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MAC Attorney Tells Physician to Stop Disclosing Lab Payment Data

By Nina Youngstrom

A California physician on Sept. 18 received a letter from a Medicare administrative contractor (MAC) that ordered him to stop sharing pricing information about labs, which he said he does to draw attention to overpayments.

The cease-and-desist letter from a law firm representing Palmetto GBA told Bruce Quinn, M.D., a former MAC medical director, that the data, which he often obtains through the Freedom of Information Act (FOIA), is “restricted by intellectual property laws.” The law firm instructed him to delete it and turn over the names of people who downloaded it.

“I don’t think Medicare contractors should send cease-and-desist letters about public documents,” Quinn said. He called it an “inversion” of the normal program integrity and FOIA process. “Palmetto regards CMS FOIA information about overpayments as de facto ‘business secrets’ that I must destroy,” Quinn wrote in an email to CMS officials, including the director of the Medicare Contractor Management Group.

In a return email, a CMS official said, “We are looking into several different issues your experience with Palmetto has raised, including the cease and desist letter you received on behalf of Palmetto’s counsel unbeknownst to CMS. Please give us a few days to sort this out. We will be in touch.”

Quinn said he regularly identifies underpayments by his laboratory clients and overpayments to their competitors and reports them to MACs. “My clients are playing by the rules and are annoyed competitors are getting paid twice as much,” he said. Quinn also has a website and blogs about payment disparities. One example is a common genetic test for breast cancer risk called BRCA testing. The normal coding is CPT 81162, with a current Medicare fee schedule price of \$1,825. However, the Palmetto instruction is for selected labs to bill BRCA testing with a nonspecific unpriced code, 81479, for which the instructions assign a much higher price of \$2,395, he said.

One way Quinn gets the information is the FOIA process, which he said he has been using for four years without incident. Then out of the blue, he received the cease-and-desist letter from the law firm Barnwell Whaley Patterson & Helms LLC.

The letter addressed Quinn’s possession and sharing of a Master Edit File from MolDX, which Palmetto developed under contract with CMS, he said. MolDX, which is used in 28 states, determines coverage and reimbursement for molecular diagnostic testing, and produces local coverage determinations and edits. The letter said MolDX is the intellectual property of Palmetto and that “possession, use, copying and publication of the File is restricted by intellectual property laws.” In addition to wanting assurance from Quinn that the file “was deleted in all electronic forms,” the law firm said “we also request that you provide to us names and contact information for all persons and entities known to you that downloaded the Master Edit File” or transmitted all or part of it.

Because of the cease-and-desist letter, Quinn took down the link to the MolDX data from his website, but he didn’t destroy it and hopes CMS will step in. He didn’t provide the names of people who downloaded it.

CMS 'Is Working to Resolve it'

“You can’t make this all make sense. It is obvious Medicare payments and their payment levels are public information,” Quinn said. In his email to CMS, Quinn added that “because the MolDX system is so complex, there are many overpayment edits. It is important they be detected and [corrected] wherever found.

In response to RMC’s request for comment, a CMS spokesperson said “on a case-by-case basis Medicare Administrative Contractors (MACs) can claim information as proprietary. CMS is aware of this issue and currently working to resolve it.”

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