



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

August 28, 2023

ONLINE SUBMISSION ONLY

FOIA Officer/Director
Office of the Secretary
Freedom of Information and Privacy Acts Division
U.S. Department of Health & Human Services
Hubert H. Humphrey Bldg, Suite 729H
200 Independence Avenue, S.W.
Washington, D.C. 20201

Office for Civil Rights Headquarters
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Sam Nunn Atlanta Federal Center, Suite 16T70
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909
Email: ocrmail@hhs.gov

Re: Freedom of Information Act (FOIA) Request

Dear Freedom of Information Officer:

This letter is submitted on behalf of the Florida Agency for Health Care Administration (“AHCA” or the “Requester”). The Requester submits this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and 28 C.F.R. § 16 *et seq.* We request that a copy of the records detailed below be provided to us. We do not wish to inspect the records first.

I. FOIA Request



Page 2 of 6

The Requester requests records and/or communications related to the U.S. Department of Health and Human Services (“HHS”) and the Florida Health Justice Project (“FHJP”), the National Health Law Program (“NHLP”), and their attorneys, agents, and employees, (as counsel of record for Plaintiffs), regarding the subject matter of litigation that was recently brought against both AHCA and the Florida Department of Children and Families (“DCF”), *Chianne D, et al. v. Weida, et al.*, No. 3:23-cv-00985 (M.D. Fla.), challenging Medicaid redeterminations of recipient eligibility pursuant to 42 U.S.C. § 1396a(3) and its implementing regulation, 42 C.F.R. § 431.210(b).

Specifically, the Requester requests the following Records¹ in the possession of HHS and/or the HHS Office for Civil Rights from January 1, 2023, through the date of production of the Records:

1. Records related to or containing HHS’s communications with or regarding the Florida Health Justice Project and/or the National Health Law Program and litigation challenging Florida’s Medicaid redeterminations of recipient eligibility, including (but not limited to): the adequacy of recipient notification of determination of ineligibility, adequacy of recipient notification for reasons of recipient ineligibility, and recipient income standards.
2. Records related to or containing HHS’s internal communications concerning Florida’s Medicaid redeterminations of recipient eligibility, including (but not limited to): the adequacy of recipient notification of determination of ineligibility, adequacy of recipient notification for reasons of recipient ineligibility, and recipient income standards.
3. Records related to or containing HHS’s communications concerning Florida’s Medicaid redeterminations of recipient eligibility with the following individuals: Katy DeBriere, Miriam Harmatz, Lynn Hearn, Sarah Grusin, Miriam Heard, Amanda Avery, and Jane Perkins.
4. Records related to litigation CMS or HHS is currently involved in regarding States’ Medicaid redeterminations of recipient eligibility.

¹ “Records” as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), existing in any format whatsoever, including, but not limited to, written correspondence, records kept in electronic format on computers and/or electronic storage devices, email correspondence (whether through .gov email addresses or private third-party services such as Gmail), records of telephone correspondence, records pertaining to in-person meetings, calendar or scheduling entries, videotapes, photographs, computer print-outs, telephone messages, or voicemail messages.

Records sought include, but are not limited to, inter- and intra-agency records and external records and communications, briefings, reports, memoranda, legal opinions, directives, policy statements, talking points, notes, and any other materials.



5. Records related to any subpoena issued or investigation commenced regarding States' redeterminations of recipient eligibility.

The Requestor asks that HHS process this request consistent with the Department of Justice's policy memorandum (directed to the heads of executive departments and agencies) emphasizing the presumption of disclosure under FOIA, as amended by the FOIA Improvement Act of 2016.²

II. Application for Expedited Processing

The Requestor requests that HHS provide expedited processing of this FOIA request, which qualifies for expedited treatment pursuant to 45 C.F.R. § 5.27 and 5 U.S.C. § 552(a)(6)(E). There is an "urgency to inform the public concerning actual or alleged Federal Government activity" as it relates to issues of significant interest to the public and the above-mentioned litigation that has been brought against AHCA. Furthermore, the Requester is "primarily engaged in dissemination of information." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 45 C.F.R. § 5.27.

AHCA is a state agency with a mission of "facilitating better health care for all Floridians." As part of that mission, AHCA is "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."³ Dissemination of information about government activities, particularly with respect to healthcare, is a critical and substantial component of AHCA's mission. Because doing so is vital to its work, AHCA will disseminate any information obtained through this request to the public, contributing to the public's enhanced understanding.

Additionally, there is an urgency for the requested information to inform the public because of the pending lawsuit that has been filed against AHCA seeking preliminary and permanent injunctions prohibiting AHCA from enforcing federal law, *Chianne D, et al. v. Weida, et al., No. 3:23-cv-00985 (M.D. Fla.)*. The requested records in HHS's possession are likely to become relevant to the issues being litigated in this time-sensitive and important matter.

As required by federal regulation, 45 C.F.R. § 5.27(a), I hereby certify that the above information is true and correct to the best of my knowledge and belief.

III. Request for a Public Interest Fee Waiver

² See Dep't of Justice Office of Information Policy, *Memorandum from The Attorney General*, March 15, 2022, available at <https://www.justice.gov/ag/page/file/1483516/download> (last visited September 10, 2022).

³ See Florida Agency for Health Care Administration website, <https://ahca.myflorida.com/> (last visited Sept. 10, 2022).



The Requester requests a waiver of search, review, and duplication fees because disclosure of the requested records (1) “is likely to contribute significantly to public understanding of the operations or activities of the Government,” and (2) “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

Specifically, the Requester is entitled to a waiver of fees because it satisfies the three factors outlined in HHS regulations. 45 C.F.R. § 5.54.

First, disclosure of the requested information here “would shed light on the operations or activities of the government,” *id.* § 5.54(b)(1), in connection with HHS because it clearly and directly concerns “identifiable operations or activities of the Federal Government,” *i.e.*, the issuance of a June 12, 2023, letter to U.S. Governors from HHS Secretary Xavier Becerra on Medicaid Redeterminations, as well as the agency’s position and actions taken in regard to those recommendations.

Second, as discussed above, because AHCA will disseminate any information obtained through this request to the public, disclosure of the requested information will likely “contribute significantly to public understanding” of the agency’s operations and approaches to States’ actions regarding Medicaid funding of certain services. *Id.* § 5.54(b)(2)(ii). Disclosure of this information will be “meaningfully informative about [HHS’s] operations or activities” because it is not already in the public domain, because, to date, HHS has not released the information sought in this FOIA request. § 5.54(b)(2)(i). It also pertains to HHS’s recent policies and activities that have recently come under heightened public scrutiny, making them of great significance to the public understanding of the agency’s operations and positions on those important issues. *Id.*

Furthermore, because the request pertains to prominent issues of great public interest, concern, and debate, including the litigation recently filed against AHCA, disclosure of these records will necessarily “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” *id.* § 5.54(b)(2)(ii). AHCA’s “expertise in the subject area” and its substantial “ability and intention to effectively convey information to the public” demonstrates that disclosure here will contribute to the understanding of a broad audience of persons. As described above, AHCA is a state agency “responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida’s health facilities, and for providing information to Floridians about the quality of care they receive.”⁴ By definition, AHCA has the knowledge and expertise to understand the information sought and to facilitate its public dissemination quickly and effectively. And, as described, AHCA will disseminate this information to the public.

⁴ See AHCA Website, <https://ahca.myflorida.com> (last visited September 12, 2022).



Third, this request is not “in the commercial interest of the requester.” *Id.* § 5.54(b)(3). AHCA does not have any commercial interest in the disclosure of the requested records. AHCA does not seek to commercially benefit from this information. Nor could it possibly do so. Rather, the dissemination of information to the public will be at no cost and for the purpose of educating the public and promoting AHCA’s mission.

IV. Search and Processing of Requested Records

Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

Please search for responsive records regardless of format, medium, or physical characteristics. The Requester asks that responsive electronic records be produced electronically in their native file format, if possible, or the format most conducive to an expedited production. Alternatively, the Requester requests that the Records be provided electronically in text-searchable PDF, in the best image quality in HHS’s possession, and in separate, Bates-stamped files.

The Requester further requests that you provide an estimated date on which you will finish processing this request.

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i).

If it is your position that any portion of the requested records is exempt from disclosure, we request that you provide a *Vaughn* index of those documents. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the



Page 6 of 6

document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

For records available in electronic format, please email the documents to Christopher.Torres@ahca.myflorida.com. Please send all other requested documents to the attention of:

Christopher Torres, Chief of Civil Litigation
2727 Mahan Drive
Mail Stop # 3
Tallahassee, FL 32308
Phone: (850) 412-3630
Email: Christopher.Torres@ahca.myflorida.com

Because of the time-sensitive nature of this request, the Requester asks that you strictly comply with the 20-day time limit established by FOIA and applicable regulations. *See* 5 U.S.C. § 552(a)(6)(A); 28 C.F.R. § 16.5(c). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and we will consider the internal appeals process to be constructively exhausted. *See, e.g., Citizens for Ethics and Resp. in Gov't v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

The Requester also respectfully requests that documents be made available as soon as they are located and reviewed via a rolling production. The Requester will undertake to pay reasonable increased costs incurred as part of a rolling production.

If you have any questions about this request, please do not hesitate to contact either me, or Chief of Civil Litigation, Christopher Torres.

Sincerely,

Jason Weida,
Secretary

