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**Freedom of Information Act Appeal; Control Number 050420207041 and PIN B94C**

1 message

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**Alex Shteynshlyuger** <dralex@newyorkurologyspecialists.com>  
To: CMS FOIA Request <FOIA\_Request@cms.hhs.gov>  
Bcc: eun@loevy.com

Mon, Aug 31, 2020 at 11:27 AM

Dear Sir or Madam,

I am attaching my appeal to CMS' FOIA response to FOIA request 050420207041.

Please confirm receipt of this appeal by email.

If you have any questions, please let me know.


Sincerely,

Alex Shteynshlyuger MD  
Director of Urology

New York Urology Specialists  
[33 W. 46th St. 5th Fl](#)  
[New York, N.Y. 10036](#)

Phone: 646-663-5252  
Fax: 718-285-8555

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 **FOIA\_appeal--8-31-2020-final.pdf**  
258K



**Alex Shteynshlyuger M.D.**  
Board Certified Urologist

Urology Care for Men and Women

## Freedom of Information Act Appeal

August 31, 2020

Dear Sir/Madam:

Principal Deputy Administrator  
Centers for Medicare and Medicaid Services  
Room C5-16-03  
7500 Security Blvd.  
Baltimore, Maryland 21244-1850  
Via email: [FOIA\\_Request@cms.hhs.gov](mailto:FOIA_Request@cms.hhs.gov)

**RE: Freedom of Information Act Appeal; Control Number 050420207041 and PIN B94C**

I am appealing CMS's FOIA response to FOIA request **050420207041**. On May 4, 2020, I submitted a FOIA request for the following records:

**“all records from 1/1/2015 to 5/1/2020 regarding (1) HIPAA administrative simplification requirements including but not limited to 45 CFR Parts 160, 162, and 164; (2) fees and costs of electronic transactions including but not limited to ERA (electronic remittance advice), EFT (electronic funds transfer), credit cards, virtual payment cards, prepaid cards and debit cards, checks, (3) electronic transactions including but not limited to ERA, EFT, electronic attachments, 835 transactions, 270/271 eligibility and benefit verification transactions, claim submissions, (4) Any aspects of HIPAA administrative simplification requirements including but not limited standard transactions, fees for standard transactions, enforcement of CMS regulations, guidance, payment methods, telecommunication fees, that involve the following:**

- Nixon Peabody
- W. Scott O'Connell
- Parthenon Capital or “Parthenon”
- Bain Capital or “Bain”, Bain Capital Ventures
- Kirkland & Ellis
- AKIN GUMP STRAUSS HAUER & FELD
- Julie E. Nolan of AKIN GUMP STRAUSS HAUER & FELD
- Heide Bajnrauh of AKIN GUMP STRAUSS HAUER & FELD
- Todd Tuten of AKIN GUMP STRAUSS HAUER & FELD
- JOHN BOZEMAN & ASSOCIATES
- BOZEMAN, JOHN H of of GEORGIALINK PUBLIC AFFAIRS GROUP
- EDGE IV, ARTHUR B of GEORGIALINK PUBLIC AFFAIRS GROUP

- GEORGIALINK PUBLIC AFFAIRS GROUP
- MARTIN III, JOHN S (TRIP) of GEORGIALINK PUBLIC AFFAIRS GROUP
- FRALICK, LAUREN WILKES of GEORGIALINK PUBLIC AFFAIRS GROUP
- PETTIT III, HUGH BOYD of GEORGIALINK PUBLIC AFFAIRS GROUP
- GRELLER, MATTHEW
- MATTHEW N GRELLER ESQ LLC
- LEWIS, RON E of Ron Lewis & Associates

I also provided the following additional keywords to aid CMS's search without limiting the search to these keywords:

- W. Scott O'Connell, O'Connell, Oconnell
- soconnell@nixonpeabody.com
- Nixon Peabody, nixonpeabody.com
- 617-345-1150, 866-947-1393, 617-345-1000
- parthenoncapital.com
- akingump.com
- 202-887-4203, [ttuten@akingump.com](mailto:ttuten@akingump.com), 202-887-4288
- Julie E. Nolan, [jnolan@akingump.com](mailto:jnolan@akingump.com), 202-887-4213, 202-887-4288
- Heide Bajnrauh, [hbajnrauh@akingump.com](mailto:hbajnrauh@akingump.com), 202-887-4206, 202-887-4288
- (917) 345-0005 [matt@mattgreller.com](mailto:matt@mattgreller.com)
- georgialink.com, [trip@georgialink.com](mailto:trip@georgialink.com)
- Ron Lewis, [ronlewis@austin.rr.com](mailto:ronlewis@austin.rr.com), (512)-473-0100

However, **none** of the documents that CMS produced as “responsive” have any relevance to the original request, submitted on May 4, 2020.

For example:

- Pages 1-2: Dated 4/6/2020 from Association of Air Medical Services is related to COVID19 pandemic funds for air.
  - This is not a topic of concern of the FOIA and not relevant or responsive to the FOIA inquiry.
- Pages 3-4: Dated 1/14/2016, Response to Coalition for Excellence in Medication Monitoring). This is related to Clinical Laboratory Fee Schedule (CLFS).
  - This is not a topic of concern of the FOIA and not relevant or responsive to the FOIA inquiry.
- Pages 5-6: Dated 1/14/2016. This is a duplicate of the second letter, response to Coalition for Excellence in Medication Monitoring.
  - This is not a topic of concern of the FOIA and not relevant or responsive to the FOIA inquiry.
- Pages 7-8: Dated 12/22/2015 from “Coalition for Excellence in Medication Monitoring” relates to Clinical Laboratory Fee Schedule (CLFS).

- This is not a topic of concern of the FOIA and not relevant or responsive to the FOIA inquiry.
- Pages 9-11: Dated April 7, 2020. This is related to Association of Air Medical Services Funding Request Letter (pages 1-2). This relates to COVID19 funds appropriated by Congress.
  - This is not a topic of concern of the FOIA and not relevant or responsive to the FOIA inquiry.
- Pages 12-13: Dated October 17, 2019, titled “FW: meeting request – Senseonics.” This record relates to diabetes monitoring.
  - This is not a topic of concern of the FOIA and not relevant or responsive to the FOIA inquiry.
- Pages 14-15: Dated 12/30/2015, titled “Subject: FW: CEMM request regarding billing guidance for drugs of abuse definitive testing.” This email relates to drug monitoring and Clinical Laboratory Fee Schedule (CLFS).
  - This is not responsive to the FOIA request.
- Pages 16-19: Dated 10/30/2018, titled “FW: Letter of support from American College of Gastroenterology.” This record is related to Merit-based Incentive Payment System (MIPS).
  - This is not responsive to the FOIA request.
- Pages 20-22: Dated 9/6/2017, titled “FW: Otsuka Meeting Request for the Administrator.” This record is related to a drug feedback system that includes an atypical antipsychotic and ingestible embedded sensor.
  - This is not responsive to the FOIA request.
- Pages 23-28: Dated 1/22/2019, Correspondence between CMS and American College of Gastroenterology regarding merit-based incentive payment system (MIPS)
  - This is not responsive to the FOIA request.

As such, by providing non-responsive records, CMS did not conduct an adequate search. The original request reasonably described the records I was seeking. I request that CMS performs an adequate and reasonable search to produce *responsive* documents. Some of the listed entities are registered lobbyists who are hired to lobby for the subject matter of this FOIA request. It is not fathomable that they billed their clients tens of thousands of dollars without doing any lobbying or communication to CMS.

CMS also improperly asserted exemptions (b)4 and (b)6 and 5 of the FOIA.

It is also my understanding that the National offices of the CMS (Headquarters) are split between Baltimore and Washington DC offices. The response mentioned that only Baltimore offices were searched. I request that the national CMS headquarters regardless of the location (Washington DC or Baltimore) are searched for responsive records.

I hope you will reconsider.



**Alex Shteynshlyuger M.D.**  
Board Certified Urologist

Urology Care for Men and Women

Sincerely,

 Recoverable Signature

**X** Alex Shteynshlyuger

Alex Shteynshlyuger MD

Director of Urology

Signed by: d4aa26c7-f0c1-4b84-8cb9-1bcedd7cfccb

New York Urology Specialists

33 W. 46th St. 5th Fl, New York, N.Y. 10036

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-11-06  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs/Freedom of Information Group**

Refer to: Control Number 050420207041 and PIN B94C

8/31/2020

Alex Shteynshlyuger MD  
New York Urology Specialists  
33 W. 46th St. 5th Fl  
New York, NY 10036

Dear Dr. Shteynshlyuger,

I am acknowledging receipt of your 8/31/2020 Freedom of Information Act (FOIA) appeal, which you sent to the Principal Deputy Director, Centers for Medicare & Medicaid Services (CMS). We will process your appeal as expeditiously as possible, consistent with Department of Health and Human Services FOIA rules set forth at 45 CFR Part 5.

Questions regarding your appeal should be directed to Hugh Gilmore at 410-786-5352 or via e-mail, at [hugh.gilmore@cmhs.hhs.gov](mailto:hugh.gilmore@cmhs.hhs.gov).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hugh Gilmore". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Hugh Gilmore  
Director  
Freedom of Information Group



**Alex Shteynshlyuger M.D.**  
Board Certified Urologist

Urology Care for Men and Women

## Freedom of Information Act Request

May 6, 2020

Attn: Hugh Gilmore

Director of Division of Freedom of Information, Office of Strategic Operations and Regulatory Affairs  
Centers for Medicare & Medicaid Services, Mailstop N2-20-16

7500 Security Boulevard

Baltimore, MD 21244

Via email: [FOIA\\_Request@cms.hhs.gov](mailto:FOIA_Request@cms.hhs.gov)

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), Alex Shteynshlyuger MD requests that the CMS (Centers of Medicare and Medicaid Services and the Department of Health and Human Services) produce **all records** from **1/1/2015 to 5/5/2020** regarding:

**Communications to and from the US Congress (US Senate and US House of Representatives) and its members related to fees to conduct standard transactions (EFT, ERA), and use of virtual credit cards or payment cards.**

To aid your search, but not to limit the search in any way, these are some additional search keywords that may help identify responsive materials:

- EFT Fee, ERA fee, transaction fee, virtual credit card, payment card, prepaid card
- Zelis, Echo Health, PaySpan Health, Vpay, Consolidated Health Plan, Allied Healthcare, Paramount, Stirling Benefits, Magnacare, Meritain, Delta Health Systems, Excellus Health Plan, POMCO, UMR, United Healthcare, Paramount, HealthFirst, Total Health Plan, GlobalExcel, Magnacare, Create Health Plan, Olympus, GHI, Fidelis, Ama Insurance, Healthsmart

Please produce all correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, phone call recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things that refer to the above mentioned records in any way.

To aid your search, but not to limit the search in any way, it is my understanding that the following offices at CMS may have responsive records. Please note that additional offices may have responsive records as well:

1. The **office of the CMS Administrator**: Ms. Seema Verma

Exhibit 13



2. Office of Strategic Operations and Regulatory Affairs - **Kathleen Cantwell, Director**
  - a. [https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office\\_OSORA.html](https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OSORA.html)
3. The **Office of Information Technology Program** Management and National Standards Group - **Cora Tracy, Director**
  - a. [https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office\\_OIT.html](https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OIT.html)

It is my understanding that **the following CMS employees and the staff they supervise have intimate knowledge of the responsive documents**, including those that may be found at other subdivisions at CMS:

1. **Ms. Cora Tracy**, a trained **lawyer**, has intimate knowledge of the responsive documents. Office of Information Technology
2. **Mr. George C. Hoffman**, Office of Information Technology
3. **Mr. Janet Vogel**, Deputy CIO & Deputy Director for Operations
4. **Mr. Scott Shippy** Office of Information Technology
5. **Mr. Madhu Annadata** Office of Information Technology
6. **Ms. Christine Gerhardt** Office of Information Technology
7. **Ms. Kathleen Cantwell** - Office of Strategic Operations and Regulatory Affairs; a trained **lawyer** who understands her FOIA responsibilities
8. **Mr. Rajiv Uppal** - Office of Information Technology
9. **Ms. Seema Verma** – CMS Administrator
10. **Ms. Kimberly Brandt** – CMS Principal Deputy Administrator for Policy & Operations
11. **Ms. Marilyn Tavenner** - CMS Administrator 2011-2015
12. **Mr. Andrew M. Slavitt** – CMS Administrator 2015-2017
13. **Mr. Matthew Albright** – CMS Director and Deputy Director Administrative Simplification Group, Office of Ehealth Standards 2010-2014
14. **Christine Stahlecker** Director, Administrative Simplification Group at CMS 2012-2012

Please note that the materials responsive to this complaint reside **at the national CMS office in Baltimore, Maryland**. This complaint does **NOT** belong in the regional New York office.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), cert denied, 415 U.S. 977 (1974). Additionally, any reasonably segregable portion of a responsive record must be provided to me after the redaction of any allegedly exempt material, as the law requires. 5 U.S.C. § 552(b).





**Alex Shteynshlyuger M.D.**  
Board Certified Urologist

Urology Care for Men and Women

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am a physician and a specialist in health economics with publications in peer-reviewed journals such as: Cost-effectiveness of PSA Screening. **I have been an advocate for administrative simplification in healthcare.** I am willing to pay fees up to the amount of \$250. If the fees will exceed this amount, please inform me before fees are incurred.

In addition, I would like to **request a fee waiver**:

1. The records are sought for their informative value with respect to specifically identified government operations or activities. CMS has issued decisions that may be contrary to law and publicly stated policies. CMS may have improperly closed complaints and engaged in other corrupt activities. Public examination of these records may shine a light on fraud, abuse, and waste perpetrated and/or abetted by the federal government.
2. The disclosure of these records is likely to **contribute to an understanding of government operations and activities** including possible improper activities. I plan to distribute the information via my website, social media, blog, and interested members of the Media, which include AMA Newswire, Reuters Health, and interested organizations, which include the MGMA (Medical Group Management Association), AMA (American Medical Association) among others.
3. The disclosure will **contribute to public understanding** of the factors involved in the agency's decisions related to electronic transactions. The disclosure is **of interest to the general public**. This issue has been addressed by multiple public organizations including the American Medical Association, which represents close to a million physicians in the United States. Low-cost electronic transactions are in public interest since they lower the cost of healthcare, a major public concern.
4. I have **no significant commercial interest in the disclosure**. The decisions that impair electronic transactions have a marginal cost of less than \$500 per year in gross expenses. In comparison, these **costs amount to hundreds of millions of dollars in unnecessary costs to healthcare providers nationwide that are passed on to the consumers of healthcare services**. Administrative costs account for up to 20% of healthcare insurance premiums in the US, on the order of \$3923 per family per year according to the National Conference of State Legislatures (<http://www.ncsl.org/research/health/health-insurance-premiums.aspx>).

I can be contacted at 718-395-6464 or by email: [dralex@newyorkurologyspecialists.com](mailto:dralex@newyorkurologyspecialists.com), if necessary to discuss any aspect of this request.

I would prefer to receive the requested information in a **digital format, preferable downloadable via the internet**. I look forward to receiving the requested documents and a full fee waiver within twenty (20) business days.



**Alex Shteynshlyuger M.D.**  
Board Certified Urologist

Urology Care for Men and Women

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Sincerely,

 Recoverable Signature

**X** Alex Shteynshlyuger

Alex Shteynshlyuger MD

Director of Urology

Signed by: d4aa26c7-f0c1-4b84-8cb9-1bcedd7cfccb

New York Urology Specialists

33 W. 46th St. 5th Fl, New York, N.Y. 10036

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-11-06  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs / Freedom of Information Group**

Request has been assigned: Control Number **050620207011** and PIN **PNYV**

5/6/2020

Alex Shteynshlyuger, M.D.  
New York Urology Specialists  
33 W. 46<sup>th</sup> Street, 5<sup>th</sup> Floor  
New York, NY 10036

Dear Dr. Shteynshlyuger:

The purpose of this letter is to acknowledge receipt of your Freedom of Information Act (FOIA) (5 U.S.C. § 552) request and to provide you with a tracking number for your request. Your FOIA request, dated **5/6/2020**, was received on **5/6/2020**, by the Centers for Medicare & Medicaid Services (CMS). To check the status of your request as it is being processed, please refer to the CMS FOIA website <http://www.cms.gov/apps/FOIA> and enter the control number and PIN (listed above) that have been assigned to your request.

We will initiate a search for responsive records within the scope of your request once we complete our initial analysis. If we determine that your request needs clarification, we will suspend processing and contact you.

Please note, your request will require the additional processing time of ten (10) business days due to unusual circumstances. The following unusual circumstances, as defined by federal FOIA regulations, may impact our ability to fulfill a FOIA request within 20 business days. These include circumstances such as (1) the request requires us to search for and collect records from multiple components and/or field offices; (2) the request involves a voluminous amount of records that must be located, compiled, transferred to this office, and reviewed. If our searching units advise us that you have requested a voluminous amount of records that require extensive search, production and review, we will contact you to discuss options for narrowing the scope of your request in order to process your request as quickly and efficiently as possible.

In addition, CMS receives a very high volume of FOIA requests. Given the high volume of requests, and in accordance with federal regulations, we have had to establish a policy of "first in, first out" case processing.

If your request sought expedited processing, we will send additional communication to provide you with our determination decision.

With regard to fees, the FOIA law assumes that requesters are willing to pay fees up to \$25.00. If estimated fees to process your request exceed \$25.00, we will notify you and may suspend processing until we receive written confirmation that you are willing to pay the estimated fees.

Additionally, for requests in which the estimated fees exceed \$250.00, the law authorizes us to collect the fees *in advance* prior to processing the request.

If you requested a fee waiver, we will address that once our office ascertains that the billable costs will exceed our \$25.00 billing threshold.

If you are not satisfied with any aspect of the processing and handling of this request, please contact Lauron Huntley, 410-786-0379.

You also have the right to seek dispute resolution services from:

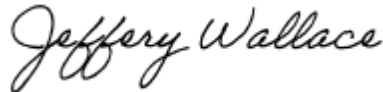
Joseph Tripline  
CMS FOIA Public Liaison  
Centers for Medicare & Medicaid Services  
7500 Security Blvd., MS N2-20-16  
Baltimore, Maryland 21244-1850  
Telephone: 410-786-5353  
Fax: 443-380-7260

and/or:

Office of Government Information Services  
National Archives and Administration  
8601 Adelphi Road – OGIS  
College Park, MD 20740-6001

Telephone: 202-741-5770  
Toll-Free: 1-877-684-6448  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Fax: 202-741-5769

Sincerely yours,



Jeffery Wallace  
Director, Division of FOIA Analysis - B  
Freedom of Information Group

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-11-06  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs/Freedom of Information Group**

Refer to: Control Number **050620207011** and PIN PNYV

6/24/2020

Alex Shteynshlyuger  
New York Urology Specialists  
33 W. 46<sup>th</sup> Street, 5<sup>th</sup> Floor  
New York, NY 10036

Dear Mr. Shteynshlyuger:

This letter is in response to your May 6, 2020, Freedom of Information Act (5 U.S.C. § 552) request submitted to the Centers for Medicare & Medicaid Services (CMS) for records regarding communications to and from the US Congress (US Senate and US House of Representatives) and its members related to fees to conduct standard transactions (EFT, ERA), and use of virtual credit cards or payment cards.

After a careful search of the CMS files (i.e., a search reasonably calculated to locate records responsive to your request and employing reasonable standards), we were unable to locate any records responsive to your request.

If you believe that this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision.

Your appeal must be mailed within 90 days from the date of receipt of this letter, to:

Principal Deputy Administrator  
Centers for Medicare & Medicaid Services  
Room C5-16-03  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

Please clearly mark both the envelope and your letter "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact Lauron Huntley at 410-786-0379, or the CMS FOIA Public Liaison for assistance at:

**Page 2 – Alex Shteynshlyuger**

Joseph Tripline  
CMS FOIA Public Liaison  
Centers for Medicare & Medicaid Services  
7500 Security Blvd., MS C5-11-06  
Baltimore, Maryland 21244-1850  
Telephone: 410-786-5353  
Fax: 443-380-7260

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road–OGIS  
College Park, MD 20740-6001

Telephone: 202-741-5770  
Toll-Free: 1-877-684-6448  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Fax: 202-741-5769

Sincerely yours,



Jeffery Wallace  
Director, Division of FOIA Analysis - B  
Freedom of Information Group

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**FOIA Appeal, Control Number: 050620207011 and PIN PNYV**

1 message

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**Rachel Eun** <eun@loevy.com>

Wed, Jul 8, 2020 at 2:28 PM

To: FOIA\_Request@cms.hhs.gov

Cc: Alex Shteynshlyuger <dralex@newyorkurologyspecialists.com>, Matt Topic <matt@loevy.com>

Hello,

We are submitting this appeal on behalf of our client Mr. Alex Shteynshlyuger.

Please confirm receipt of the appeal. If this is not the appropriate email address, we ask that you let us know where to send this to. We were unable to find a separate email address for FOIA appeals on the CMS website.

Best,

**Rachel Eun, Paralegal**

LOEVY & LOEVY

311 N. Aberdeen, 3rd Floor

Chicago, IL 60607

312-243-5900 (main office)

<https://loevy.com/>



**2020.07.08 Appeal Ltr.pdf**

134K



# LOEVY & LOEVY

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311 N. Aberdeen St., 3rd Floor, Chicago, Illinois 60607

July 8, 2020

Submitted via E-mail

Principal Deputy Administrator  
Centers for Medicare & Medicaid Services  
Room C5-16-03  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

**Freedom of Information Act Appeal, Control Number: 050620207011 and PIN PNYV**

To whom it may concern,

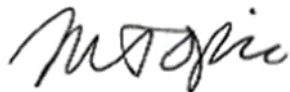
On behalf of our client, Alex Shteynshlyuger, I am writing you today to appeal the CMS's response to Mr. Shteynshlyuger's FOIA request **050620207011** and **PIN PNYV**. We are requesting expedited processing on processing the appeal as this concerns matter of public interest.

On May 6, 2020, Mr. Shteynshlyuger submitted a FOIA request for communications between the U.S. Congress members (both Senate and House) and CMS employees pertaining to fees to conduct standard transactions (EFT, ERA) and use of virtual credit cards or payment cards. On June 24, CMS denied the request by claiming that it was unable to "locate any records responsive" to the request. We appeal the denial. We believe CMS did not conduct an adequate search.

In our original request from May 6, 2020, we identified several keywords, types of records, and the CMS employees who may have such records in order to aid CMS's search process. In determining whether CMS conducted an adequate search, we ask that you identify what search algorithm CMS used to conduct the initial search, which accounts it searched, keywords used in the search, and databases that were searched.

With this appeal, we ask that CMS reconsider its denial and conduct another search in response to the request.

Best,



Matthew Topic

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**FOIA Appeal, Control Number: 050620207011 and PIN PNYV**

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**CMS FOIA Request** <[FOIA\\_Request@cms.hhs.gov](mailto:FOIA_Request@cms.hhs.gov)>

Thu, Jul 9, 2020 at 7:39 AM

To: "matt@loevy.com" <[matt@loevy.com](mailto:matt@loevy.com)>, "eun@loevy.com" <[eun@loevy.com](mailto:eun@loevy.com)>

Good Morning,

Please, see the attached Appeal Acknowledgement Letter for your request.

Thank You, and Have a Great & Healthy Day!

**From:** Rachel Eun [<mailto:eun@loevy.com>]

**Sent:** Wednesday, July 8, 2020 3:29 PM

**To:** CMS FOIA Request <[FOIA\\_Request@cms.hhs.gov](mailto:FOIA_Request@cms.hhs.gov)>

**Cc:** Alex Shteynshlyuger <[dralex@newyorkurologyspecialists.com](mailto:dralex@newyorkurologyspecialists.com)>; Matt Topic <[matt@loevy.com](mailto:matt@loevy.com)>

**Subject:** FOIA Appeal, Control Number: 050620207011 and PIN PNYV

Hello,

We are submitting this appeal on behalf of our client Mr. Alex Shteynshlyuger.

Please confirm receipt of the appeal. If this is not the appropriate email address, we ask that you let us know where to send this to. We were unable to find a separate email address for FOIA appeals on the CMS website.

Best,

**Rachel Eun, Paralegal**

LOEVY & LOEVY

311 N. Aberdeen, 3rd Floor

Chicago, IL 60607

312-243-5900 (main office)

<https://protect2.fireeye.com/url?k=089a2fe4-54cf26f7-089a1edb-0cc47adb5650-6df8db3971f9ff37&u=https://loevy.com/>

**2 attachments**



**2020.07.08 Appeal Ltr.pdf**

134K



**Topic-Appeal Acknowledgement Letter.pdf**

97K

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-11-06  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs/Freedom of Information Group**

Refer to: Control Number **050620207011** and PIN **PNYV**

07/09/2020

Matthew Topic  
Loevy & Loevy  
311 N. Aberdeen Street, 3rd Floor  
Chicago, IL 60607

Dear Mr. Topic:

I am acknowledging receipt of your 05/06/2020 Freedom of Information Act (FOIA) appeal, which you sent to the Principal Deputy Director, Centers for Medicare & Medicaid Services (CMS). We will process your appeal as expeditiously as possible, consistent with Department of Health and Human Services FOIA rules set forth at 45 CFR Part 5.

Questions regarding your appeal should be directed to Hugh Gilmore at 410 786 5353 or via e-mail, at [hugh.gilmore@cms.hhs.gov](mailto:hugh.gilmore@cms.hhs.gov).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hugh Gilmore". The signature is fluid and cursive.

Hugh Gilmore  
Director  
Freedom of Information Group

## Freedom of Information Act Request

May 7, 2020

Attn: Hugh Gilmore

Director of Division of Freedom of Information, Office of Strategic Operations and Regulatory Affairs  
Centers for Medicare & Medicaid Services, Mailstop N2-20-16

7500 Security Boulevard

Baltimore, MD 21244

Via email: [FOIA\\_Request@cms.hhs.gov](mailto:FOIA_Request@cms.hhs.gov)

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), Alex Shteynshlyuger MD requests that the CMS (Centers of Medicare and Medicaid Services and the Department of Health and Human Services) produce **all records** from **1/1/2015 to 5/5/2020** regarding:

- Zelis or Zelis Healthcare;
- All communication involving or referring to Edward Fargis (edward.fargis@zelis.com or his other email accounts);
- All communication involving or referring to Matthew Albright (matthew.albright@zelis.com or his other email accounts); and
- A log of phone calls between any number at CMS to and from (678) 350-3810, (908) 389-8966, and (908) 268-2229.
- All communication involving or referring to Ed Fargis (edward.fargis@zelis.com or his other email accounts); and
- All communication involving or referring to Doug Klinger ([doug.klinger@zelispayments.com](mailto:doug.klinger@zelispayments.com) or his other email accounts);
- All communication involving or referring to Ian Drysdale (ian.drysdale@zelis.com or his other email accounts)

Please produce all correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, phone call recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things that refer to the above mentioned records in any way.

To aid your search, but not to limit the search in any way, it is my understanding that the following offices at CMS may have responsive records. Please note that additional offices may have responsive records as well:

1. The **office of the CMS Administrator**: Ms. Seema Verma
2. Office of Strategic Operations and Regulatory Affairs - **Kathleen Cantwell, Director**
  - a. [https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office\\_OSORA.html](https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OSORA.html)
3. The **Office of Information Technology Program Management and National Standards Group** - **Cora Tracy, Director**
  - a. [https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office\\_OIT.html](https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OIT.html)

It is my understanding that **the following CMS employees and the staff they supervise have intimate knowledge of the responsive documents**, including those that may be found at other subdivisions at CMS:

1. **Ms. Cora Tracy**, a trained **lawyer**, has intimate knowledge of the responsive documents. Office of Information Technology
2. **Mr. George C. Hoffman**, Office of Information Technology
3. **Mr. Janet Vogel**, Deputy CIO & Deputy Director for Operations
4. **Mr. Scott Shippy** Office of Information Technology
5. **Mr. Madhu Annadata** Office of Information Technology
6. **Ms. Christine Gerhardt** Office of Information Technology
7. **Ms. Kathleen Cantwell** - Office of Strategic Operations and Regulatory Affairs; a trained **lawyer** who understands her FOIA responsibilities
8. **Mr. Rajiv Uppal** - Office of Information Technology
9. **Ms. Seema Verma** – CMS Administrator
10. **Ms. Kimberly Brandt** – CMS Principal Deputy Administrator for Policy & Operations
11. **Ms. Marilyn Tavenner** - CMS Administrator 2011-2015
12. **Mr. Andrew M. Slavitt** – CMS Administrator 2015-2017
13. **Mr. Matthew Albright** – CMS Director and Deputy Director Administrative Simplification Group, Office of Ehealth Standards 2010-2014
14. **Christine Stahlecker** Director, Administrative Simplification Group at CMS 2012-2012

Please note that the materials responsive to this complaint reside **at the national CMS office in Baltimore, Maryland**. This complaint does **NOT** belong in the regional New York office.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaugh v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), cert denied, 415 U.S. 977 (1974). Additionally, any reasonably

segregable portion of a responsive record must be provided to me after the redaction of any allegedly exempt material, as the law requires. 5 U.S.C. § 552(b).

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am a physician and a specialist in health economics with publications in peer-reviewed journals such as: Cost-effectiveness of PSA Screening. **I have been an advocate for administrative simplification in healthcare.** I am willing to pay fees up to the amount of \$250. If the fees will exceed this amount, please inform me before fees are incurred.

In addition, I would like to **request a fee waiver**:

1. The records are sought for their informative value with respect to specifically identified government operations or activities. CMS has issued decisions that may be contrary to law and publicly stated policies. CMS may have improperly closed complaints and engaged in other corrupt activities. Public examination of these records may shine a light on fraud, abuse, and waste perpetrated and/or abetted by the federal government.
2. The disclosure of these records is likely to **contribute to an understanding of government operations and activities** including possible improper activities. I plan to distribute the information via my website, social media, blog, and interested members of the Media, which include AMA Newswire, Reuters Health, and interested organizations, which include the MGMA (Medical Group Management Association), AMA (American Medical Association) among others.
3. The disclosure will **contribute to public understanding** of the factors involved in the agency's decisions related to electronic transactions. The disclosure is **of interest to the general public**. This issue has been addressed by multiple public organizations including the American Medical Association, which represents close to a million physicians in the United States. Low-cost electronic transactions are in public interest since they lower the cost of healthcare, a major public concern.
4. I have **no significant commercial interest in the disclosure**. The decisions that impair electronic transactions have a marginal cost of less than \$500 per year in gross expenses. In comparison, these **costs amount to hundreds of millions of dollars in unnecessary costs to healthcare providers nationwide that are passed on to the consumers of healthcare services**. Administrative costs account for up to 20% of healthcare insurance premiums in the US, on the order of \$3923 per family per year according to the National Conference of State Legislatures (<http://www.ncsl.org/research/health/health-insurance-premiums.aspx>).

I can be contacted at 718-395-6464 or by email: [dralex@newyorkurologyspecialists.com](mailto:dralex@newyorkurologyspecialists.com), if necessary to discuss any aspect of this request.





**Alex Shteynshlyuger M.D.**  
Board Certified Urologist

Urology Care for Men and Women

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I would prefer to receive the requested information in a **digital format, preferable downloadable via the internet**. I look forward to receiving the requested documents and a full fee waiver within twenty (20) business days.

Sincerely,

 Recoverable Signature

**X** Alex Shteynshlyuger

Alex Shteynshlyuger MD

Director of Urology

Signed by: d4aa26c7-f0c1-4b84-8cb9-1bcedd7cfccb

New York Urology Specialists

33 W. 46th St. 5th Fl, New York, N.Y. 10036

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-11-06  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs / Freedom of Information Group**

Request has been assigned: Control Number **050720207010** and PIN **2MJH**

RE: Zelis Healthcare

**5/11/2020**

**Alex Shteynshlyuger MD**  
**New York Urology Specialists**  
**33 W. 46th St. 5th Fl**  
**New York, NY 10036**

Dear Dr. Shteynshlyuger:

The purpose of this letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request (5 U.S.C. § 552) and to provide you with a tracking number for your request. Your FOIA request, dated **5/7/2020** was received on **5/7/2020** by the Centers for Medicare & Medicaid Services (CMS). To check the status of your request as it is being processed, please refer to the CMS FOIA website <http://www.cms.gov/apps/FOIA> and enter the control number and PIN (listed above) that have been assigned to your request.

Once we complete our initial analysis of your request, we will initiate a search for responsive records. If however, we determine that your request needs clarification, we will contact you. Additionally, if our searching units advise us that you have requested a voluminous amount of records that require extensive search, production and review, we will contact you to discuss options for narrowing the scope of your request in order to process your request as quickly and efficiently as possible.

Please note that CMS receives a very high volume of FOIA requests. The following unusual circumstances, as defined by Federal FOIA Regulations, may impact our ability to fulfill a FOIA request within 20 business days. These include circumstances such as (1) the request requires us to search for and collect records from multiple components and/or field offices; (2) the request involves a voluminous amount of records that must be located, compiled, transferred to this office, and reviewed. In addition, given our high volume of requests, and in accordance with federal regulations, our processing policy includes factors such as the date of the request as well as the complexity of the request.

The FOIA law assumes that requesters are willing to pay fees up to \$25.00. If estimated fees to process your request exceed \$25.00, we will notify you and may suspend processing until we receive written confirmation that you are willing to pay the estimated fees. Additionally, for

requests in which the estimated fees exceed \$250.00, the law authorizes us to collect the fees *in advance* prior to processing the request.

If your request sought a fee waiver or expedited processing, we will send additional communication to provide you with our determination decision(s).

If you are not satisfied with any aspect of the processing and handling of this request, please contact Angela Pompey.

You also have the right to seek dispute resolution services from:

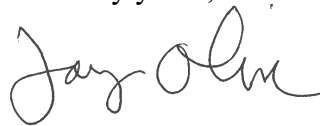
Joseph Tripline  
CMS FOIA Public Liaison  
Centers for Medicare & Medicaid Services  
7500 Security Blvd., MS N2-20-16  
Baltimore, Maryland 21244-1850  
Telephone: (410) 786-5353 fax (443)-380-7260

and/or:

Office of Government Information Services  
National Archives and Administration  
8601 Adelphi Road – OGIS  
College Park, MD 20740-6001

Telephone: 202-741-5770  
Toll-Free: 1-877-684-6448  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Fax: 202-741-5769

Sincerely yours,

A handwritten signature in cursive script that reads "Jay Olin".

Jay Olin  
Director, Division of FOIA Analysis – C  
Freedom of Information Group

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**Fwd: FOIA Request - Vpay EchoHealth**

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**Alex Shteynshlyuger** <dralex@newyorkurologyspecialists.com>  
To: Rachel Eun <eun@loevy.com>

Wed, Jun 17, 2020 at 4:44 PM

----- Forwarded message -----

From: **Alex Shteynshlyuger** <dralex@newyorkurologyspecialists.com>  
Date: Tue, May 12, 2020 at 7:13 AM  
Subject: FOIA Request - Vpay EchoHealth  
To: CMS FOIA Request <FOIA\_Request@cms.hhs.gov>

Hello,

Please accept the attached PDF file with my Freedom of information request.

Please **confirm receipt of this FOIA request by email**.I would **prefer to receive the case number and other communications by email**. If you have any questions please do not hesitate to contact me.

Sincerely,

Alex Shteynshlyuger MD  
Director of Urology

New York Urology Specialists  
33 W. 46th St. 5th Fl  
New York, N.Y. 10036

Phone: 646-663-5252  
Fax: 718-285-8555

<http://www.newyorkurologyspecialists.com/>

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 **FOIA\_echohealth-vpay-5-12-2020.pdf**  
209K

## Freedom of Information Act Request

May 12, 2020

Attn: Hugh Gilmore

Director of Division of Freedom of Information, Office of Strategic Operations and Regulatory Affairs  
Centers for Medicare & Medicaid Services, Mailstop N2-20-16

7500 Security Boulevard

Baltimore, MD 21244

Via email: [FOIA\\_Request@cms.hhs.gov](mailto:FOIA_Request@cms.hhs.gov)

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), Alex Shteynshlyuger MD requests that the CMS (Centers of Medicare and Medicaid Services and the Department of Health and Human Services) produce **all records** from **1/1/2015 to 5/10/2020** regarding:

- CMS Complaint 14OPR04107 (also known as 4107, 140-PRO-4107) involving Echo Health
- CMS Complaint 1242 involving Echo Health (also known as 19TRA01242)
- CMS Complaint 1244 involving Echo Health
- Any other CMS complaints involving Echo Health and related documents and communications
  
- CMS complaints 18TRA00940, 17TRA00901 involving Vpay
- Any other CMS complaints involving Vpay and related documents and communications

To aid your search, but not to limit the search in any way, these are some additional search keywords that may help identify responsive materials:

- Echo Health Inc; Echo Health
- MSroka@EchoHealthInc.com , @EchoHealthInc.com
- [richmans@pepperlaw.com](mailto:richmans@pepperlaw.com), vpay.com, vpayusa.com, Vpay

Please produce all correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, phone call recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things that refer to the above mentioned records in any way.

To aid your search, but not to limit the search in any way, it is my understanding that the following offices at CMS may have responsive records. Please note that additional offices may have responsive records as well:

1. The **office of the CMS Administrator**: Ms. Seema Verma
2. Office of Strategic Operations and Regulatory Affairs - **Kathleen Cantwell, Director**
  - a. [https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office\\_OSORA.html](https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OSORA.html)
3. The **Office of Information Technology Program Management and National Standards Group** - **Cora Tracy, Director**
  - a. [https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office\\_OIT.html](https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OIT.html)

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2. **Mr. George C. Hoffman**, Office of Information Technology
3. **Mr. Janet Vogel**, Deputy CIO & Deputy Director for Operations
4. **Mr. Scott Shippy** Office of Information Technology
5. **Mr. Madhu Annadata** Office of Information Technology
6. **Ms. Christine Gerhardt** Office of Information Technology
7. **Ms. Kathleen Cantwell** - Office of Strategic Operations and Regulatory Affairs; a trained **lawyer** who understands her FOIA responsibilities
8. **Mr. Rajiv Uppal** - Office of Information Technology
9. **Ms. Seema Verma** – CMS Administrator
10. **Ms. Kimberly Brandt** – CMS Principal Deputy Administrator for Policy & Operations
11. **Ms. Marilyn Tavenner** - CMS Administrator 2011-2015
12. **Mr. Andrew M. Slavitt** – CMS Administrator 2015-2017
13. **Mr. Matthew Albright** – CMS Director and Deputy Director Administrative Simplification Group, Office of Ehealth Standards 2010-2014
14. **Christine Stahlecker** Director, Administrative Simplification Group at CMS 2012-2012

Please note that the materials responsive to this complaint reside **at the national CMS office in Baltimore, Maryland**. This complaint does **NOT** belong in the regional New York office.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaugh v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), cert denied, 415 U.S. 977 (1974). Additionally, any reasonably

segregable portion of a responsive record must be provided to me after the redaction of any allegedly exempt material, as the law requires. 5 U.S.C. § 552(b).

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am a physician and a specialist in health economics with publications in peer-reviewed journals such as: Cost-effectiveness of PSA Screening. **I have been an advocate for administrative simplification in healthcare.** I am willing to pay fees up to the amount of \$250. If the fees will exceed this amount, please inform me before fees are incurred.

In addition, I would like to **request a fee waiver**:

1. The records are sought for their informative value with respect to specifically identified government operations or activities. CMS has issued decisions that may be contrary to law and publicly stated policies. CMS may have improperly closed complaints and engaged in other corrupt activities. Public examination of these records may shine a light on fraud, abuse, and waste perpetrated and/or abetted by the federal government.
2. The disclosure of these records is likely to **contribute to an understanding of government operations and activities** including possible improper activities. I plan to distribute the information via my website, social media, blog, and interested members of the Media, which include AMA Newswire, Reuters Health, and interested organizations, which include the MGMA (Medical Group Management Association), AMA (American Medical Association) among others.
3. The disclosure will **contribute to public understanding** of the factors involved in the agency's decisions related to electronic transactions. The disclosure is **of interest to the general public**. This issue has been addressed by multiple public organizations including the American Medical Association, which represents close to a million physicians in the United States. Low-cost electronic transactions are in public interest since they lower the cost of healthcare, a major public concern.
4. I have **no significant commercial interest in the disclosure**. The decisions that impair electronic transactions have a marginal cost of less than \$500 per year in gross expenses. In comparison, these **costs amount to hundreds of millions of dollars in unnecessary costs to healthcare providers nationwide that are passed on to the consumers of healthcare services**. Administrative costs account for up to 20% of healthcare insurance premiums in the US, on the order of \$3923 per family per year according to the National Conference of State Legislatures (<http://www.ncsl.org/research/health/health-insurance-premiums.aspx>).

I can be contacted at 718-395-6464 or by email: [dralex@newyorkurologyspecialists.com](mailto:dralex@newyorkurologyspecialists.com), if necessary to discuss any aspect of this request.





**Alex Shteynshlyuger M.D.**  
Board Certified Urologist

Urology Care for Men and Women

---

I would prefer to receive the requested information in a **digital format, preferable downloadable via the internet**. I look forward to receiving the requested documents and a full fee waiver within twenty (20) business days.

Sincerely,

 Recoverable Signature

**X** Alex Shteynshlyuger

Alex Shteynshlyuger MD

Director of Urology

Signed by: d4aa26c7-f0c1-4b84-8cb9-1bcedd7cfccb

New York Urology Specialists

33 W. 46th St. 5th Fl, New York, N.Y. 10036