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Press Release

**HHS Fighting to Deny Consumers Access to Information on
Physician Experience and Quality**

On October 19, the U.S. Department of Health and Human Services filed notice that it will appeal a Federal court decision ordering the release of government information that would help consumers select experienced, skilled physicians.

On August 22, Consumers' CHECKBOOK/Center for the Study of Services, a nonprofit consumer research and information organization, won a Freedom of Information Act lawsuit in which the U.S. District Court for the District of Columbia ordered the U.S. Department of Health and Human Services to release certain information from the records of physician claims paid by Medicare. The data to be released would not include any information on individual patients or information that would make possible the identification of patients.

CHECKBOOK/CSS announced that it would use the information to create a resource, free to the public, on its www.checkbook.org website, that would report the number of various types of major procedures performed by each physician and reimbursed by Medicare, "so a consumer selecting a physician for a knee replacement or prostate surgery or other major procedure will be able easily to check that a physician has an appropriate level of experience," said Robert Krughoff, CHECKBOOK/CSS's president.

CHECKBOOK/CSS also announced that it would expect leading health plans, those with a strong consumer-information focus, to collaborate with it, pooling their data with the Medicare data to create an even more comprehensive procedure count for each physician. And the organization announced that physicians would be invited to report directly—and attest to—their total procedure count, if they wished to.

For many types of procedures, there is strong research evidence that experience matters, as documented, for example, in "Success Rates for Prostate Cancer Depend on Experience of Surgeon," published in July 2007 in the *Journal of the National Cancer Institute*.

The data, according to CHECKBOOK/CSS, would also be useful in the evaluation of the Medicare program itself—for example, to assess whether the government is paying some unqualified physicians to do large numbers of certain high-risk procedures or, on the other hand, whether substantial numbers of patients are getting high-risk surgery from physicians who do too few procedures to maintain the needed skills—and whether certain physicians are billing the program for excessive numbers of expensive procedures.

HHS has repeatedly touted consumer information—or transparency—as a top Administration priority. In HHS Secretary Michael Leavitt's words: "Every American should have access to a full range of information about the quality and cost of their health care options." And HHS has frequently acknowledged the value of the Medicare claims data for measuring physician quality—for example, at the HHS "Value-Driven Health Care" website: <http://www.hhs.gov/valuedriven/>.

But Secretary Leavitt has for many months told consumer, employer, and researcher leaders that HHS was barred by law from releasing physician-identified data. And the government argued in the District Court that it could not release the data because of a requirement to protect the privacy of the physicians who bill Medicare for services.

On August 22, the District Court not only ruled that there was no legal bar to releasing the information but actually ordered the government to make the release.

In response to the court's decision, the American Medical Association (AMA) wrote to Secretary Leavitt to "urge HHS to appeal this decision." And the government decided to appeal.

The government's announcement of an appeal was made in the face of many arguments from consumer groups, employer groups, and others that it should not do so.

Dr. Paul Ginsburg, president of the Center for Studying Health System Change, a policy research group, was quoted by the *Los Angeles Times* as saying: "Not supporting this ruling would certainly be inconsistent with administration initiatives that favor price and quality transparency in health care. . . . This represents transparency on the quality side."

Consumers Union, the nonprofit publisher of *Consumer Reports*, wrote to Secretary Leavitt stating that it "applauds the recent United States district court decision to require the U.S. Department of Health and Human Services (HHS) to release Medicare physicians-claims data to the public." The consumer group went on to say: "We hope that HHS . . . will embrace the ruling and forgo an appeal."

The National Business Group on Health, representing many of the nation's largest employers, wrote to Secretary Leavitt stating that the group "applauds the recent federal court decision requiring the release of Medicare physician claims data and *views this as a giant step in advancing the transparency movement in health care. . . .*"

And, in a letter signed by Debra Ness, president of the National Partnership for Women and Families, and by Peter Lee, Chief Executive Officer of the Pacific Business Group on Health, the Consumer-Purchaser Disclosure Project wrote Secretary Leavitt saying: "To date, you have argued that your goals for greater transparency have been hampered by questions about the legality of releasing physician-identified Medicare claims data. The court's decision in *Consumers CHECKBOOK* should put that issue to rest, with a clear statement that release of this data is warranted because of the 'important public interests at stake.' This decision is a victory for patients and for the health care system as a whole. We strongly urge you not to appeal the court's decision and to move rapidly to release the Medicare claims data to the public as soon as possible."

Robert Krughoff, the CHECKBOOK/CSS president, summarized his group's current position. "We are disappointed that HHS is fighting the release of information that would be of such clear value to consumers. We regret that the AMA has pushed HHS so hard to hide this information. In fact, we think many consumer-oriented, quality-conscious physicians would disagree with the AMA's stance, and are not the least bit afraid of having consumers be better informed. We will continue, on appeal, to fight for release of information consumers deserve. And we will also continue to try to work informally with HHS and the Medicare program to expand the information available to consumers."

[A copy of the August 22, 2007, U.S. District Court opinion that HHS has said it will appeal can be seen at www.checkbook.org.]

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