

March 28, 2024

Centers for Medicare & Medicaid Services
Freedom of Information Act Office
Mail Stop C5-11-06
7500 Security Boulevard
Baltimore, Maryland 21244
Sent via [FOIA Request@cms.hhs.gov](mailto:FOIA_Request@cms.hhs.gov)

Dear Records Custodian,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552 et seq., we request copies of the following records:

All database records indicating Medicare Level 2 (“Reconsideration”) appeals and their outcomes, minus personally-identifying information.

All Medicare parts afford beneficiaries access to a tiered appeals process by which they can contest denials of coverage. In Medicare, the second level (“Level 2”) of the five level process is known as a Qualified Independent Contractor (QIC) Reconsideration.¹

CMS currently maintains a publicly accessible view of a structured dataset containing Level 2 appeal outcomes for Part C and Part D (but neither Part A nor Part B).² It contains the following fields:

- Medicare program part
- Appeal decision
- Decision date
- Appeal type
- Item/service
- Condition
- Case number
- Decision rationale
- Coverage rules

These fields, however, represent a small fraction of the records CMS collects for each Level 2 appeal. Furthermore, the online database contains only appeals decided since 2020.

¹ Centers for Medicare and Medicaid Services, “Appeals Level 2: Qualified Independent Contractor (QIC) Reconsideration,” <https://www.medicare.gov/claims-appeals/file-an-appeal/appeals-level-2-qualified-independent-contractor-qic-reconsideration>, accessed March 28, 2024.

² “Appeals Decision Search (Part C & Part D),” <https://www.cms.gov/medicare/appeals-grievances/appeals-decision-search-part-c-d>, accessed February 16, 2024.

For these reasons, **we request all database records representing Level 2 appeals for Parts A, B, C, and D, and their outcomes, minus personally-identifying information.**

The responsive records should at minimum include (but not be limited to) the fields CMS includes online for Part C and Part D appeals.

Additionally, the records should include (but not be limited to) the following fields, if they are captured as exportable database records:

- Qualified Independent Contractor (QIC) handling the appeal
- Date appeal filed
- Expedited status

We believe, however, that many more fields are disclosable, including those relating to reversal reasons, provider category, care setting, and others.

We preemptively agree to forgo all fields containing personally-identifiable information, such as appellant names, addresses, et cetera.

It is our informed belief that CMS possesses the records being requested, and that they are stored in the Medicare Appeals System (MAS), a structured database system that possesses the ability to export arbitrary sets of records, including the records requested above.

In 2005, the MAS was implemented to support the tracking and storage of appeals data, including all Level 2 appeals for all parts of Medicare.³ A complete description of MAS is beyond the scope of this request, but according to the 2024 CMS budget proposal⁴:

MAS is a system that tracks and records Medicare appeals through multiple levels of the appeal process. The system leverages processes and consolidates data to allow users across appeal levels to realize benefits of reusable, centralized data. The system supports standard processing of appeals and availability of data to other appeal levels while allowing stakeholders and user groups to shape procedures at their desired level. CMS maintains the system and implements all necessary system changes.

Finally, as noted above, CMS currently maintains an online interface containing a subset of fields for

³ Government Accountability Office, "MEDICARE FEE- FOR-SERVICE: Opportunities Remain to Improve Appeals Process," May 2016, page 11. <https://www.gao.gov/assets/gao-16-366.pdf>

⁴ Centers for Medicare and Medicaid Services, "Justification of Estimates for Appropriations Committees," March 2024, page 36. <https://www.cms.gov/files/document/cms-fy-2024-congressional-justification-estimates-appropriations-committees.pdf-0>

Level 2 appeal outcomes for Part C and Part D. This suggests CMS has access to a mechanism by which arbitrary exports of case-level appeal outcomes, stripped of personally identifying information, can be extracted from the structured database used in MAS.

Similarly, we believe it should be possible to provide the records requested while withholding the records we have agreed above to forgo, without the need to withhold or redact any other portion of the records. This approach is supported by 5 U.S.C. § 552(a)(8)(A)(ii), which states that an agency shall “take reasonable steps necessary to segregate and release nonexempt information[.]”

We request these records in their native digital formats and not in formats that degrade the accessibility of the records, such as tabular data converted to PDF or Word files. If converting the native digital format to another high-fidelity format, such as CSV or Excel, please take care not to introduce formatting inconsistencies or errors, which can occur in the conversion process (for example, encoding errors or the inclusion of internal unescaped quotation marks in CSV files).

We also ask that the records be provided in the structure that they are stored — for instance, as distinct database tables, not “joined” versions of those tables. (Those tables still should, however, contain the fields necessary for the public to perform those database “joins.”)

Given that this request pertains to an export from a specific database system, rather than a document search, we do not believe it is necessary to specify a time period for the records. If, however, specifying such a time period is necessary for your process, please use the following: appeals decided January 1, 2015 to the date the records export is performed.

We request that the responsive records be provided by email or digital file transfer, rather than by postal mail. If it helps, we can supply the digital transfer folder.

Production of Responsive Records on a Rolling Basis

In the event that a portion of the present request is completed before the full request is completed, we ask that the records be produced on a rolling basis.

Fee Waiver Request

A waiver of search and review fees is appropriate here because disclosure of the requested information is in the public interest under 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54(a), (b)(1)-(2), and because the request is not primarily in our commercial interest, 45 C.F.R. §§ 5.45(a), (b)(3)(ii).

The disclosure of these records is firmly in the public interest. The last five years have seen

increasing interest among consumers⁵, lawmakers⁶, regulators⁷, researchers⁸ and journalists in data that informs comparisons of traditional Medicare versus Medicare Advantage in performance, cost effectiveness, and equity. Such interest stems from the fact that Medicare is a publicly funded program, and numerous independent outfits have raised concerns about solvency of the program, equity in its administration, protection of patient rights, and accountability of bad actors, which may or may not vary across the traditional and Advantage programs^{9,10}.

CMS maintains and releases *some* case level outcome data for Level 2 appeals for the Part C and Part D programs. No equivalent database has been made publicly available, however, for Parts A and B, despite the fact that the rules governing Level 2 appeal adjudication are largely the same across these programs. Having access to unified, complete data for Level 2 appeal adjudication across all Medicare program parts would provide the public an unprecedented ability to make direct comparisons between a shared facet of these programs, which has largely been impossible due to program differences to date.

Moreover, the public data for Part C and Part D data include only a subset of fields recorded in MAS, which limits the range of analyses the public can conduct.

Additionally, the online records go back only to appeals decided since 2020. Given the massive impact of the COVID-19 pandemic on the US healthcare system, it is of great public interest that a substantial tranche of pre-pandemic appeal decisions be available for analysis.

Release of this data would also improve understanding of Medicare Administrative Contractor (MAC) claims adjudication and appeal adjudication in the Part A and Part B programs themselves, in the same way the Part C and Part D database informs MA health plan claim and appeal adjudication.

⁵ Gretchen Jacobson et al., “What do Medicare Beneficiaries Value About Their Coverage”, The Commonwealth Fund, February 2024. <https://www.commonwealthfund.org/publications/surveys/2024/feb/what-do-medicare-beneficiaries-value-about-their-coverage>

⁶ Robert King, “It was stunning’: Bipartisan anger aimed at Medicare Advantage care denials”, November 2023. <https://www.politico.com/news/2023/11/24/medicare-advantage-plans-congress-00128353>

⁷ Centers for Medicare and Medicaid Services, “Biden-Harris Administration Launches Effort to Increase Medicare Advantage Transparency”, January 2024. <https://www.cms.gov/newsroom/press-releases/biden-harris-administration-launches-effort-increase-medicare-advantage-transparency>

⁸ Gretchen Jacobson et al., “Medicare Advantage vs. Traditional Medicare: How do Beneficiaries’ Characteristics and Experiences Differ?”, The Commonwealth Fund, October 2021. <https://www.commonwealthfund.org/publications/issue-briefs/2021/oct/medicare-advantage-vs-traditional-medicare-beneficiaries-differ>

⁹ Jeannie Fuglesten Biniek et al., “Higher and Faster Growing Spending Per Medicare Advantage Enrollee Adds To Medicare’s Solvency and Affordability Challenges”, KFF, August 2021. <https://www.kff.org/medicare/issue-brief/higher-and-faster-growing-spending-per-medicare-advantage-enrollee-adds-to-medicares-solvency-and-affordability-challenges/>

¹⁰ Department of Health and Human Services Office of the Inspector General, “Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care”, April 2022. <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.pdf>

For example, the data can help the public understand to what extent different regional MACs adjudicate the same distribution of claims fairly, as measured by Level 2 QIC appeal overturn distributions. Such analyses play a particularly critical role for helping to ensure equity in adjudication consistent with Medicare coverage rules for vulnerable populations, and the historically marginalized.

This Request is Not Primarily in Our Commercial Interest

The requested information is *not* being sought for commercial purposes. 45 C.F.R. § 5.54(a). We are news media requesters that can and will “effectively convey information to the public.” 45 C.F.R. § 5.54(b)(2)(ii).

Requester Gartner is doing so on behalf of Persius LLC, an organization that provides free digital tools and data to help U.S. consumers navigate issues with health insurance. His past work in this vein displays a clear track record of transparent, public disclosure of acquired data. For example, through Persius he maintains Hospital Price Transparency metadata,¹¹ has obtained and made public aggregate claims denial records¹² from the Pennsylvania Department of Insurance which ought to have already been public pursuant to the Affordable Care Act, and has reported on problematic trends in Medicare data¹³. On the heels of the PA DOI request, the Governor’s Office and PA DOI made a joint, formal announcement celebrating their own new commitment to publicly releasing such data moving forward.¹⁴ All records obtained by Persius LLC from government agencies are made freely available to the public, and do not benefit Persius LLC financially.

Requester Singer-Vine is doing so on behalf of the Data Liberation Project, a new initiative to bring more datasets of public value into the public domain, especially for journalistic purposes.¹⁵ His “past publication record[,]” 5 U.S.C. § 552(a)(4)(A)(ii), includes serving from 2014 to early 2022 as the data editor for BuzzFeed News, where he helped to make many datasets available to the public;¹⁶ before that, he worked as a reporter and computer programmer at The Wall Street Journal, where he was named a Pulitzer Prize co-finalist for National Reporting.¹⁷ Records obtained by the Data Liberation Project are released publicly, for all to use.¹⁸

¹¹ Persius, “CMS Transparency Rules Supplemental Data”. <https://github.com/TPAFS/transparency-data>

¹² Persius, “Public Records Portal”. <https://repos.persius.org/public-records/>

¹³ Mike Gartner, “Medicare Advantage QIC Appeal Outcomes”, November 2023. https://blog.persius.org/blog/medicare_partc&d_qic_appeals

¹⁴ Pennsylvania Department of Insurance, “Shapiro Administration Releases Health Insurers Claims Data Report, Highlights Denial Appeal Process to Ensure Pennsylvanians Receive Benefits They Are Owed”, October 2023. <https://www.media.pa.gov/Pages/Insurance-Details.aspx?newsid=517>

¹⁵ The Data Liberation Project. <https://www.data-liberation-project.org/>.

¹⁶ BuzzFeed News, “An index of all our open-source data, analysis, libraries, tools, and guides.” <https://github.com/BuzzFeedNews/everything>.

¹⁷ The Pulitzer Prizes, “Finalist: John Emshwiller and Jeremy Singer-Vine of The Wall Street Journal.” <https://www.pulitzer.org/finalists/john-emshwiller-and-jeremy-singer-vine>.

¹⁸ The Data Liberation Project, “Datasets.” <https://www.data-liberation-project.org/datasets/>.

This information will also shed light on the operations or activities of the government in relation to CMS's work tracking and overseeing the adjudication of appeals claims. For this reason, 45 C.F.R. § 5.54(b)(1), and because this information is not already in the public domain, 45 C.F.R. § 5.54(b)(2)(i), this request is "not primarily in the commercial interest of the requester." 45 C.F.R. § 5.54(b)(3)(ii).

As such, and because disclosure "is likely to contribute significantly to public understanding of the operations or activities of the government" (5 U.S.C. § 552(a)(4)(A)(iii)), we respectfully request that you waive all applicable fees.

Limitation of Fees

We are also entitled to a limitation of fees because we are members of the news media. 45 C.F.R. § 5.53(b); 5 U.S.C. § 552(a)(4)(A)(ii)(II). Accordingly, even if our application for a waiver of all fees is denied, we are entitled to a limitation of fees. As a news media requester, we are "entitled to search time, review time, and up to 100 pages of duplication" and can be charged only duplication fees after the first 100 pages or its cost equivalent. 45 C.F.R. § 5.53(b). We request that the information be provided in its native electronic format, and thus there should be no duplication fees.

Request for Explanation of Withholdings and Redactions

If this request is denied in whole or in part, please provide a reasonable description of any withheld materials and a justification for all such withholdings that includes reference to the specific FOIA exemptions authorizing withholding and specific reasons why such exemptions apply. 45 C.F.R. § 5.31. An agency shall withhold information only if "the agency reasonably foresees that disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law." 5 U.S.C. § 552(a)(8)(A)(i). (Per Attorney General Garland's March 15, 2022 memorandum, "In case of doubt [regarding foreseeable harm or legal bar to disclosure], openness should prevail."¹⁹) We therefore request that if the agency determines that an exemption applies, specific reasons be provided as to why disclosure would harm any interest protected by such exemption. An agency shall also "consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible" and "take reasonable steps necessary to segregate and release nonexempt information." *Id.* at § 552(a)(8)(A)(ii). We therefore request that the agency release all segregable portions of otherwise exempt material.

We look forward to your reply within the FOIA-specified timeframe of 20 working days. Please let us know if there are any clarifications we can make to make this request easier and/or quicker to complete.

¹⁹ Merrick Garland, "Memorandum for Heads of Executive Departments and Agencies" (Subject: "Freedom of Information Act Guidelines"), March 15, 2022. <https://www.justice.gov/ag/page/file/1483516/download>.

Sincerely,

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