thank you for your email of August 16, 2018 advising that our payment of \$120,000 was received by CMS. Since August 16<sup>th</sup>, I have contacted CMS via email and voicemails on multiple occasions, including but not limited to communications on August 30, September 4, 10, and 14. I have been unable to reach you or Ms. Dutton. As stated in my August 9<sup>th</sup> email below, we expected CMS to begin producing documents upon receipt of our advance payment because responsive documents have been produced to other FOIA requestors and should be readily available for production. We also requested a schedule for the production of additional responsive documents. Our FOIA requests have been pending since May 21, 2018. I understand that you have been out on leave, which has delayed CMS's response to our FOIA requests. I hope that you are back from leave and all is well. If not, please provide me with an alternative contact. We would like to work with CMS in an effort to avoid filing any type of enforcement action to obtain these documents. Please contact me at 317-237-3843 at your earliest convenience. Kandi

**Kandi K. Hidde**  
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**From:** Gilmore, Hugh P. (CMS/OSORA) <[Hugh.Gilmore@cms.hhs.gov](mailto:Hugh.Gilmore@cms.hhs.gov)>  
**Sent:** Thursday, August 16, 2018 5:20 PM  
**To:** Hidde, Kandi K. <[khidde@fbtlaw.com](mailto:khidde@fbtlaw.com)>  
**Subject:** RE: FOIA Advance payment

Yes, it was received yesterday...will contact you soon as I'm back from leave and catching up with many items.

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**From:** Hidde, Kandi K. [mailto:[khidde@fbtlaw.com](mailto:khidde@fbtlaw.com)]  
**Sent:** Thursday, August 16, 2018 2:00 PM  
**To:** Gilmore, Hugh P. (CMS/OSORA) <[Hugh.Gilmore@cms.hhs.gov](mailto:Hugh.Gilmore@cms.hhs.gov)>  
**Cc:** Dutton, Vendetta (CMS/OSORA) <[Vendetta.Dutton@cms.hhs.gov](mailto:Vendetta.Dutton@cms.hhs.gov)>  
**Subject:** RE: FOIA Advance payment

Dear Mr. Gilmore—I received confirmation from UPS that the check for \$120,000 for the FOIA advance payment was delivered to your office. Courtesy copies of the letter and check are attached. Can you please confirm that you have received the check? Also, let me know if you would like to discuss my email from August 9<sup>th</sup>. Thank you. Kandi

**Kandi K. Hidde**

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**From:** Hidde, Kandi K.

**Sent:** Thursday, August 9, 2018 1:39 PM

**To:** Gilmore, Hugh P. (CMS/OSORA) <[Hugh.Gilmore@cms.hhs.gov](mailto:Hugh.Gilmore@cms.hhs.gov)>

**Cc:** Dutton, Vendetta (CMS/OSORA) <[Vendetta.Dutton@cms.hhs.gov](mailto:Vendetta.Dutton@cms.hhs.gov)>

**Subject:** RE: FOIA Advance payment

Dear Mr. Gilmore,

Thank you for your July 25, 2018 email in response to my July 20, 2018 letter, and your explanation of the \$120,000 advance payment for search, review, and duplication in response to our FOIA requests, Control Numbers #052220187048, #052220187050, #052320187013, #052220187046, #052320187007, and #052320187010 (the "Requests").

While we reserve our right to enforce the Requests for the deficiencies outlined in our July 20, 2018 letter, after reviewing your explanation of the \$120,000 fee, we better understand the basis for it and agree to submit payment of \$120,000 pursuant to the instructions in your June 22, 2018 invoice so that you may continue your search, review, and duplication efforts and begin to promptly produce documents responsive to the Requests.

As we described in our July 20, 2018 letter, because a number of the Requests relate to materials CMS already has produced to other FOIA requestors, we believe that those materials, at minimum, should be readily available for production. Please confirm that you will produce those materials to us by August 25, 2018.

Please also confirm that you will produce to us on a rolling basis additional responsive documents based on unique searches you may be running. For those documents, please provide by August 25, 2018 an expected production schedule.

Feel free to contact me at 317-237-3843 to further discuss this matter. Thank you. Kandi

**Kandi K. Hidde**

**Attorney at Law | Frost Brown Todd LLC**

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**From:** Gilmore, Hugh P. (CMS/OSORA) <[Hugh.Gilmore@cms.hhs.gov](mailto:Hugh.Gilmore@cms.hhs.gov)>  
**Sent:** Wednesday, July 25, 2018 3:45 PM  
**To:** Hidde, Kandi K. <[khidde@fbtlaw.com](mailto:khidde@fbtlaw.com)>  
**Cc:** Dutton, Vendetta (CMS/OSORA) <[Vendetta.Dutton@cms.hhs.gov](mailto:Vendetta.Dutton@cms.hhs.gov)>  
**Subject:** FOIA Advance payment

Dear Ms. Hidde:

I have received your July 20, 2018 letter referencing the FOIA fees assessed in the matters of your FOIA requests and especially those regarding Medicare Advantage Organizations. I want to put in perspective the amount of information which is driving the fee assessment.

For example in your request 052320187007 item 3. "All communication between any MAO and CMS concerning the validity of diagnosis codes for MAOs or the legal obligation for MAOs to submit valid risk adjustment data, including but not limited to, documents related to RADV audits, determining the validity of diagnosis codes, guidelines for corrective action, ICE, RADAR, and RAPS data." The time period for this request is January 2007 to present.

A preliminary search of records has been conducted on which to base the estimate for fees. One component has been searched in the time period January 2014 to June 2018 using the following terms:

"UnitedHealthcare, Humana, "BCBS" or "Blue Cross Blue Shield", Kaiser Permanente, Aetna, Anthem, Cigna, Wellcare and or overpayments, and /or attestations, and/or risk adjustments, and /or code intensity adjustments, and or "RADV" or Risk adjustment validation , and or diagnosis coding, and/ or FFS diagnosis coding, and or FFS audit and procedures, and or/ FSS adjuster, and or/ actuarial equivalence...."

This search revealed 90,000 documents.

There are still 7 additional years which need to be searched as well as many other items of these requests of which terms still need to be submitted for search. The scope is clearly going to expand exponentially with other terms and the breadth of years in which the search needs to be conducted. The review process is a page by page review of responsiveness to the requests as well as the review of application of FOIA exemptions which may be applied to portions or entirety of the records. What previously was provided was an *estimate* and I hope this sample of a preliminary search gives perspective on what volume is left to be determined which will erode rather quickly the fees estimated once the hours of review begin to accumulate over the expanse of review for the voluminous documents of these requests.

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