



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

Refer to: C07FOI0730EW (PC)

Dear Part D Sponsors:

I am writing to each of you because a request (copy enclosed) has been made under the Freedom of Information Act (FOIA) (5 U.S.C. 552) that seeks disclosure of all data reported to Medicare by Medicare Part D plans as outlined in the Final Medicare Part D Reporting Requirements Appendix Table 1. The web link to the 2007 Part D Reporting Requirements is as follows:

<http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/PartDReportingRequirementsCurrentYear.pdf>

Table 1 is found on pages 26 through 31 of the 2007 Medicare Part D Reporting Requirements.

Under FOIA, upon receipt of a request, we must disclose responsive records in our possession unless one of FOIA's exemptions permits us to withhold the records (or some reasonably segregable portion thereof).

We have reviewed that requested data and determined that we are not permitted to withhold any of the reporting elements from the following sections enumerated in Appendix Table 1: Reversals, Medication Therapy Management Programs (MTMP), Generic Dispensing Rate, Grievances, Transition, Exceptions, Appeals and Drug Benefit Analyses. Therefore, we have released the reporting elements from these sections to the requester.

We are in the process of making disclosure decisions concerning the reporting elements within the remaining sections, i.e.,: *Overpayment; Pharmaceutical Rebates, Discounts, and Other Price Concessions Long-term Care (LTC) Rebates; and Licensure and Solvency, Business Transactions and Financial Requirements.*

Please note that when responsive records may contain proprietary information, we consider whether some or all of such information might be withheld under FOIA's Exemption 4 (5 U.S.C. §552(b)(4)). This Exemption permits a Federal agency to withhold information that is in the nature of "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." If we determine that the responsive records we have located, or any reasonably segregable portion thereof, qualifies for withholding under this Exemption, we will withhold all such information. We will disclose all information that does not qualify for withholding under the Exemption.

This is to give you an opportunity to participate in our decision-making process by identifying the reporting elements within the sections cited in paragraph four of this letter that you believe should be withheld under FOIA's Exemption 4. If you elect to assert that any information in these sections should be withheld under Exemption 4, you should advise us to that effect in accordance with the following:

1. Identify the section and each potential Exemption 4 reporting element clearly and specifically.
2. Furnish written comments, and any other pertinent evidence you may wish to offer, that are sufficient to show that: (a) the designated reporting element constitutes confidential commercial information (i.e., information protected by 5 U.S.C. § 552(b)(4)), and (b) disclosure of such information would cause your organization substantial competitive harm.
3. In articulating your position regarding each particular reporting element you want us to withhold under Exemption 4, it is important to expressly state the specific, reasonably foreseeable, substantial competitive harm that is likely to result by releasing such information. Generalized, conclusory claims of competitive harm are not a sufficient basis for us to invoke the Exemption (and thereby protect your interests).
4. It is also important that you identify only those reporting elements for which you can make a showing that the information is confidential and that its disclosure would result in substantial competitive injury. Overbroad designations (of an entire section) are not useful to assist our analysis because, by law, we must disclose any reasonably segregable portion of a record that contains non-exempt information. Therefore, you should assert as being within the scope of the Exemption, all reporting elements for which there is a substantial basis for such assertion and no reporting element for which there is little, if any, basis to make such assertion.
5. **Your reply must be received via e-mail at CMS 12600 Responses to Himmelstein's FOIA request @ cms.hhs.gov within twenty (20) days of the date of this letter.** (Because of time constraints imposed by FOIA on Federal agencies to timely respond to requestors, we are unable to afford you additional time to furnish your response.)

Although we must reach an independent decision regarding release or withholding of each reporting element, your timely comments will ensure that we will have considered your position before making a disclosure decision. If you have not fully apprised us of your views on this matter within the time limit indicated above, we may be compelled to release data without your views being fully considered. Thus, your prompt attention to this matter may be advisable.

Questions concerning this matter may be directed to Ms. Melodye Hardy at (410) 786-5358 or Ms. Poonam Chona at (410) 786-2919. Thank you for your cooperation in this matter.

Sincerely,

\s\

Michael S. Marquis
Director
Freedom of Information Group

Enclosures