

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 and Accountability Group**

---

Refer to: Control Number 071620137079 and PIN [Private identifiers redacted]

Paul Burke

FEB 25 2015

Dear Mr. Burke:

This is in response to your July 15, 2013, Freedom of Information Act (FOIA) (5 U.S.C. § 552) request submitted to the Center for Medicare & Medicaid Services (CMS) or one of this agency's Medicare contractors via letter, facsimile transmission or e-mail seeking copies of language provided by Medicare to Accountable Care Organization for signs and informing beneficiaries about the Shared Savings Program. Documents responsive to your request, consisting of 17 pages, were forwarded to this agency because of my responsibility for administering the FOIA.

After a careful review of the 17 pages forwarded to this office for review and release determination, I have determined to withhold the materials in their entirety, under Exemption 5 of the FOIA (5 U.S.C. § 552(b)(5)).

Exemption 5 of the FOIA permits an agency to withhold "inter-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." Documents that are privileged in the context of civil discovery are thus exempt from release under Exemption 5. Among the civil discovery privileges incorporated into Exemption 5 are attorney-client privilege and the deliberative process privilege.

Exemption 5's Deliberative Process Privilege is being invoked in order to prevent injury to the quality of agency decisions by preserving the ability of agency employees to engage in free and candid discussions on matters of policy. The Deliberative Privilege applies to inter-agency or intra-agency communications that are (1) pre-decisional, i.e. antecedent to the adoption of an agency policy and (2) deliberative, i.e. a direct of the part of the deliberative process in that it makes recommendations on legal or policy matters.

Page 2 - Burke

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.

Sincerely,



Hugh Gilmore  
Director

Division of Freedom of Information

Enclosure