

1 John Hamlin, Esq.
2 DC Bar #1022139, Federal Bar #13-205
3 AllianceHealth Clinton
4 100 North 30th Street
5 Clinton, OK 73601
6 (405) 834-7172
7 jhhamlin@att.net
8 Attorney for Plaintiff

United States District Court for the Western District of Oklahoma

9 1) John Hamlin,

10 Plaintiff

11 vs.

- 12 1) United State of America Department of Health and Human Services,
- 13 2) Sylvia Mathews Burwell, Secretary of Health and Human Services, in her official capacity
- 14 3) Centers for Medicare and Medicaid Services (CMS),
- 15 4) Defendant Andrew Slavitt, acting administrator of the Centers for Medicare and Medicaid Services (CMS)

16 Defendants

Case No. CIV -15-1027-F

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20 COMPLAINT FOR INJUNCTIVE RELIEF

21 Plaintiff brings this civil action for injunctive relief, and alleges as follows:

22 INTRODUCTION

23 1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552,
24 to order the production of agency records, concerning **“The record of the number
25 of diagnostic radiologists and diagnostic radiology groups, broken down as**

1 **to the record of the number of individual diagnostic radiologist and**
2 **diagnostic radiology groups per each state of the United States for 2009,**
3 **2010, 2011, 2012, 2013, 2014 and 2015 to the date of this request, subjected**
4 **to medical record reviews of selected Part A and Part B claims where there**
5 **has been a significant increase in billing and payment for high cost**
6 **diagnostic radiology claims where there has been good cause for reopening**
7 **the claim with the number of diagnostic radiologists and diagnostic**
8 **radiology groups further broken down into the number of diagnostic**
9 **radiologists and diagnostic radiology groups that resulted in payment**
10 **adjustments and the number of diagnostic radiologists and diagnostic**
11 **radiology groups that resulted in no payment adjustments” , which defendant**
12 has improperly withheld from plaintiff.

13 JURISDICTION AND VENUE

14 2. This Court also has jurisdiction under 28 U.S.C. § 1346 because this is
15 a civil action or claim against the United States. This court has jurisdiction over
16 this action pursuant to 5 U.S.C. § 552(a)(4)(B). Injunctive remedy is authorized
17 under 28 U.S.C. § 2201 and FRCP 65.

18 3. Venue lies in the District of Oklahoma pursuant to 28 U.S.C. § 1402 (a)
19 (1). Plaintiff resides in the Western District of the State of Oklahoma.

20 PARTIES

21 4. Plaintiff is the requester of the records which defendant is now
22 withholding. Plaintiff has requested this information for use in investigation of
23 illegal activity of defendant.

24 5. Defendant, Health and Human Services is an executive department of
25 the United States of America.

1 6. Defendant, Sylvia Mathews Burwell, is the Secretary of the Department
2 of Health and Human Services, and is being sued in her official capacity.

3 7. Defendant, Centers for Medicare and Medicaid Services is an agency of
4 Defendant Health and Human Services.

5 8. Defendant Andrew Slavitt, is the acting administrator of the Centers for
6 Medicare and Medicaid Services (CMS) and is being sued in his official capacity.

7 FACTUAL ALLEGATIONS, CAUSE OF ACTION AND CLAIMS FOR RELIEF

8 FIRST CLAIM FOR RELIEF

9 9. Plaintiff incorporate paragraphs 1 through 8 of the petition as if fully stated
10 herein.

11 10. Defendants are agencies of the United States and has possession of the
12 documents that plaintiff seeks.

13 11. By letter dated July 27, 2015, plaintiff requested access to **“The record of**
14 **the number of diagnostic radiologists and diagnostic radiology groups,**
15 **broken down as to the record of the number of individual diagnostic**
16 **radiologist and diagnostic radiology groups per each state of the United**
17 **States for 2009, 2010, 2011, 2012, 2013, 2014 and 2015 to the date of this**
18 **request, subjected to medical record reviews of selected Part A and Part B**
19 **claims where there has been a significant increase in billing and payment for**
20 **high cost diagnostic radiology claims where there has been good cause for**
21 **reopening the claim with the number of diagnostic radiologists and**
22 **diagnostic radiology groups further broken down into the number of**
23 **diagnostic radiologists and diagnostic radiology groups that resulted in**
24 **payment adjustments and the number of diagnostic radiologists and**
25 **diagnostic radiology groups that resulted in no payment adjustments.”**

1 A copy of this letter together with certified mail return receipt is attached as Exhibit 1.

2 12. Defendants refused to respond to the demand for production under the
3 Freedom of Information Act 5 U.S.C. § 552 within 20 days of receipt of the
4 demand.

5 13. Plaintiff has a right of access to the requested information under 5 U.S.C.
6 § 552(a)(3), and there is no legal basis for defendant's denial of such access.

7 PRAYER FOR RELIEF

8 WHEREFORE, Plaintiff requests the following relief:

- 9 1. Order defendants to provide access to the requested documents;
10 2. Expedite this proceeding as provided for in 28 U.S.C. § 1657;
11 3. Award plaintiff costs and reasonable attorneys fees in this action, as
12 provided in 5 U.S.C. § 552(a)(4)(E);
13 4. That this court award other relief it deems just and proper.

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15 Dated this 21st day of September, 2015.

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18 /s John Hamlin
19 JOHN HAMLIN, Esq.
20 DC Bar #1022139, Federal Bar #13-205
21 AlianceHealth Clinton
22 100 North 30th Street
23 Clinton, OK 73601
24 Tel. (405) 834-7172
25 jhhamlin@att.net
Attorney for Plaintiff