



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

Refer to Control Number: 020820117031

HCDI-(SBJ)

Nathan Mehrens  
Americans for Limited Government  
9900 Mains St., Suite 303  
Fairfax, VA 22031

NOV 07 2012

Dear Mr. Mehrens:

This letter is an interim response to your November 1, 2010, Freedom of Information Act (5 U.S.C. § 552) request addressed to the Department of Health and Human Services (HHS) for specifically identified records pertaining to applications submitted to the Department of Health and Human Services for a temporary waiver from the annual limit requirements of the Public Health Service (PHS) Act, Section 2711(a)(2).

On September 13, 2012, Mark Wolschlegel had a discussion with a member of my staff concerning the scope of your request. During that conversation, he expressed that you did not agree to accept a subset as the final response to your request; but preferred to have the subset provided as part of an interim response. Specifically, you request:

**1. Copies of all waiver requests submitted as per the process created by OCIO Sub-regulatory Guidance (OCIO 2010 – 1)....**

This subset, included on the enclosed compact disc, comprises of 8,283 pages of redacted annual limit waiver application packages submitted on behalf of 237 benefit plans that were approved for participation. Where information has been redacted, these withholdings are made pursuant to Exemption 4 of the FOIA, 5 U.S.C. §552(b)(4)(West 2011).

We are also withholding the copies of applications that were denied pursuant to Exemption 4 of the FOIA, 5 U.S.C. §552(b)(4). The copies of applications of denied applicants are being withheld because release of any portion of a denied applicant's waiver application could also cause substantial competitive harm. In recognition of these unique circumstances, all denied waiver application materials are withheld in full under Exemption 4.

Exemption 4 protects "commercial or financial information obtained from a person [that is] privileged or confidential", and is intended to protect both the interests of the government and of submitters of information. Exemption 4 affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure.

Information redacted from the released subset included information; i.e., Terms of Plans, Number of Persons Covered, and Annual and Lifetime Coverage limits, the release of which would cause a substantial competitive harm to the entities that submitted applications that were approved.

**2. List of waiver requests under number 1 above that have been approved along with the dates they were approved.**

The list of all applicants who have sought a waiver is publically available at: [http://cciio.cms.gov/resources/files/approved\\_applications\\_for\\_waiver.html](http://cciio.cms.gov/resources/files/approved_applications_for_waiver.html). In addition, we are including with this response a link to a listing of states that have requested an adjustment to the Medical Loss (MLR) requirements established by Section 2718 of the PHS Act: <http://cciio.cms.gov/programs/marketreforms/mlr/state-mlr-adj-requests.html>. While CMS does not grant waivers to the MLR requirements, requests for adjustment are often referred to as waivers by the public, and, therefore, we are including this information in this letter.

**3. List of waiver requests under number 1 above that have been denied along with the dates they were denied and the reason(s) given for the denial.**

The list of denied applicants is publicly available at: [http://cciio.cms.gov/resources/files/denials\\_01062012.pdf](http://cciio.cms.gov/resources/files/denials_01062012.pdf).

**4. The number of pending waiver requests under number 1 above that are still pending approval.**

None are pending.

Our Center for Consumer Information and Insurance Oversight (CCIIO) is charged with helping implement many provisions of the Affordable Care Act, the historic health reform bill that was signed into law March 23, 2010. CCIIO oversees the implementation of the provisions related to private health insurance. Additional information is available at:

**<http://cciio.cms.gov/index.html>**

Please note that this interim response does not constitute a final agency action, as additional document disclosures are forthcoming. Therefore, the right to appeal these disclosure decisions will be extended concurrent with the final response action by this office. Thank you for your patience in this matter.

Sincerely,



Michael Marquis  
Director  
Division of Freedom of Information

Enclosure