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Press Release

Consumers to Get Better Information for Choosing Physicians

Consumer Research Organization Wins Lawsuit Freeing Vast Government Data on Physicians

Consumers' CHECKBOOK/Center for the Study of Services, a nonprofit consumer research and information organization, has won a Freedom of Information Act lawsuit that will require the U.S. Department of Health and Human Services to release data on every physician claim paid by Medicare. The data to be released will identify physicians but will not make possible identification of patients.

"Consumers, physicians, and the Medicare program itself will benefit greatly when these data are used in measures of physician experience, quality, and efficiency," said Robert Krughoff, president of CHECKBOOK/CSS.

As a first use of the data, the consumer organization will create a resource, free to the public, on its www.checkbook.org website, that will 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 Krughoff.

CHECKBOOK/CSS is expecting some of the nation's 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 physicians will be invited to report directly—and attest to—their total procedure count, if they wish. For many types of procedures, there is strong research evidence that experience matters. (See recently, for example, "Success Rates for Prostate Cancer Depend on Experience of Surgeon," published in July 2007 in the Journal of the National Cancer Institute, and more generally "Is Volume Related to Outcome in Health Care? A Systematic Review and Methodologic Critique of the Literature," documenting a volume-outcome relationship for many types of procedures, in the September 2002 issue of the Annals of Internal Medicine.)

Other potential uses of physician-identified Medicare claims data include measuring physicians on how well they adhere to evidence-based care guidelines—for example, what proportion of their diabetic patients get appropriate hemoglobin tests and eye exams. Some health plans have begun developing such measures, but often have too few members with the relevant health condition being cared for by each physician to have a statistically strong basis for their measures. Analyzing the Medicare claims—billions of claims—alongside a plan's own much more limited claims will make for far better measures.

Consumer-information advocates have eagerly sought access to physician-identified Medicare claims data. HHS itself has made better consumer information—or transparency—a top priority. The government has recognized the value of the Medicare data and has begun to experiment with the use of this information in demonstration projects.

But the government took the position that it has been constrained from making the physician-identified data available for public analysis and use based on an exemption in the Freedom of Information Act (FOIA) that is designed to protect personal privacy. In *Consumers' CHECKBOOK, Center for the Study of Services v. U.S. Department of Health and Human Services*, in which CHECKBOOK/CSS was represented in the U.S. District Court for the District of Columbia by Wilmer Cutler Pickering Hale and Dorr LLP, Judge Emmet G. Sullivan ruled that the government must release the requested physician-identified claims data under FOIA. The court found that the FOIA privacy exemption did not apply due to the public interest in disclosure of the information and the absence of any significant privacy interest on the part of physicians. (A copy of the opinion is available on the www.checkbook.org website.)

The court, citing FOIA's purpose of enabling the public to evaluate the performance of government agencies, pointed to the fact that the physician-identified claims data could be used, among other ways, to assess whether physicians paid by Medicare have appropriate levels of experience in the procedures they are performing, rate well on other independent measures of quality relevant to the procedures they are performing, and are routinely following evidence-based guidelines for patients with various types of conditions.

Nicole Rabner of WilmerHale said, "the data at issue in this case are exactly the sort of information citizens should have access to because these data will reveal a great deal about the workings of a government program touching millions of people in this country." The District Court's Order dated August 22, 2007, requires HHS to release all the Medicare claims data that CHECKBOOK/CSS sought, namely data from Illinois, Maryland, Washington, and Virginia, and Washington, DC. CHECKBOOK/CSS also has a FOIA request pending for Medicare claims data for all 50 states, which, given the court's ruling, it expects to be successful.

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