

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

COUNTY OF SANTA CRUZ, ET AL

PLAINTIFF

v.

**CENTERS FOR MEDICARE AND
MEDICAID SERVICES**

DEFENDANTS.

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)
) **CIV. ACTION NO. 07-2889 MMC**
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DECLARATION OF SUZANNE M. CODESPOTE

I, Suzanne M. Codespote, hereby make the following declaration:

1. I am the Deputy Director of the Medicare and Medicaid Cost Estimates Group (MMCEG), Office of the Actuary (OACT), Centers for Medicare & Medicaid Services (CMS), United States Department of Health and Human Services (HHS). I have served in this position since 2004, and have worked in the Office of the Actuary since 1989. The Medicare and Medicaid Cost Estimate Group participates in Medicare rate setting for most fee-for-service provider types including physicians and inpatient hospitals. In this capacity, MMCEG establishes budget neutral scalars, which are applied to the physician work effort, physician practice expense, and physician malpractice expense components of the Geographic Practice Cost Index (GPCI). The GPCI's are updated every three years by CMS. The primary responsibility of updating the GPCI's rests with the Centers for Medicare Management (CMM) and their contractor. OACT's role in the update is the creation and application of budget neutral scalars to the updated GPCI data compiled by CMM and their contractor. After completing this task, OACT returns the updated data to CMM.

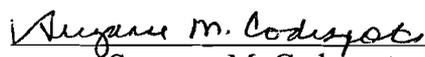
2. I make this declaration based upon my personal knowledge and information available to me in my official capacity.

3. This declaration will serve to augment the December 19, 2008 declaration of CMS FOIA Director Michael S. Marquis, and further explain the search conducted by OACT/MMCEG to locate responsive documents for the December 11, 2006 and July 17, 2007 Freedom of Information Act (FOIA) requests directed to CMS from attorney Amanda Riddle, of the law firm of Corey, Luzaich, Pliska, de Ghetaldi & Nastari, LLP. Within those requests, amongst other things, Ms. Riddle sought records pertaining to the Geographic Practice Cost Index (GPCI) and the budget neutral scaler utilized by CMS to adjust the GPCI's.

4. During August 2008, I was contacted by Assistant United States Attorney Jonathan Lee, in regard to records in the OACT's possession pertaining to any updates of the GPCI's. As the Deputy Director of MMCEG, in the course of my responsibilities and participation in calculating the budget neutrality factors, I am familiar with and have personal knowledge regarding the calculations of the budget neutrality factors, the process by which these factors are applied to the GPCI's, and the storage of these records. OACT files related to the calculation of physician payments are stored electronically in the OACT network "G" drive, in a subdirectory labeled: G:\MMCEG\OMMCE\PHYS. The majority of OACT files related to the GPCI's include the identifier "GPCI" in the file name. In response to Mr. Lee's request, I located and provided an Excel file containing 2008 budget neutrality data entitled "2008 GPCIs budget neutral, 12-13-07.xls". Subsequently, in response to the September 3, 2008 electronic mail request of Deborah Peters, CMS Freedom of Information Group, I located and provided two additional budget neutrality data Excel files in the above referenced subdirectory, under the file names "2005 Work and PE GPCIs revised 1-21-2004.xls" and "2005 MP GPCI.xls", which

pertained to the 2005 update. I also advised Ms. Peters on September 3, 2008 that I was unable to locate any budget neutrality files for years prior to 2005. For earlier GPCI updates, OACT's customary practice was to store their budget neutrality files on the CMS mainframe. Since the agency's mainframe capacity is not unlimited, when those files were not accessed and became inactive, the inactive files would have eventually been purged from the CMS mainframe, and would no longer exist or be accessible.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief. 28 U.S.C. § 1746. Executed this 8th day of May 2009.


Suzanne M. Codespote

County of Santa Cruz, et al. v. Centers for
Medicare and Medicaid Services
Civil Action No. 07-2889 MMC

Exhibit 1

Declaration of Suzanne M. Codespote, Deputy Director
Medicare and Medicaid Cost Estimates Group
Centers for Medicare & Medicaid Services

AMANDA RIDDLE



C07-0597 (D14)

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Hon. Edward W. Pliska
(1935-2006)
Xenophon Tragoutsis (Ret.)

December 11, 2006 *CMM*

C07FOJ 0597

BY FACSIMILE ONLY

Centers for Medicare & Medicaid Services
Office of Strategic Operations and Regulatory Affairs
Freedom of Information Group
Room N2-20-16
7500 Security Boulevard
Baltimore, Maryland 21244-1850

25
ITEMS

2006 DEC 13 11:10:53
CURS ROT

Re: Freedom of Information Act

Dear Freedom of Information Group:

This is a request under the Freedom of Information Act. I request that a copy of the following documents, or documents containing the requested information, be provided to me, preferably in the form of an Excel spreadsheet if available.

The following requests ## 1 - 16 seek information contained in CMS indexes established pursuant to 42 U.S.C. § 1395w-4(e)(1) reflecting the three Geographic Practice Cost Indexes ("GPCI") for physicians' services described in 42 U.S.C. § 1395w-5(e)(1)(A):

OACT

1. A document which contains the GPCI for physician work effort for each county in the United States for each year from 1999 to the present prior to each such GPCI being adjusted by the application of a national budget neutral scaler.

OACT

2. A document which contains the GPCI for physician practice expense for each county in the United States for each year from 1999 to the present prior to each such GPCI being adjusted by the application of a national budget neutral scaler.

OACT

3. A document which contains the GPCI for physician malpractice expense for each county in the United States for each year from 1999 to the present prior to each such GPCI being adjusted by the application of a national budget neutral scaler.

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OACT

4. A document which contains the GPCI for physician work effort for each payment locality in the United States for each year from 1999 to the present prior to each such GPCI being adjusted by the application of a national budget neutral scaler.

OACT

5. A document which contains the GPCI for physician practice expense for each payment locality in the United States for each year from 1999 to the present prior to each such GPCI being adjusted by the application of a national budget neutral scaler.

OACT

6. A document which contains the GPCI for physician malpractice expense for each payment locality in the United States for each year from 1999 to the present prior to each such GPCI being adjusted by the application of a national budget neutral scaler.

OACT

7. A document which contains the national budget neutral scaler used to adjust the GPCI for physician work effort for each year from 1999 to the present.

OACT

8. A document which contains the national budget neutral scaler used to adjust the GPCI for physician practice expense for each year from 1999 to the present.

OACT

9. A document which contains the national budget neutral scaler used to adjust the GPCI for physician malpractice expense for each year from 1999 to the present.

10. A document which contains the GPCI for physician work effort for each county in the United States for each year from 1999 to the present adjusted by the application of a national budget neutral scaler.

11. A document which contains the GPCI for physician practice expense for each county in the United States for each year from 1999 to the present adjusted by the application of a national budget neutral scaler.

12. A document which contains the GPCI for physician malpractice expense for each county in the United States for each year from 1999 to the present adjusted by the application of a national budget neutral scaler.

OACT

13. A document which contains the GPCI for physician work effort for each payment locality in the United States for each year from 1999 to the present prior adjusted by the application of a national budget neutral scaler.

OACT

14. A document which contains the GPCI for physician practice expense for each payment locality in the United States for each year from 1999 to the present adjusted by the application of a national budget neutral scaler.

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OACT

15. A document which contains the GPCI for physician malpractice expense for each payment locality in the United States for each year from 1999 to the present adjusted by the application of a national budget neutral scaler.

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16. A document which contains the calculations used in the determination of the value of the 2007 adjuster for the GPCI for physician work effort.

The following requests ## 17 - 22 seek information relating to the three Relative Value Units ("RVU") for physicians' services established pursuant to 42 U.S.C. § 1395w-4(c):

OACT

17. A document which contains the yearly aggregate RVU for the Work Component for each county in the United States for each year from 1999 to the present.

OACT

18. A document which contains the yearly aggregate RVU for the Practice Expense Component for each county in the United States for each year from 1999 to the present.

OACT

19. A document which contains the yearly aggregate RVU for the Malpractice Component for each county in the United States for each year from 1999 to the present.

20. A document which contains the yearly aggregate RVU for the Work Component for each payment locality in the United States for each year from 1999 to the present.

21. A document which contains the yearly aggregate RVU for the Practice Expense Component for each payment locality in the United States for each year from 1999 to the present.

22. A document which contains the yearly aggregate RVU for the Malpractice Component for each payment locality in the United States for each year from 1999 to the present.

The following requests ## 23 - 24 seek information relating to the Geographic Adjustment Factor ("GAF") for physicians' services established pursuant to 42 U.S.C. § 1395w-4(e)(2):

23. A document which contains the GAF for each county in the United States for each year from 1999 to the present.

24. A document which contains the GAF for each payment locality in the United States for each year from 1999 to the present.

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December 7, 2006
Page 4

The following request # 25 seeks information relating to the "Conversion Factor" for physicians' services established pursuant to 42 U.S.C. § 1395w-4(d):

25. A document which contains the actual Conversion Factor used for payments to physicians from 1999 to the present.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am an attorney at the law firm of Corey, Luzaich, Pliska, de Ghetaldi & Nastari, and our address and contact information is stated at the letterhead of this letter.

I am willing to pay fees up to a maximum of \$1,000.00. If you estimate that the fees will exceed this limit, please inform me first.

I request that the information I seek be provided in electronic format (such as in one or more Excel spreadsheets), and I would like to receive it on a CD-Rom.

Please contact me at the telephone number listed above, between the hours of 9 a.m. and 5 p.m., if necessary, to discuss any aspect of this request.

Thank you for your assistance with this request.

Sincerely,



Amanda L. Riddle



COREY, LUZAICH, PLISKA, DE GHETALDI & NASTARI LLP
Attorneys at Law

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Hon. Edward W. Pliska
(1935-2006)
Xenophon Tragoutsis (Ret.)

July 17, 2007

C07FOI1741

BY FACSIMILE ONLY

Centers for Medicare & Medicaid Services
Office of Strategic Operations and Regulatory Affairs
Freedom of Information Group
Room N2-20-16
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Re: Freedom of Information Act

Dear Freedom of Information Group:

This is a request under the Freedom of Information Act and is made on behalf of the County of Santa Cruz, the County of Sonoma, the County of Santa Barbara, the County of Marin, the County of San Diego, the County of San Luis Obispo, and the County of Monterey, each of which are political subdivisions of the State of California. This request is related to the requests dated December 11, 2006 (C07FOI0597) and January 30, 2007 (C07FOI1725) submitted by Amanda L. Riddle of this office. In addition, this request is related to pending litigation in *County of Santa Cruz, et al., v. Michael Leavitt*, United States District Court, Northern District of California, case number C-07-2888 EMC, and *County of Santa Cruz, et al., v. Centers for Medicare and Medicaid Services*, United States District Court, Northern District of California, case number C-07-2889 MMC.

Request is hereby made that a copy of the following documents, or documents containing the requested information, be provided to me, preferably in the form of an Excel spreadsheet if available.

1. Documents sufficient to show the GAFs, GPCIs, RVUs, and all conversion factors applied for each county in the United States used in calculating payments to physicians for the years 2007-2009.
2. The source file for Practice Expense GPCIs for the years 1999 to 2009, including documents sufficient to show: (a) the rent data, wage data, and other expense data used for all

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July 17, 2007
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counties and localities; (b) the methodology used to modify any HUD rent data employed in the calculations, including which percentile and type (number of bedrooms) used; and (c) the actual calculation used for all counties and localities in order to arrive at the peGPCI for each (this should include all components of the peGPCI).

3. The source data for the wGPCIs, including input data points for 1999 to 2009 for all counties and localities, and documents sufficient to show the methodology used in the calculation of the full wGPCI for each county and locality.

4. ~~Any report prepared by the GAO, the Urban Institute, and/or MedPAC that CMS staff reviewed or considered in the preparation of the Proposed Rule published in 72 FR 38122 on July 12, 2007.~~

OSORA?

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am an attorney at the law firm of Corey, Luzaich, Pliska, de Ghetaldi & Nastari, and our address and contact information is stated at the letterhead of this letter.

We are willing to pay fees up to a maximum of \$1,000.00. If you estimate that the fees will exceed this limit, please inform me first.

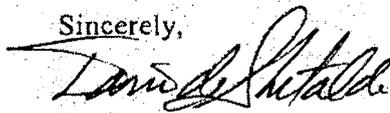
I request that the information I seek be provided in electronic format (such as in one or more Excel spreadsheets), and I would like to receive it on a CD-Rom.

Please contact me at the telephone number listed above, between the hours of 9 a.m. and 5 p.m., if necessary, to discuss any aspect of this request.

Finally, please expedite this request as the information requested is necessary for our office and our clients to be able to submit a timely and complete response to the Proposed Rule published by CMS in 72 FR 38122. An expedited response to this FOIA request is necessary since the response to the Proposed Rule must be submitted no later than August 31, 2007.

Thank you for your assistance with this request.

Sincerely,



Dario de Ghetaldi

DEG/drj