

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop N2-20-16
Baltimore, Maryland 21244-1850



Office of Strategic Operations and Regulatory Affairs/Openness, Transparency & Accountability Group

Refer to Control Number: **020820117031** and PIN: **L5E9**

Nathan Paul Mehrens
Americans for Limited Government
9900 Main Street, Suite 303
Fairfax, VA 22031

FEB 29 2012

Dear Mr. Mehrens:

This letter is in response to your November 1, 2010, Freedom of Information Act (FOIA) (5 U.S.C. § 552) request addressed to the Department of Health & Human Services (DHHS) Assistant Secretary for Public Affairs (ASPA). Within your correspondence, you sought a copy of all of the applications submitted in response to the Center for Consumer Information & Insurance Oversight's (CCIIO's) (formerly the Office of Consumer Information and Insurance Oversight (OCIIO)) grant solicitation entitled "Grants to States for Health Insurance Premium Review-Cycle I." In addition, you sought a list of approved grant applications and the amount awarded to each state.

Upon receiving your request, ASPA transferred it to the appropriate operating division, the Centers for Medicare & Medicaid Services (CMS), for processing. Once your request was received by CMS, it was then sent to the appropriate component, the Center for Consumer Innovation & Insurance Oversight (CCIIO) (formerly the Office of Consumer Information and Insurance Oversight (OCIIO)), for a records search. After conducting a thorough search, CCIIO located 5,502 pages (encompassing applications from 46 states and the District of Columbia) of documents responsive to the first part of your request. These pages were then forwarded to my office, the Division of Freedom of Information (DFOI), for a final disclosure review pursuant to my duties as FOIA Director under the Act.

With that said, after a careful review of the 5,502 pages of records forwarded to this office, I have determined to release 5,198 of the pages to you. Of the pages received for review, I am denying you access to 304 pages, in their entirety, pursuant to Exemption 4 of the FOIA (5 U.S.C. § 552 (b)(4)). Furthermore, I am denying you access to portions of 31 pages pursuant to Exemption 6 of the FOIA (5 U.S.C. § 552 (b)(6)) and portions of three (3) pages pursuant to Exemption 4.

Exemption 4 of the FOIA 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." As part of their grant application package, many states included a sample health insurance rate filing. Although most of the states which included sample rate filings make these documents available to the public, other states do not. In cases where a state

included a sample health insurance rate filing in its grant application but either does not make this information available to the public or withholds information deemed to be proprietary, we have withheld the sample rate filing. This is because a release of these pages is likely to cause substantial competitive harm to the competitive position of the health insurance issuer identified in the filing. Under this rationale, I have withheld 304 pages of documents.

Additionally, portions of three (3) of the released pages have been withheld under Exemption 4 because they include data on the number of individuals enrolled in various private health insurance plans. This information is not made publically available by the state that submitted the application in question (Washington) and its release is likely to cause substantial competitive harm to the competitive position of the identified private health plans. Therefore, this information has been withheld under Exemption 4.

Exemption 6 permits a federal agency to withhold information about individuals in "personnel and medical files and similar files" when disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." When determining whether a piece of information "would constitute a clearly unwarranted invasion of personal privacy," an agency must conduct a balancing test, weighing the privacy interest at stake against the public interest in disclosure (which the Supreme Court has held is to be limited in this context to the public interest that would be served by shedding light on the agency's performance of its statutory duties).

Under the grant solicitation, states were asked to submit the resumes of the Project Director and the Assistant Director who would be working on the grant. In many cases, the resumes included home addresses, telephone numbers, e-mail addresses and other personal information related to these individuals. Because our office believes that a release of this information would reveal little or nothing about the agency's own conduct, we have concluded that the personal privacy interests of these state employees far outweigh the public interest in disclosure in this particular matter and that, therefore, this information must be withheld under Exemption 6.

In response to the second part of your request, a full listing of the grant recipients and the amount awarded to each state can be found at the following website:
<http://www.healthcare.gov/news/factsheets/2010/08/rateschart.html>

You have the right to appeal this decision. To do so, you must put your appeal in writing and send it within 30 days to: The Deputy Administrator and Chief Operating Officer, CMS, Room C5-16-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Please mark the envelope containing your letter of appeal "Freedom of Information Act Appeal" and enclose a copy of this letter with your appeal.

Page 3

Thank you for your patience and we hope you find the enclosed materials both informative and useful

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Marquis", with a stylized flourish at the end.

Michael Marquis
Director
Division of Freedom of Information

Enclosure: One (1) Digital Video Disc