

Paul Burke
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March 24, 2015

The Deputy Administrator and Chief Operating Officer
CMS, Room C5-16-03
7500 Security Blvd
Baltimore, MD 21244-1850

FREEDOM OF INFORMATION ACT APPEAL
control number 071620137079

Dear Sir or Madam:

This is an administrative appeal of the denial of my July 15, 2013 FOIA request, control number 071620137079, denied by Hugh Gilmore's letter of February 25, 2015 citing Exemption 5 of the FOIA (5 U.S.C § 552(b)(5)). The documents requested in this FOIA have been released to over 450 Accountable Care Organizations (ACOs) for further dissemination to beneficiaries. The denial letter says there are 17 pages.

Mr. Gilmore's reference to Exemption 5 did not cite to any specific privilege. Although he made conclusory mention of attorney-client privilege and the deliberative process privilege, he did not explain how either applies to information already released to the public. The documents are not pre-decisional, since Medicare has approved them for release to ACOs and beneficiaries. The documents cannot contain recommendations on legal or policy matters, since their purpose is to tell beneficiaries factual information about ACOs.

I understand Exemption 5 to embody the Deliberative Process Privilege, Attorney Work-Product Privilege, Attorney-Client Privilege, Confidential Commercial Information, Statements from Air Crash Investigations, and Reports of Expert Witnesses.

None of these privileges bears in any way upon my request, because I sought information listed in 76 *Federal Register* 67946-67947, 11/2/11, which the regulated entities, ACOs, must use to communicate with beneficiaries, including:

- "post... to notify beneficiaries" 42 CFR § 425.312(a)(2)
- "Make available standardized written notices" 42 CFR § 425.312(a)(3)
- "Use template language developed by CMS" 42 CFR § 425.310(c)(1)

A claim of privilege by definition cannot attach to information that is to be "made available" to the public. Moreover, "standardized" language that is already provided to third parties is inherently inconsistent with the notion of the types of information that privileges are intended to safeguard.

CMS has improperly misapplied exemption (b)(5), saying that no portion of the 17 pages of responsive documents can be released to me, though they have been released to over 450 ACOs (Attachment 3) for dissemination to beneficiaries. Even while this FOIA was pending, CMS released the documents to 122 ACOs which started in January 2014, and 89 which started in January 2015.

I respectfully request that CMS rule upon this FOIA Appeal within 20 days as required by law. Should CMS continue to withhold any of the 17 pages, I request that CMS provide an itemized, indexed inventory of every agency record or portion thereof responsive to my request which CMS asserts to be exempt from disclosure, accompanied by a detailed justification statement covering each refusal to release records or portions thereof.

I am amenable to resolving this matter and encourage you to contact me at the address above. If we are unable to resolve this administratively, I am prepared to pursue the matter in district court.

Sincerely,

Paul Burke

cc: Daniel J. Stotter, Esq., 408 SW Monroe, Corvallis, OR 97333

Attachment 1 - Chronology

Attachment 2 - Text of FOIA from Paul Burke Submitted Online July 15, 2013

Attachment 3 - Accountable Care Organizations (which have received the documents requested in this FOIA)

Attachment 4 - Letter Denying FOIA, dated February 25, 2015, from Hugh Gilmore to Paul Burke

ATTACHMENT 1

Chronology of Events

FOIA Events		Related Events	
		Dec 2011 -Jan 2013	CMS provided the documents to 250 ACOs for release to beneficiaries
Jul 2013	Burke asked for the documents from the appropriate CMS office. CMS understood which documents were requested but did not provide them. (attachment 2)		
Jul 2013	Burke filed FOIA, using HHS online FOIA Request Form (attachment 2)		
Jul 2013	CMS assigned contact Angela Pompey and control number 071620137079	FY 2013 <i>FOIA Annual Report</i>	CMS median time to process <i>simple</i> requests: 11 days; <i>complex</i> requests: 2 days
Nov 2013 - Jul 2014	Burke followed up by phone with Pompey	Jan 2014	CMS provided the documents to 122 new ACOs for release to beneficiaries
Jul 2014	Pompey told Burke that program office had produced documents and that staff contact would be Edna Brady		
Aug-Sep 2014	Burke followed up with Brady	FY 2014 <i>FOIA Annual Report</i>	CMS median time to process <i>simple</i> requests: 14 days; <i>complex</i> requests: 3 days
Oct 2014	Association of Health Care Journalists (AHCJ) raised the matter in a meeting with HHS, which said to contact Michael Marquis		
Oct 2014	Burke spoke with Marquis and Brady, who said she would email the response 10/22/14		
Nov 2014 -Feb 2015	Burke followed up with Gilmore and Marquis	Jan 2015	CMS provided the documents to 89 new ACOs for release to beneficiaries

ATTACHMENT 3

Accountable Care Organizations (which have received the documents requested in this FOIA)

ACOs which Started in December 2011

1. Allina Health
2. Atrius Health ACO
3. Banner Health Network
4. Beacon Health ACO
5. Bellin-ThedaCare Healthcare Partners ACO
6. Beth Israel Deaconess Care Organization
7. Brown & Toland Physicians
8. Dartmouth Hitchcock ACO
9. Fairview Health Systems
10. Franciscan Alliance
11. Genesys PHO ACO
12. HCPACO Nevada, LLC
13. Healthcare Partners Medical Group
14. Heritage California ACO
15. JSA Care Partners
16. Michigan Pioneer ACO
17. Monarch HealthCare ACO
18. Montefiore ACO
19. Mount Auburn Cambridge IPA
20. OSF Healthcare System ACO
21. Park Nicollet Health Services
22. Partners HealthCare ACO
23. Physician Health Partners
24. Plus ACO
25. Presbyterian Healthcare Services
26. PrimeCare Medical Network, Inc.
27. Renaissance Health Network
28. Seton Health Alliance
29. Sharp Healthcare ACO
30. Steward Health Care Network
31. Trinity Pioneer ACO
32. University of Michigan ACO

ACOs which Started in April and July 2012

33. Accountable Care Coalition of Caldwell County, LLC
34. Accountable Care Coalition of Coastal Georgia, LLC
35. Accountable Care Coalition of Eastern North Carolina, LLC
36. Accountable Care Coalition of Greater Athens Georgia, LLC
37. Accountable Care Coalition of Mount Kisco, LLC
38. Accountable Care Coalition of Southeast Wisconsin, LLC
39. Accountable Care Coalition of Texas, Inc.
40. Accountable Care Coalition of the Mississippi Gulf Coast, LLC
41. Accountable Care Coalition of the North Country, LLC
42. AHS ACO, LLC
43. AppleCare Medical ACO, LLC
44. Arizona Connected Care, LLC
45. Catholic Medical Partners-Accountable Care IPA, Inc.
46. Chinese Community Accountable Care Organization
47. Coastal Carolina Quality Care, Inc.
48. Crystal Run Healthcare ACO, LLC
49. Florida Physicians Trust, LLC
50. Hackensack Physician-Hospital Alliance ACO, LLC
51. Jackson Purchase Medical Associates, PSC
52. Jordan Community ACO
53. North Country ACO
54. Optimus Healthcare Partners, LLC
55. Physicians of Cape Cod ACO, Inc.
56. Premier ACO Physician Network, LLC
57. Primary Partners, LLC
58. RGV ACO Health Providers, LLC
59. West Florida ACO, LLC
60. Accountable Care Coalition of Green Mountains, LLC
61. Accountable Care Coalition of Maryland, LLC
62. Accountable Care Coalition of Northwest Florida, LLC
63. Accountable Care Coalition of Syracuse, LLC
64. Accountable Care Coalition of The Tri-Counties, LLC
65. Accountable Care Options, LLC
66. Accountable Care Partners, LLC
67. Accountable Healthcare Alliance, PC
68. Advocate Physician Partners Accountable Care, Inc.
69. Allcare Options, LLC
70. AnewCare Collaborative, LLC
71. ApolloMed Accountable Care Organization, Inc.
72. Asian American Accountable Care Organization
73. Aurora Accountable Care Organization, LLC
74. AzPCP-ACO, A Medical Corporation, PC
75. Balance Accountable Care Network
76. Barnabas Health ACO-North, LLC
77. Beacon Health Partners, LLP
78. BHS Accountable Care, LLC
79. BJC HealthCare ACO, LLC
80. Central Maine ACO
81. Central Utah Clinic, P.C.
82. Chautauqua Region Associated Medical Partners, LLC
83. Chicago Health System ACO, LLC
84. Circle Health Alliance, LLC
85. Coastal Medical, Inc.
86. Concord Elliot ACO LLC
87. Cornerstone Health Care, PA
88. Cumberland Center for Healthcare Innovation, LLC
89. Deaconess Care Integration, LLC
90. Dean Clinic and St. Mary's Hospital Accountable Care Organization, LLC
91. Essentia Health
92. Essential Care Partners, LLC
93. Florida Medical Clinic ACO, LLC
94. FPG Healthcare, LLC
95. Franciscan AHN ACO, LLC
96. Genesis Accountable Care Organization, LLC
97. Golden Life Healthcare, LLC
98. Greater Baltimore Health Alliance Physicians, LLC
99. Harbor Medical Associates, PC
100. Healthcare Provider ACO, Inc.
101. HealthNet LLC
102. Heartland Regional Medical Center
103. Indiana University Health ACO, Inc.
104. Integrated Care Alliance, LLC
105. Iowa Health Accountable Care, L.C.
106. Iowa Health Accountable Care, LLC
107. John C. Lincoln Accountable Care Organization, LLC
108. John Muir Physician Network
109. Maine Community Accountable Care Organization, LLC
110. MaineHealth Accountable Care Organization
111. Maryland Accountable Care Organization of Eastern Shore, LLC
112. Maryland Accountable Care Organization of Western, MD, LLC
113. Medical Mall Services of Mississippi
114. Medical Practitioners for Affordable Care, LLC
115. Memorial Hermann Accountable Care Organization
116. Mercy ACO
117. Mercy Health Select, LLC
118. Meridian Holdings, Inc.
119. Methodist Patient Centered ACO
120. MissionPoint Health Partners
121. Mount Sinai Care, LLC
122. MPS ACO Physicians, LLC
123. Nevada Primary Care Network, ACO, LLC
124. North Bend Medical Center, Inc.
125. North Coast Medical ACO, Inc.
126. Oakwood Accountable Care Organization, LLC
127. Palm Beach Accountable Care Organization, LLC
128. Physicians ACO, LLC
129. Polyclinic Management Services Company
130. PriMed, LLC
131. ProHEALTH Accountable Care Medical Group, PLLC
132. ProHealth Solutions, LLC
133. ProMedica Physician Group, Inc.
134. Quality Independent Physicians
135. Reliance Healthcare Management Solutions, LLC
136. Southeast Michigan Accountable Care, Inc.
137. Southern Kentucky Health Care Alliance
138. St. Thomas Medical Group, PLLC
139. Summa Accountable Care Organization
140. Summit Health Solutions
141. Texoma ACO, LLC
142. Torrance Memorial Integrated Physicians, LLC
143. TP-ACO, LLC
144. Triad Healthcare Network, LLC
145. University Hospitals Coordinated Care
146. University of Iowa Affiliated Health Providers, LC
147. WellStar Health Network, LLC
148. WESTMED Medical Group, P.C.

ACOs which Started in January 2013

149. A.M. Beajow, MD Internal Medicine Associates ACO, P.C.
150. AAMC Collaborative Care Network
151. Accountable Care Clinical Services, PC
152. Accountable Care Coalition of Central Georgia, LLC
153. Accountable Care Coalition of DeKalb, LLC
154. Accountable Care Coalition of Georgia, LLC
155. Accountable Care Coalition of Greater Athens Georgia II, LLC
156. Accountable Care Coalition of Greater Augusta & Statesboro, LLC
157. Accountable Care Coalition of New Mexico, LLC
158. Accountable Care Coalition of North Central Florida, LLC
159. Accountable Care Coalition of North Texas, LLC
160. Accountable Care Coalition of Southern Georgia, LLC
161. Accountable Care Coalition of Western Georgia, LLC
162. Accountable Care Organization of New England
163. ACO of Puerto Rico, Inc.
164. Advocare Walgreens Well Network
165. Affiliated Physicians IPA
166. Akira Health, Inc.
167. Alegent Health Partners, LLC
168. Alexian Brothers Accountable Care Organization, LLC
169. Amarillo Legacy Medical ACO
170. American Health Alliance, LLC
171. American Health Network of Ohio PC
172. APCN-ACO
173. Arizona Care Network, LLC
174. Atlanticare Health Solutions
175. AVETA Accountable Care, Inc.
176. Billings Clinic
177. Billings Clinic
178. Bon Secours Good Helpcare, LLC
179. Cambridge Health Alliance
180. Cape Cod Health Network ACO, LLC
181. Cedars-Sinai Accountable Care
182. Central Florida Physicians Trust
183. Central Jersey ACO, LLC
184. Christie Clinic Physician Services
185. Collaborative Care of Florida, LLC
186. Collaborative Health ACO
187. Colorado Accountable Care, LLC
188. Community Health Network
189. Diagnostic Clinic Walgreens Well Network
190. Doctors Connected
191. Essential Care Partners II, LLC
192. Fort Smith Physicians Alliance ACO, LLC
193. Franciscan Northwest Physicians Health Network, LLC
194. Franciscan Union ACO
195. GPIPE ACO
196. Hartford HealthCare Affordable Care Organization, Inc.
197. HHC ACO, Inc.
198. HNMC Hospital/Physician ACO
199. Independent Physicians' ACO of Chicago
200. Indiana Care Organization, LLC
201. Indiana Lakes ACO
202. Integral Healthcare, LLC
203. Integrated ACO, LLC
204. KCOMP
205. KentuckyOne Health Partners, LLC
206. Keystone ACO
207. Lahey Clinical Performance Accountable Care Organization, LLC
208. Lower Shore ACO, LLC
209. Marshfield Clinic
210. Maryland Collaborative Care, LLC
211. MCM Accountable Care Organization, LLC
212. Medicare Value Partners
213. Mercy ACO, LLC
214. Meridian Accountable Care Organization, LLC
215. Meritage ACO, LLC
216. Morehouse Choice ACO-ES
217. National ACO
218. Nature Coast ACO, LLC
219. NOMS ACO, LLC
220. Northeast Florida Accountable Care
221. Northern Maryland Collaborative Care, LLC
222. Northwest Ohio ACO
223. Ochsner Accountable Care Network
224. OneCare Vermont Accountable Care Organization, LLC
225. Owensboro ACO, LLC
226. Paradigm ACO, LLC
227. Partners in Care
228. Physician Organization of Michigan ACO
229. Physicians Collaborative Trust ACO, LLC
230. Physicians HealthCare Collaborative
231. Pioneer Valley Accountable Care, LLC
232. Primary Care Alliance, LLC
233. Primary Partners
234. ProCare Med, LLC
235. ProHealth Physicians ACO, LLC
236. Qualuable Medical Professionals
237. Rio Grande Valley Health Alliance
238. Saint Francis HealthCare Partners ACO, Inc.
239. San Diego Independent ACO
240. Scott & White Healthcare Walgreens Well Network, LLC
241. SERPA-ACO
242. South Florida ACO, LLC
243. Southcoast Accountable Care Organization, LLC
244. Southern Maryland Collaborative Care, LLC
245. St. Luke's Clinic Coordinated Care, Ltd.
246. Summit Health-Virtua, Inc.
247. The Premier Health Care Network, LLC
248. UCLA Faculty Practice Group
249. UW Health ACO, Inc.
250. Virginia Collaborative Care, LLC
251. Wellmont Integrated Network
252. Winchester Community ACO
253. Yavapai Accountable Care
254. Yuma Connected Community

ACOs which Started in January 2014

255. Accountable Care Alliance of Ventura, LLC
256. Accountable Care Coalition of Greater Houston, LLC
257. Accountable Care Coalition of Greater New York, LLC
258. Accountable Care Coalition of Maryland Primary Care, LLC
259. Accountable Care Coalition of Mississippi, LLC
260. Accountable Health Care 4U, LLC
261. Accountable Physicians of North Mississippi, Inc.
262. ACMG
263. ACO Providers
264. ACO-PA
265. Adirondacks ACO, LLC
266. Akira Health of Fresno, Inc.
267. Allegiance ACO
268. Allied Physicians ACO, LLC
269. Antelope Valley ACO
270. Arkansas Accountable Care, LLC
271. Arkansas Health Network, LLC
272. Augusta Care Partners, LLC
273. Baroma Health Partners
274. Bayview Physicians Group
275. Broward Guardian, LLC
276. Buena Vida y Salud, LLC
277. Care Coordination Services, LLC
278. Carolinas ACO, LLC
279. CaroMont
280. Central Missouri Medical Network
281. Central US ACO, LLC
282. Central Virginia Accountable Care Collaborative, LLC
283. CHA ACO, LLC
284. Cleveland Quality Healthnet
285. Clinical Partners of Colorado Springs, LLC
286. Colonial ACO, LLC
287. Community Health Accountable Care, LLC
288. Community Medical Centers Foundation
289. Covenant Health Partners, Inc.
290. Delmarva Health Network
291. Duke Connected Care, LLC
292. Emerald Physicians
293. FamilyHealth ACO, LLC
294. First Coast Health Alliance, LLC
295. Foothill Accountable Care Medical Group, Inc.
296. Franciscan Select Health Network ACO, LLC
297. Genesis Accountable Physician Network, LLC
298. Georgia Physicians for Accountable Care, LLC
299. GGC ACO, LLC
300. HCP ACO California, LLC
301. Health Choice Care, LLC
302. Health Connect ACO, LLC
303. Health Connect Partners, LLC
304. Health Point ACO, LLC
305. Huntington Care Network ACO, LLC
306. Illinois Health Partners ACO, LLC
307. Ingalls Care Network, LLC
308. Integrity Health Innovations, LLC
309. JFK Population Health Company, LLC
310. Johns Hopkins Medicine Alliance for Patients, LLC
311. Kansas Primary Care Alliance, LLC
312. Lancaster General Health Community Care Collaborative, LLC
313. LHS Health Network, LLC
314. Loudoun Medical Group ACO, LLC

315. Louisiana Physicians ACO, LLC
316. MBA - Northern California Physicians Management Group
317. MD Valuecare, LLC
318. Medical Clinic of North Texas PLLC
319. Mercy Health System ACO
320. MetroHealth Care Partners ACO
321. Mid-Atlantic Primary Care ACO
322. Midwest Independent Physicians LLC
323. National Rural ACO
324. NEPA ACO Company, LLC
325. New York State Elite (NYSE) Accountable Care Organization (ACO), Inc.
326. NJ Physicians ACO
327. North Collaborative Care
328. North Georgia HealthCare Partnership, Inc.
329. Northeast Alabama Primary Health Care, Inc.
330. Northern Michigan Health Network
331. Northwest Florida Health Partners, LLC
332. Oklahoma Health Initiatives
333. Orange Accountable Care of South Florida, LLC
334. Partners In Care ACO, Inc.
335. Physician Alliance of Kansas, Inc.
336. Physician Collaborative of Kansas City, LLC
337. Physician Direct Accountable Care Organization
338. Physician First ACO
339. Physician Health Partners ACO
340. Physicians Accountable Care of Utah
341. PMC ACO
342. Premier Care Network, LLC
343. Premier Choice ACO, Inc.
344. Premier Patient Healthcare, LLC
345. PremierMD ACO, LLC
346. Primary Comprehensive Care ACO, LLC
347. Primary PartnerCare Associates IPA, Inc.
348. Privia Quality Network, LLC
349. R TotalHealth, LLC
350. Redwood Community Care Organization, LLC
351. Reliance ACO, LLC
352. River Health ACO, LLC
353. Rochester General Health System ACO
354. RWJ Partners, LLC
355. Saint Vincent Accountable Health Network
356. Saint Vincent Shared Savings Program ACO, LLC
357. Scottsdale Health Partners
358. Seton Health Alliance, Inc.
359. Silver State ACO, LLC
360. South Bend Clinic Accountable Care
361. Southern NMIPA ACO, LLC
362. SSM ACO, LLC
363. St. Joseph Health Partners ACO
364. St. Vincent's Accountable Care Organization, LLC
365. Sunshine ACO, LLC
366. SW Provider Partners LLC
367. The Accountable Care Organization, Ltd.
368. THP-Meritus ACO, LLC
369. Tidewater Accountable Care Organization, LLC
370. University Radiology Development Corporation
371. UPSA ACO, LLC
372. UR Care, LLC
373. UT Southwestern Accountable Care Network
374. Via Christi Health Alliance in Accountable Care, Inc.
375. VPI ACO, LLC
376. WakeMed Key Community Care, LLC

ACOs which Started in January 2015

377. ACO Providers of Central Texas
378. Adena Healthcare Collaborative, LLC
379. Advanced Premier Physicians ACO
380. Akira Health of Los Angeles Inc
381. Aledade Delaware ACO LLC
382. Aledade Primary Care ACO LLC
383. American Rural ACO
384. Arkansas High Performance Network ACO of CAH
385. Arkansas High Performance Network ACO of FQHC, LLC
386. Arkansas High Performance Network ACO, LLC
387. ASPA-Connected
388. Bassett Accountable Care Partners, LLC
389. BayCare Physician Partners ACO, LLC
390. Baylor Scott & White Quality Alliance
391. Bluegrass Clinical Partners LLC
392. BMC Integrated Care Services, Inc.
393. Cadence Health ACO, LLC
394. Cape Fear Valley Accountable Care Organization, LLC
395. Capital Health Accountable Care Organization, LLC
396. Carolina Medical Home Network Accountable Care Organization LLC
397. Carroll ACO, LLC
398. CHI St. Luke's Health Network
399. Chrysalis Medical Services, LLC
400. CHWN ACO
401. Cleveland Clinic Medicare ACO, LLC
402. CMG ACO, LLC
403. Coastal Plains Network, LLC
404. Connected Care, LLC
405. Cornerstone Health Enablement Strategic Solutions, LLC
406. Cotton-O'Neil ACO llc
407. CP Health Network
408. Doctors ACO, LLC
409. Franciscan Alliance ACO
410. Franciscan Riverview Health ACO
411. Frederick Integrated Healthcare Network LLC
412. Genesys PHO, L.L.C.
413. Health Alliance Integrated Care, LLC
414. Health Collaborative of Central Ohio LLC
415. Healthcare Partners of the North Country, llc
416. Holy Cross Physician Partners ACO, LLC
417. IL-RCCO
418. Innovative Health Alliance of New York, LLC
419. Inspira Care Connect, LLC
420. Integra Community Care Network LLC
421. Integrated Medical Staff of Jackson, P.C.
422. Keystone Clinical Partners, LLC
423. Lehigh Valley Health Network Accountable Care Organization, LLC
424. LifeBridge Health ACO, LLC
425. Loyola Physician Partners ACO, LLC
426. Mary Washington Health Alliance, LLC.
427. Mercy Health ACO, LLC
428. Mission Health Care Network, LLC
429. Mission Health Partners, Inc.
430. MissionPoint Birmingham, LLC
431. MissionPoint Evansville, LLC
432. MissionPoint Indianapolis, LLC
433. MyHealth First Network, LLC
434. National Rural ACO II LLC
435. NEQCA Accountable Care, Inc.
436. NewYork Quality Care
437. North Central Arizona Accountable Care, LLC
438. Northeast Medical Group ACO, LLC
439. Northwest Rural ACO
440. Orange Accountable Care of New York
441. PACN
442. Physicians Accountable Care Solutions, LLC
443. Physicians ACO, LLC
444. Pioneer Health Alliance
445. PQN - Central Texas, LLC
446. Pricare ACO, LLC
447. PrimeCare Select
448. Quality Health Alliance-ACO LLC
449. Reid ACO
450. RHS Regional Health Network, LLC
451. Richmond Quality, LLC
452. Signature Partners
453. SLPA ACO, LLC
454. Springfield Clinic ACO, LLC
455. SSMOK ACO, LLC
456. St. Francis Accountable Health Network
457. Suburban Health ACO
458. The Health Network of Western Kentucky, LLC
459. Trinity Health Michigan d/b/a St. Mary Mercy Hospital
460. UMASS Memorial Accountable Care Organization, INC.
461. USMM Accountable Care Partners, LLC
462. WCHN ACO
463. WellSpan Population Health Services
464. West Tennessee Clinical Partners
465. Western Maryland Physician Network, LLC