

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

FRED SCHULTE  
910 17<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor  
Washington, DC 20006-2606, and

CENTER FOR PUBLIC INTEGRITY  
910 17<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor  
Washington, DC 20006-2606,

Plaintiffs,

v.

Civil Action No. 14-887

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES  
200 Independence Ave., S.W.  
Washington, DC 20201-0004,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Fred Schulte and the Center for Public Integrity (the Center), bring this action for declaratory and injunctive relief, alleging as follows:

**Nature of Action**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, to compel the production of certain agency records related to Medicare Advantage plans.

**Jurisdiction and Venue**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, and 28 U.S.C. § 2201(a).

3. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

### **Parties**

4. Plaintiff Fred Schulte is an investigative reporter employed by the Center for Public Integrity. His assignments include covering Medicare spending and billing issues.

5. Plaintiff Center for Public Integrity is a District of Columbia corporation, a tax-exempt public charity and a nonprofit, nonpartisan, non-advocacy, independent journalism organization based in Washington, D.C. The Center's mission is "[t]o serve democracy by revealing abuses of power, corruption and betrayal of public trust by powerful public and private institutions, using the tools of investigative journalism." "About The Center for Public Integrity," <http://www.publicintegrity.org/about>.

6. Plaintiffs are the requesters of the withheld records.

7. Defendant, U.S. Department Of Health and Human Services ("HHS"), is an agency of the United States. The Centers for Medicare and Medicaid Services ("CMS") is a component agency of Defendant HHS. Defendant has possession of and control over the records that plaintiffs seek.

### **Plaintiffs' Freedom of Information Request**

8. By letter dated May 21, 2013, addressed to CMS, Plaintiffs requested copies of the following records, preferably in electronic format, along with any associated documentation:

- copies of all investigations, reports, audits, correspondence and emails and all other records pertaining to effects of electronic health records and other digital billing systems on medical coding. Also requested are records of meetings over the past five years in which these issues were discussed, including meeting calendars identifying persons involved, location and dates of meetings, matters discussed and results.
- Copies of all investigations, reports, audits, correspondence and emails and all other records pertaining to overpayments related to risk scoring at Medicare Advantage plans and any records concerning requests for repayments, settlement conference information and other policy memoranda and records concerning any

other Medicare Advantage payment issues, including the potential impact of electronic health records on diagnosis reporting.

- All records of meetings over the past five years in which Medicare Advantage payment and repayment issues were discussed including meeting calendars identifying persons present, location and dates of meetings, matters discussed and results, including issues involving electronic health records and risk scoring.
- All data showing annual risk scores of Medicare Advantage patients by plan since 2004. This includes a breakdown of individual HCCs reported by plan, total payment to the plans and amounts for each HCC. This is not a request for patient names. Copies of all investigations, reports, audits, correspondence and emails and all other records involving changes in risk scores by individual plans also are requested. Also requested is a copy of the agency database that records risk scores by plan by year and tracks changes.
- All records designating Medicare Advantage plans as “high risk” providers, including the rationale for the designation, as well as copies of all pilot audits and targeted audits of risk scoring and other matters. Also requested are all records pertaining to enforcement actions, or complaints alleging quality of care concerns, and resolution.
- All Congressional correspondence, records of meetings and all other documents related to discussions of Medicare Advantage program policies or issues, including risk scoring, enforcement actions, quality of care concerns, awarding of stars and the impact of electronic health records on diagnosis coding.

9. By letter dated June 7, 2013, Michael Marquis, Director, Division of Freedom of Information, CMS, acknowledged receipt of Plaintiffs’ request.

#### **Defendant’s Processing of the Request**

10. Defendant has not yet issued a determination with respect to Plaintiffs’ request.

11. More than twenty working days have passed since Defendant received Plaintiffs’ request. Plaintiffs have therefore exhausted all applicable administrative remedies.

12. Plaintiffs have a statutory right to the requested records, and there is no legal basis for Defendant’s failure to make them available to Plaintiffs.

#### **Demand for Relief**

WHEREFORE, Plaintiffs request that this Court:

1. Declare that Defendant's failure to disclose the records requested by Plaintiffs is unlawful;
2. Order Defendant to make the requested records available to Plaintiffs;
3. Award Plaintiffs its costs and reasonable attorneys' fees in this action; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/S/

Peter Newbatt Smith  
D.C. Bar #458244  
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Attorney for Plaintiffs

May 27, 2014