DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C5-11-06
Baltimore, Maryland 21244-1850

**Office of Strategic Operations and Regulatory Affairs/Freedom of Information Group**
Refer to: Control Number 111520217049 and PIN QDNA

Neil Anand
1313 Cheltenham Drive
Bensalem, PA 19020

March 21, 2022

Dear Mr. Anand:

This letter is in response to your Freedom of Information Act (5 U.S.C. §552) request of 11/8/2021, which you sent to the Centers for Medicare & Medicaid Services (CMS). Within your correspondence, you requested the following records:

1. All responses by Thomas Frieden and/or the Centers for Disease Control and Preventionto the December 18, 2015 letter from the One Hundred Fourteenth Congress of the United States House of Representatives Committee on Oversight and Government Reform pertaining to the Core Expert Group and violations of the Federal Advisory Committee Act (FACA).
2. All responses by Thomas Frieden and/or the Centers for Disease Control and Preventionto the November 17, 2015, Washington Legal Foundation letter pertaining to the Core Expert Group and violations of the Federal Advisory Committee Act (FACA).
3. All internal evaluations and documents performed by the CDC or Thomas Frieden concerning the Core Expert Group guidelines and concerns raised by the Washington Legal Foundation or One Hundred Fourteenth Congress of the United States House of Representatives Committee on Oversight and Government Reform concerning possibleFACA violations.
4. The rough drafts and foundational documents involved in the creation of the 2016 CDC Guidelines by the Core Expert Group including but not limited to the funding documentsand memorandum of understanding, etc.
5. All documents including the lists of names of the human beings, pertaining to the "badactor physicians" and "most likely drug seeking patients" as identified by HFPP, GDITTrusted Third Party, Qlarant NBI Medic, Medicare Pill Mill Doctor Project or US Attorney's Office (USAO).
6. The manner and methods that HHS and CMS determines, classifies and ranks "good"doctors or "good" healthcare providers versus "bad" doctors or "bad" healthcare providers.
7. All information pertaining to the reliability and verification of the data and analysis produced with OIG HHS Toolkit: Using Data Analysis To Calculate Opioid Levels andIdentify Patients At Risk of Misuse or Overdose.

8. A yearly list of summary analysis that Qlarant NBI MEDIC provides to Federal Law Enforcement of the "most likely drug seeking" patients and/or "bad actor" physicians forcriminal investigation.
9. Identification of all companies and individuals involved in computerized algorithms ofidentified International Classification of Disease (ICD) and Current Procedural Terminology (CPT) codes in the use of patient or physician targeting algorithms.
10. All data and documents concerning the identities of past and/or present, chronic pain andaddiction physicians that have been arrested or convicted for violations of the ControlledSubstance Act since 1990.
11. All data and documents concerning "bad actor" physicians identified via predictive pre-crime algorithms or from referral by the US Attorney Office (USAO) of known "bad actor" physicians.
12. All data, documents or lists of HFPP issued provider alerts to alert other HFPP Membersabout flagged physician providers.
13. All data or lists of physicians where CMS or HFPP received periodic updates from theclaims system to the BCBSA, GDIT, HFPP champion partners' special investigative units (SIUs), where the patient data is stored in data warehouses for analysis.
14. The manner and methods used by SIUs, BCBSA, GDIT, or HFPP to identify aberranciessuch as high prescribers, including pain management providers, and high users of opioids.
15. All documents pertaining to indicators, data points or analysis performed on patient claims records by special investigative units SIUs, BCBSA, GDIT, or HFPP to allowtracking the movements of those known or suspected of abusing opioids or having anopioid use disorder."
16. The identification and names of all physicians or patients that are marked by CMS, BCBSA, GDIT, HFPP or its champion partners with a digital mark on a list (i.e. list ofpatients and physicians marked with a digital "Scarlet Letter").
17. All dates and referrals and communications between Blue Cross Blue Shield Association,Blue Cross Blue Shield Franchises, and/ or the Champion Partners concerning physician bad actors, physicians who commit healthcare fraud, physicians who are drug dealing or identified "most likely" drug seeking patients to the:

    a) Office of the Inspector General
    b) Department of Justice
    c) Federal Bureau of Investigation
    d) Medicaid State Agency
    e) Medicaid Fiscal Agents
    f) Medicaid Fraud Control Units (MFCU)

g) State Agencies for Survey and Certification

h) Law Enforcement Health Care Task Forces

i) State and Local Licensure and Enforcement Agencies

j) Professional Societies

k) Quality Improvement Managed Care Organizations

l) Private Health Insurers

m) Other Specialty Contractors

n) Other Federal and State Agencies

17. The methods of implementation of the 2016 CDC Guidelines in algorithms used by law enforcement including DEA, OIG, FBI and USDOJ against physicians at the October 20, 2016, Healthcare Fraud Prevention Partnership as well as other critically relevant documents especiallythe white paper, "Healthcare Payer Strategies to Reduce the Harms of Opioids" by Dr. David Rein and NORC including but not limited to:

a) A list of all individuals who attended the October 20, 2016 Special Session.

b) All documents concerning Blue Cross Blue Shield Association and the ChampionPartners and their involvement within the HFPP.

c) All draft approaches developed in October 2016 and all other documents that were madeavailable to the members who attended the "Special Session" and any input, revisions, or modifications that were provided in response to these documents by the members during the Special Session.

d) All documents that were prepared by any member of the HFPP and supplied to CMSregarding the "Special Session" or the White Paper.

e) All documents prepared by the Executive Board or the Trusted Third Party regarding thedrafting and release of the White Paper including documents relating to any meetings of theExecutive Board at which the White Paper was discussed.

f) Any contracts entered into between CMS or any other government agency and the Trusted Third Party both CSRA and GDIT that relates to the work to be performed by theTrusted Third Party with respect to the HFPP.

g) A copy of the charter that established HFPP in fall 2012 and was signed by then HHSSecretary Kathleen Sebelius and then U.S. Attorney General Eric Holder.

h) The Memorandum of Understanding prepared in or around 2012 to 2013 that establishedthe legal framework for the HFPP. The controlling document as well as all documents, minutes, notes and recordings pertaining to the formation of the HFPP. The roles and responsibilities as well as the initial signatories of the formation of the HFPP.

i) The public meeting notice for the October 20, 2016 Special Session as well as theamounts of money (Federal, public and private dollars) spent to host the meeting.

j) CMS Spark funding documents related to the formation of the HFPP including any contracts entered into between CMS or any other government agency and the Trusted ThirdParty both CSRA and GDIT that relates to the work to be performed by the Trusted Third Party with respect to the HFPP.

k) Any public funding of the TTP, General Dynamics Information Technology, or its subsidiary CSRA, of the white paper, "Healthcare Payer Strategies to Reduce the Harms ofOpioids" by Dr. David Rein and NORC. All information concerning the funder as well as the task order number listed on the study.

18. The names of all physicians prosecuted both civilly and criminally by the US Department ofJustice for Controlled Substance Prescribing since 1990.

19. The names of all physicians prosecuted both civilly and criminally by the US Department ofJustice for Health Care Waste, Fraud and Abuse since 1990.

20. Any documents with USDOJ or U.S. Federal Law Enforcement agencies concerning the implementation of the 2016 CDC Guidelines in algorithms used by law enforcement includingDEA, OIG, FBI and USDOJ against physicians at the October 20, 2016, Healthcare FraudPrevention Partnership as well as other critically relevant documents especially the white paper,"Healthcare Payer Strategies to Reduce the Harms of Opioids" by Dr. David Rein and NORC.

21. With respect to the transmission of patient health data from HFPP or GDIT TTP all documents able to elucidate: Through what entity is patient health data transmitted to (i.e. Qlarant, OIG, USDOJ etc)? What elements of the patient health data are reported by HFPP or GDIT? What is the frequency of the reporting of the patient health data? This request also includes documents concerning transmission of patient data by the Blue Cross Blue Shield Association, subsidiary Blue Cross Blue Shield Franchises, and the Champion Partners and their involvement within the HFPP.

For All Item #'s Except #'s 12 and 17:

After a careful search of the Centers for Medicare & Medicaid Services (CMS) files, i.e., a search reasonably calculated to locate records responsive to your request and employing reasonable standards, we were unable to locate any records responsive to your request. You may wish to submit your FOIA request to the agencies listed as they respond to FOIA requests for their records.

For Item #12:

I am denying you access to all records in our possession pursuant to Exemption 4 of the FOIA (5 U.S.C. §552(b)(4)).

Exemption 4 protects information which constitutes "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

For Item 17:

After careful review of the documents submitted to me, a total of 322 pages and 8 Excel spreadsheets, I have determined to release them to you, as enclosed. Two hundred and fifty-twopages are released to you in their

entirety. However, I am denying you access to eleven pages inpart and 59 pages and 8 Excel spreadsheets in full pursuant to Exemptions 4, 6, 7(E) and/or 7(F)of the FOIA (5 U.S.C. §§ 552(b)(4),(6),(7)(E), and/or (7F)).

Exemption 4 protects information which constitutes “trade secrets and commercial or financialinformation obtained from a person [that is] privileged or confidential.”

Exemption 6 of the FOIA permits a Federal agency to withhold information contained in personnel and medical files and similar files the disclosure of which would “constitute a clearly unwarranted invasion of personal privacy.” I have weighed the public interest in disclosure (which the Supreme Court has held to be limited in this context to the public interest that wouldbe served by shedding light in the agency’s performance of its statutory duties) against the harmto the privacy of the individuals identified in these records and have concluded that the privacy interest of the subject individuals outweighs the public interest in disclosure in this particular matter.

Exemption 7(E) of the Freedom of Information Act affords protection to law enforcement information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutionsif such disclosure could reasonably be expected to risk circumvention of the law."

Exemption 7(F) of the Freedom of Information Act protects "records or information compiled forlaw enforcement purposes [the disclosure of which] could reasonably be expected to endanger the life or physical safety of any individual."

If you believe that the information withheld should not be exempt from disclosure, or this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency’s decision.

Your appeal must be mailed within 90 days from the date of receipt of this letter, to: Principal Deputy Administrator, Centers for Medicare and Medicaid Services, Room C5-16-03, 7500 Security Blvd., Baltimore, Maryland 21244-1850

Please clearly mark both the envelope and your letter “Freedom of Information Act Appeal.”
If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact Mr. James Olin at phone number (410) 786-3677 or email at james.olin@cms.hhs.gov OR the CMS FOIA Public Liaison for assistance at: Joseph Tripline, CMS FOIA Public Liaison, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Mailstop C5-11-06, 7500 Security Blvd., Baltimore, MD 21244-1850, Telephone: (410) 786-5362, Email: FOIA_Request@cms.hhs.gov

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman’s office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road–OGIS, College Park, MD 20740-6001, Telephone: 202-741-5770, Toll-Free: 1-877-684-6448, E-mail: ogis@nara.gov, Fax: 202-741-5769.

Sincerely yours,

James K. Olin -S Digitally signed by James K. Olin -S
Date: 2022.03.21 09:47:54 -04'00'

James K. Olin
Director, Division of FOIA Analysis – C
Freedom of Information Group