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Executive Director

July 8, 2025

Also filed electronically

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FOIA Officer  
Centers for Medicare & Medicaid Services  
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7500 Security Boulevard  
Baltimore, Maryland 21244

**Re: FOIA Request**

Dear HHS and CMS FOIA Officers:

The National Health Law Program submits this request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and U.S. Department of Health and Human Services FOIA regulations, 45 C.F.R. §§ 5.1-5.71. We ask that a copy of the records described below be provided to us. We do not wish to inspect the records beforehand.

As used herein,

- (1) "Data" means information collected by the single state Medicaid agency that includes personally identifiable information of individuals (e.g., name, date of birth, address, phone number, or citizenship or immigration status of the individual) who have applied for or received Medicaid coverage of emergency medical conditions under 42 U.S.C. § 1396b(v)(2) and/or individuals who have received medical assistance coverage through state-funded programs that serve individuals who do not qualify for federally-funded Medicaid coverage due to their immigration status;
- (2) "DHS" means the U.S. Department of Homeland Security;

- (3) "HHS" means the U.S. Department of Health and Human Services and includes the Centers for Medicare & Medicaid Services ("CMS");
- (4) "Records" means all records as defined in 5 U.S.C. § 552(f)(2). Please search for all records regardless of format, including all paper records and all electronic records, audiotapes, videotapes, photographs, and graphical materials. This request includes, without limitation, all correspondence, memorandum of understanding, letters, emails, text messages, calendar entries, facsimiles, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

Please provide us with a copy of the following records created on or after January 20, 2025:

- (1) Memorandum of understanding between HHS and CMS that refer or relate to sharing the data;
- (2) Records sent from HHS to DHS, or from DHS to HHS, that refer or relate to the data;
- (3) Records sent from CMS to any and all states, or from any and all states to CMS, that refer or relate to both the data and the SHO #25-002, Re: Data Reporting Compliance for the Transformed-Medicaid Statistical Information System (T-MSIS) (May 28, 2025) (excluding the data itself);
- (4) HHS records that refer or relate to legal, regulatory, and ethical prohibitions to sharing the data either within HHS or with individuals or entities outside of HHS;
- (5) Communications within HHS, including CMS, that refer or relate to the sharing of the data either within HHS or with individuals or entities outside of HHS;
- (6) Communications that refer or relate to the June 6, 2025 memorandum signed by CMS Medicaid Deputy Director Sara Vitolo and sent to Kimberly Brandt, CMS Office of the Administrator, about the transfer of the data between the state Medicaid programs of California, Washington, Illinois, and Washington, DC and the federal government;
- (7) Records sent from HHS to DHS, or from DHS to HHS, that refer or relate to both the Health Insurance Portability and Accountability Act (HIPAA) and the data.

Should any documents or portions of documents be withheld, we request that you provide a *Vaughn* index of those documents, stating with specificity the description of the document to be withheld and the legal and factual grounds for the withholding. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). The index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA," *CADC 79-12 Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979), and "for each withholding it must discuss the consequences of disclosing the sought-after information." *King v. US. Dep 't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987). Should any document include both disclosable and nondisclosable

material that cannot reasonably be segregated, see 5 U.S.C. § 552(b) (requiring disclosure of any material that can reasonably be segregated), we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document, in accordance with *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

For records available in electronic format, please email the documents to [perkins@healthlaw.org](mailto:perkins@healthlaw.org). Please send all other requested records to:

Jane Perkins  
National Health Law Program  
1512 E. Franklin St., Ste. 110  
Chapel Hill, NC 27514

### Request to Waive Fees

We request a waiver of search, review, and duplication fees because disclosure of the requested records “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). A federal regulation, 45 C.F.R. § 5.54, lists three factors that, if met, entitle the requester to a waiver of fees. We believe our request satisfies these factors. *First*, disclosure of the information requested here “would shed light on the operations or activities of the government,” *id.* § 5.54(b)(1), in connection with the transfer of the data between federal and state government programs.

*Second*, NHeLP will disseminate any information obtained through this request to the public, so disclosure of the requested information will likely “contribute significantly to public understanding” of the federal government’s operations and approach to the transfer of the data. *Id.* § 5.54(b)(2). Disclosure of this information will be “meaningfully informative” about [HHS ] operations or activities” because it is not already in the public domain. *Id.* The request also pertains to government policies and activities that are under public scrutiny, making them significant to the public’s understanding of the government’s operations and positions on important issues affecting the administration of the Medicaid program. *Id.* § 5.54(b)(2)(i). Because the data gathering and reporting activities are occurring in multiple states and potentially affecting millions of people, disclosure of these records will necessarily “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” *id.* § 5.54(b)(2)(ii). Moreover, NHeLP’s “expertise in the subject area” and its substantial “ability and intention to effectively convey information to the public” demonstrates that disclosure here will contribute to the understanding of a broad audience of persons. As described on our website, [www.healthlaw.org](http://www.healthlaw.org), NHeLP is a non-profit legal organization whose

mission is to protect and advance health rights of low-income and underserved people. We work extensively with individuals who are seeking access to health benefits through Medicaid. We work with a range of federal, state, and local organizations that provide assistance to low-income and underserved individuals, providing information, education, and litigation support. NHeLP has the knowledge and expertise to understand the information sought and to facilitate its public dissemination quickly and effectively.

*Third*, this request is not “in the commercial interest of the requester.” *Id.* § 5.54(b)(3). NHeLP does not have any commercial interest in the disclosure of the requested records and does not seek to benefit commercially from this information. We exist to help individuals use programs such as Medicaid. Our clients cannot afford to pay for legal assistance; they also cannot afford the costs associated with this request. The dissemination of information to the public will be at no cost and for the purpose of educating the public and promoting NHeLP’s mission.

#### Request for Expedited Processing

We ask that you provide expedited processing of this FOIA request, which qualifies for such treatment pursuant to 45 C.F.R. § 5.27 and 5 U.S.C. § 552(a)(6)(E). There is an “urgency to inform the public concerning actual or alleged Federal Government activity” as it relates to the transfer of the data between state and federal government agencies. The individuals that we serve has an immediate interest in knowing whether and how widely information they provide to a state Medicaid agency will be shared among federal officials. Furthermore, as noted above, NHeLP is “primarily engaged in disseminating information to the public.” 45 C.F.R. § 5.27(b)(2). Dissemination of information about government activities, particularly with respect to the Medicaid program, is a critical and substantial component of our mission.

In addition to prioritizing this request and expediting it, we ask that you strictly comply with the 20-day time limit established by FOIA. 5 U.S.C. § 552(a)(6)(A). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and we will consider the internal appeals process to be constructively exhausted. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

As required by federal regulation, 45 C.F.R. § 5.27(a), I hereby certify that the above information is true and correct to the best of my knowledge and belief. Please contact me at (919) 968-6308 or [perkins@healthlaw.org](mailto:perkins@healthlaw.org) if you have questions. Thank you for your assistance.

Sincerely,

  
Jane Perkins  
Litigation Director