September 5, 2013

<u>**VIA E-MAIL (Physician_Data_Comments@cms.hhs.gov)**</u>

Department of Health and Human Services
Centers for Medicare and Medicaid Services
Attention: Physician Data Comments
Hubert H. Humphrey Building, Office 341D-05
200 Independence Avenue, SW
Washington, DC 20201

> *Re: Request for Public Comments on the Potential Release
>   of Medicare Physician Data, August 6, 2013*

Dear Sirs/Madams:

The Reporters Committee for Freedom of the Press, along with the 21 undersigned news media organizations and journalism associations, submit the following in response to the Department of Health and Human Services' (HHS) and component Centers for Medicare and Medicaid Services' (CMS) request for public comments on the potential release of Medicare physician data. The undersigned have a vested and continuing interest in ensuring robust access to government information to better enable their watchdog role. Further, the undersigned are particularly concerned about access to the incredibly newsworthy information that is the subject of this comment and the means by which HHS will consider its potential release. We address each of the three questions posed by HHS in turn.

Question 1: Whether physicians have a privacy interest in information concerning payments they receive from Medicare and, if so, how to properly weigh the balance between that privacy interest and the public interest in disclosure of Medicare payment information, including physician-identifiable reimbursement data

For decades, health care policy, legislation and administration has been one of the most contentious issues in the public and political arena. The passage—and subsequent judicial sanction—of the Affordable Care Act has only heightened the public's interest in being able to evaluate the efficiencies and effectiveness of government-administered health programs. As federal health care programs continue to grow, there has also been an increasing interest in being able to access and report on data that shed light on the operations of such programs.

Responding to this demand, the Obama administration has embarked on an aggressive, multi-prong initiative to make government data more

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accessible, granular and easier to analyze. This includes allowing the public to track
exactly how and where federal dollars are spent. The heightened public interest in
federal spending transparency coupled with the current health care regulatory landscape
has thus greatly reframed the notion of what information should now be considered
private. As with other similar federal spending, the idea that doctors accepting billions of
dollars in Medicare and Medicaid benefits have a privacy interest in related billing
records is simply an outdated view. Therefore, HHS should move toward greater
transparency and find that doctors have no privacy interest in records reflecting Medicare
payment information that does not directly identify patients.

Healthcare Policy, Spending and Administration Lies at the Core of Public Debate

        Federal health care policy and spending has been at the forefront of domestic
policy discussion for decades. As detailed in *Dow Jones & Company's* motion to vacate
the injunction, in 1979 federal outlays for Medicare equaled $26.5 billion—roughly 5%
of total spending. [1] Today, Medicare pays out more than $1 billion on 4.5 million claims
every work day and has increased as a percentage of the total federal budget nearly three-
fold since 1979.[2] Meanwhile, Medicare fraud and waste have skyrocketed in recent
decades, with hundreds of millions of dollars lost.[3] The Affordable Care Act—and the
continuing fiscal issues it provokes—adds yet another layer to this public debate, further
cementing health care's central role in political discourse.

        Given the scope of federal health programs and the potential for abuse, the public
is naturally curious about how the government is administering and monitoring such
programs. In addition to *Dow Jones'* own landmark 2010 reporting on Medicare fraud
and abuse, other outlets regularly report on federal health care spending and
administration.[4] For example, HHS' recent release of hospital charges for Medicare

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[1] *See* Dow Jones & Company, Inc.'s Motion to Vacate Permanent Injunction and
Incorporated Memorandum of Points and Authorities, *Florida Medical Ass'n, Inc. v.
Dept. of Health, Ed. & Welfare*, No. 3:78-cv-00178-MMH-MCR (M.D. Fla.) (Doc. No.
56) (Mar. 19, 2012) at 9.

[2] *See id*.

[3] *See id*. at 9-11.

[4] It is important to note that oversight cannot be fully achieved by provisions in the
Affordable Care Act that require HHS to release Medicare payment data sets to
"qualified entities" for review and publication, including if they choose, individual doctor
payment data. Not only does this requirement belie the rationale for keeping such
information from the public but it also fundamentally stymies the role of the press.
Journalists provide an additional layer of oversight over those charged with being
watchdogs and can provide an outlet for voicing government abuses when internal

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services generated great public interest and resulted in numerous stories across the nation detailing the wide price disparities for similar service across hospitals.[5] This data release was said to be spurred on by *Time's* comprehensive report on the state of domestic medical care, "Bitter Pill: Why Medical Bills are Killing Us."[6] Moreover, as discussed in greater detail later in these comments, journalists at *ProPublica*, *The Seattle Times*, *The Center For Public Integrity*, the *Las Vegas Sun* and *California Watch* have all used health care data—including Medicare and Medicaid data—to tell compelling stories about quality of care and billing abuses throughout the health care system.

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reporting is frustrated or stymied. *See, e.g.*, Tracy Weber, *et al.*, *Medicare Drug Program Fails to Monitor Prescribers, Putting Seniors and Disabled at Risk*, PROPUBLICA, May 11, 2013 available at http://www.propublica.org/article/part-d-prescriber-checkup-mainbar. According to an Inspector General Investigation cited in the story, contractors hired by Medicare to root out fraud "generated few of their own investigations," relying instead on outside complaints to direct inquiries. *Id*. Additionally, private insurers often lacked the necessary data to conduct effective audits of prescribing behavior. *See id*. Further, the press provides an outlet for those who cannot always turn to those supposedly charged with program compliance. For example, an *Orange County Register* 1996 Pulitzer prize-winning series detailed a UC Irvine hospital scandal involving the unknowing harvest of eggs from female patients that were then placed in other patients. UC Irvine employees who complained about the practice were pressured to remain quiet and had their jobs threatened. The entire series can be found at http://www.pulitzer.org/citation/1996-Investigative-Reporting.

[5] *See*, *e.g.*, Jim Doyle, *Price of a Pacemaker: $32K at St. Luke's, $75K at Des Peres*, ST. LOUIS POST-DISPATCH, May 9, 2013 available at http://www.stltoday.com/business/local/price-of-a-pacemaker-k-at-st-luke-s-k/article_57cfd452-e9aa-5aeb-932d-c1569e2f38a8.html; Barry Meier, *et al.*, *Hospital Billing Varies Wildly, Government Data Shows*, N.Y. TIMES, May 8, 2013 available at http://www.nytimes.com/2013/05/08/business/hospital-billing-varies-wildly-us-data-shows.html; Chris Isidore, *Your Heart Attack Bill: $3,300 in Arkansas, $92,000 in California*, CNN, May 13, 2013 available at http://money.cnn.com/2013/05/08/news/economy/hospital-bills/index.html; Sarah Kliff & Dan Keating, *One Hospital Charges $8,000 – Another, $38,000*, WASHINGTON POST, May 13, 2008 available at http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/08/one-hospital-charges-8000-another-38000/; Annie Feidt, *Dramatically Different Medicare Bills Set Hospitals Thinking*; NPR, May 11, 2013 available at http://www.npr.org/blogs/health/2013/05/10/182916297/dramatically-different-medicare-bills-set-hospitals-thinking.

[6] *See* Steven Brill, *An End to Medical-Billing Secrecy?*, TIME, May 8, 2013 available at http://swampland.time.com/2013/05/08/an-end-to-medical-billing-secrecy/.

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To be sure, the public needs the ability to monitor federal health care administration and be fully informed about its operations and costs. Doctors who participate in these federal programs cannot be allowed to shield billing data from the public when it serves as a primary means to monitor administration. Even assuming there was a privacy interest in such records in 1979, the current health care system has grown so central to the lives of every citizen and has become such a significant federal budget item that HHS can no longer find any cognizable privacy right in such data.

Releasing Medicare Doctor Billing Data Serves Many Public Interests

While a primary purpose of open government is to shed light on government operations, other public interests exist that HHS should consider in finding that doctors have no legitimate privacy right in Medicare billing data. The Obama administration has made it a priority to foster derivative uses of public information in order to spur innovation, creativity and develop new products that help consumers make better choices in their lives.[7]

To this end, sites like Recovery.gov, USASpending.gov and Data.gov have been developed to proactively disclose myriad data sets ranging from granular spending/contracting information to scientific data. Payment data is a particular focus of Recovery.gov and USASpending.gov as they disclose very similar payment information in other areas of federal spending to what is at issue here.

Part of this transparency push is driven by the desire to simply set data free. By placing it directly in the hands of the public, users can develop independent applications and products that the government may never have the time, funding or knowledge to produce. Efforts like this not only serve transparency oversight policy goals but can also fuel potential economic and social innovation, reform efforts and scientific discovery. HHS itself has been part of this "innovation and reform through transparency" push to improve the quality of health care via its "Health Data Initiative." Unlocked Medicare payment data has the same potential to serve additional public interests beyond oversight. This ability to quickly distribute bulk government data to countless developers and third parties with a particular interest has further altered the public interest/privacy calculus in favor of disclosure. HHS should recognize the power inherent within such data sets and adopt a policy of proactive release.

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[7] *See infra*, notes 8-13, 24, 32-33, and accompanying text, highlighting Obama administration data disclosure initiatives.

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Question 2: What specific policies CMS should consider with respect to disclosure of individual physician payment data that will further the goals of improving the quality and value of care, enhancing access and availability of CMS data, increasing transparency in government, and reducing fraud, waste, and abuse within CMS programs

As the Obama administration has recognized, "it is important to make information not merely available but also useable."[8] To that end, it has regularly supported efforts to put raw government data directly into the hands of those who can extract the greatest value and insight from it. Consistent with this executive policy focus—and given the nature of the data sets at issue here—CMS should provide Medicare physician data in electronic, open data formats, proactively posted to a dedicated department website. This section highlights how such a disclosure would comport with the administration's commands on open data disclosure and the federal Freedom of Information Act (FOIA). It also includes a select survey of how journalists have used electronic, bulk data to produce compelling narratives.

<u>Open, Machine Readable Data as the Minimum Standard</u>

The Obama administration has made clear through numerous orders, memorandums and directives that agencies should harness the power of technology and emerging distribution platforms to foster greater government transparency and private-sector innovation through data use. Chief among these policies is the enhanced use of proactive disclosure of government data in open, electronic formats. OMB's 2009 Open Government Directive states that "[t]o increase accountability, promote informed participation by the public, and create economic opportunity, each agency shall take prompt steps to expand access to information by making it available online in open formats."[9]

This May, the administration reaffirmed its commitment to machine readable data disclosure when it ordered the development of an "Open Data Policy" to be implemented throughout all departments and agencies noting that "across fields such as health and

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[8] Cass R. Sunstein, Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments and Agencies, *Disclosure and Simplification as Regulatory Tools*, 7 (June 18, 2010) available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure_principles.pdf.

[9] Peter R. Orszag, Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments and Agencies, *Open Government Directive*, 2 (Dec. 8, 2009) available at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf.

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medicine, education, energy, public safety, global development, and finance" the public has utilized open government data "to develop a vast range of useful new products and businesses…."[10] The resulting Open Data Policy memorandum (issued the same day as the executive order) again supports electronic, open data as a default and further encourages agencies to "improve the discoverability and usability of existing datasets by making them 'open'…prioritizing those that have already been released to the public or otherwise deemed high-value or high-demand through engagement with customers."[11]

Journalists need ready access to large data sets in open, electronic formats to transform complicated and overwhelming volumes of information into rich, sophisticated reporting, informative graphics and interactive presentations. Bulk data sets containing numerous fields have particular value to journalists engaged in computer-assisted reporting (CAR) techniques. Indeed, it is often only with the use of sophisticated statistical analysis software that such data can be manipulated to reveal newsworthy facts, patterns and relationships.

Naturally, journalists therefore frequently play a primary role in informing the public about complex health care issues that enable people to make better choices. This reality is directly reflected by the Obama administration's commitment to "smart disclosure," that is, the "timely release of complex information and data in standardized, machine readable formats in ways that enable consumers to make informed decisions."[12] Indeed, "third-party intermediaries," like journalists, "may also create tools that use these data sets to provide services that support consumer decision-making."[13]

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[10] Exec. Order No. 13642, *Making Open and Machine Readable the New Default for Government Information*, 78 Fed. Reg. 28,111 (May 14, 2013). *See also*, Office of Mgmt. & Budget, Exec. Office of the President, *Digital Government: Building a 21st Century Platform to Better Serve the American People* (May 23, 2012) available at http://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digital-government-strategy.pdf.

[11] Sylvia M. Burwell, *et al.*, Memorandum for the Heads of Executive Departments and Agencies, *Open Data Policy—Managing Information as an Asset*, 6 (May 9, 2013) available at http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf.

[12] Cass R. Sunstein, Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments and Agencies, *Informing Consumers Through Smart Disclosures*, 2 (Sept. 8, 2011) available at http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/informing-consumers-through-smart-disclosure.pdf.

[13] *Id*. ("In practice, it is often time-consuming and difficult for consumers to track and analyze the complex information they need to make judgments. Smart disclosure can

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Journalists have produced profound news packages using large government datasets. In a piece co-published with *The Washington Post*, *ProPublica* analyzed over four years of Medicare Part D prescription data and found that "some doctors and health professionals across the country prescribe large quantities of drugs that are potentially harmful, disorienting or addictive."[14] Among other things, the piece catalogued instances where elderly patients with dementia were being wrongfully administered drugs that increased their risk of death and cases where Soma was being prescribed—more than 500,000 times in all—to elderly patients despite being on a list of drugs seniors should avoid.[15]

Similarly, the non-profit journalism outlet, *The Center for Public Integrity* select Medicare billing claims data spanning close to ten years to produce its "Cracking the Codes" series.[16] Key findings included: (1) thousands of medical providers billing Medicare at progressively higher rates over time leading to $11 billion in inflated charges; (2) abuse of Medicare billing codes and "upcoding" to charge for more expensive services than what were actually delivered; and (3) an alarming increase in "upcoding" in hospital emergency rooms where hospitals set their own rules for outpatient billing (with little oversight by Medicare).[17]

The Seattle Times won a 2012 Pulitzer Prize for its series, "Methadone and the

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help consumers to find and use relevant data, including data about the effects of their own past choices and those of others, to make decisions that reflect their individualized needs, and to revise and improve those decisions over time or as new circumstances arise.") *Id*. at 2-3. *See also*, Sunstein, *Disclosure and Simplification as Regulatory Tools*, at 7. ("Full disclosure will frequently involve large amounts of complicated data, and most people may not find it worth their time to seek out and analyze all or most of it. In such cases, the data may be most directly useful to groups and organizations with technical capabilities and with an interest in obtaining, analyzing, and repackaging relevant information. Such groups and organizations may reorganize and disseminate the information in ways that turn out to be highly beneficial to the general public….").

[14] *See* Weber, *supra* note 4, *Medicare Drug Program Fails to Monitor Prescribers, Putting Seniors and Disabled at Risk*.

[15] *See id*.

[16] *See* Fred Schulte & David Donald, *Cracking the Codes: How Doctors and Hospitals Have Collected Billions in Questionable Medicare Fees*, THE CENTER FOR PUBLIC INTEGRITY, Sept. 15, 2012 available at http://www.publicintegrity.org/2012/09/15/10810/how-doctors-and-hospitals-have-collected-billions-questionable-medicare-fees.

[17] *See id*.

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Politics of Pain."[18] *The Times* used state health datasets, death certificates, census data and mapping software to expose state-subsidized health practices that, for cost-saving reasons, prescribed the sometimes deadly pain drug Methadone to patients.[19] The investigation used the data to establish a link between methadone deaths and poverty and in the series' wake state health officials reversed course and advised that methadone should only be administered as a last resort.[20]

Finally, a 2010 multi-part series by the *Las Vegas Sun* examining the quality of hospital care in Las Vegas analyzed more than 2.9 million hospital inpatient visit records for over a decade.[21] Fueled in part by this analysis, the *Sun* uncovered numerous risks and dangers patients faced upon admission to specific Las Vegas hospitals including, for example, hospital-acquired infections and myriad preventable injuries occurring while in a hospital's care. Lawmakers vowed to introduce reform legislation in the aftermath of the series' revelations.[22]

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[18] *See Methadone and the Politics of Pain*, THE SEATTLE TIMES, Apr. 30, 2012 (last updated) available at http://seattletimes.com/flatpages/specialreports/methadone/methadoneandthepoliticsofpain.html. The series included a variety of graphics and interactive maps based on the analyzed data.

[19] *See* Micheal J. Berens, *How We Linked Methadone Deaths to Poverty*, THE SEATTLE TIMES, Dec. 10, 2011 available at http://seattletimes.com/html/localnews/2016987143_silenthow.html.

[20] *See* Michael J. Berens and Ken Armstrong, *'Preferred' Pain Drug Now Called Last Resort*, THE SEATTLE TIMES, Jan. 27, 2012 available at http://seattletimes.com/html/localnews/2017356441_methadone28m.html; Seattle Times Staff, *Seattle Times Methadone Investigation Wins Pulitzer Prize*, THE SEATTLE TIMES, Apr. 16, 2012 available at http://seattletimes.com/html/localnews/2017994882_pulitzer17m.html.

[21] *See Do No Harm: Hospital Care in Las Vegas*, LAS VEGAS SUN available at http://www.lasvegassun.com/hospital-care/; *A Breakthrough in Medical Transparency*, LAS VEGAS SUN, June 27, 2010 available at http://www.lasvegassun.com/news/2010/jun/27/complete-guide-vegas-health-care/. Like the *Seattle Times'* Methadone package, this series also included a wealth of interactive maps and informational graphics utilizing the analyzed data.

[22] *See Overview of the Sun's Series on Health Care*, LAS VEGAS SUN, Nov. 14, 2010 available at http://www.lasvegassun.com/news/2010/nov/14/overview-suns-series-health-care/.

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While data-driven reporting is certainly not limited to the health care sphere,[23] the above examples demonstrate how CAR uses bulk data to tell compelling stories and in many cases effect positive change. But it is only through CAR that such reporting can be realistically accomplished and for this reason, CMS physician data needs to be disclosed in open, machine readable formats.

Complete Proactive Disclosure on the Internet

CMS should also adopt a policy of non-discriminatory, proactive disclosure on a dedicated department website. This would best ensure that the public has quick and easy access to CMS physician data without having to engage in the often delayed process of making a formal request under FOIA. As noted in the numerous administration information policy announcements, timely access to information and proactive dissemination are both markers of transparent government and open data policy.[24]

Given the immense public interest in CMS physician data and the size of the data sets, they are well-suited for online, proactive disclosure. If ultimately determined to be public, CMS physician data would likely be the subject of ongoing FOIA requests from journalists, health care policy advocates, private industry and otherwise interested members of the public. Placing this information online would unburden HHS from having to respond to continual requests that increase processing backlogs and costs. At the same time, it would relieve requesters from having to wait their turn in a FOIA

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[23] *See*, *e.g.*, INN Staff, *Aviation Database Reveals Frequent Safety Problems at Airports*, INVESTIGATIVE NEWS NETWORK, Feb. 17, 2011 available at http://investigativenewsnetwork.org/2011/02/aviation-database-reveals-frequent-safety-problems-at-airports/; Jennifer LaFleur, *et al.*, *Recovery Tracker: How Much Stimulus Funding is Going to Your County?*, PROPUBLICA, Oct. 1, 2012 (last updated) available at http://projects.propublica.org/recovery/.

[24] *See* Orszag, *Open Government Directive*, at 2 ("Timely publication of information is an essential component of transparency. Delays should not be viewed as an inevitable and insurmountable consequence of high demand.") ("Agencies shall respect the presumption of openness by publishing information online (in addition to any other planned or mandated publication methods) [and] [t]o the extent practical and subject to valid restrictions, agencies should proactively use modern technology to disseminate useful information, rather than waiting for specific requests under FOIA."); Sunstein, *Informing Consumers Through Smart Disclosure*, at 5. ("Smart disclosure should generally make information as accessible as possible to the consumer, which ordinarily means that such information should be made available on the Internet…."); Sunstein, *Disclosure and Simplification as Regulatory Tools*, at 6 ("Disclosed information should be as accessible as possible. For that reason, the Internet should ordinarily be used as a means of disclosing information, to the extent feasible and consistent with law.").

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request processing queue in which it often takes considerably longer than the 20-day statutory deadline to complete a request. Even assuming the data could be retrieved and released with relative ease, a "first-in, first-out" processing queue means unnecessary delay for requesters for information pre-determined to be public.

Such a policy would also be consistent with FOIA's mandate that frequently requested records be proactively disclosed.[25] Moreover, allowing public access without restriction based on intended use or requester identity comports with FOIA's maxims that "a release to one is a release to all" and that the identity of a requester is immaterial when considering whether to disclose a record. Indeed, given the power of CAR tools, crowd ingenuity and the yet unknown ways in which such data could be used to innovate and inform the public, executive policy requires CMS physician data to be accessible online and in the whole to all interested parties.

<u>Crowdsourcing Requires Unrestricted, Open Data</u>

A final consideration in determining how best to promote transparency, facilitate public understanding of HHS operations and provide oversight is to allow large data sets to be "crowdsourced." As the administration's information policy mandates acknowledge, releasing bulk data to the public at large leverages collective power and insight in ways that can produce otherwise unachievable results. Due to its unprecedented power and reach, journalism outlets are beginning to experiment with various types of crowdsourcing to facilitate newsgathering and dissemination.[26] One such crowdsourcing method is to engage the public to help analyze large data sets, and CMS physician data is the exact kind of information that lends itself to such collaborative journalism.

One of the more notable examples of this was *ProPublica's* "Free the Files" initiative where it looked to the crowd to help retrieve, analyze and compile reported data from local television stations regarding 2012 political advertisement spending.[27] Almost

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[25] 5 U.S.C. § 552(a)(2)(D) states that agencies must make available for inspection and copying "copies of all records, regardless of form or format, which have been released to any person [pursuant to a FOIA request] and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records…."

[26] For a more detailed description of how journalists can use crowdsourcing to aid news production see Johanna Vehkoo, *Crowdsourcing in Investigative Journalism*, Reuters Institute for the Study of Journalism (Aug. 2013) available at https://reutersinstitute.politics.ox.ac.uk/fileadmin/documents/Publications/fellows__paper s/2009-2010/Crowdsourcing_in_Investigative_Journalism.pdf.

[27] *See Free the Files*, PROPUBLICA available at http://www.propublica.org/series/free-the-

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1,000 members of the public participated in helping *ProPublica* track spending data to create a public database detailing more than $1 billion in advertisement spending.[28] Among other things, the effort uncovered a number of "dark money" funding sources that obscured donation sources and supposed "grassroots" organizations funded by large electric companies.[29]

Other noted projects include the 2011 efforts by *The New York Times* and *The Washington Post* that called on the public to help crowdsource nearly 25,000 pages of released Sarah Palin public record e-mails.[30] Additionally, in 2009, the British national daily, *The Guardian*, enlisted the aid of its readers to analyze and publish a comprehensive list detailing many interesting—and often questionable—expenses claimed by Members of Parliament.[31]

As CAR techniques and collaborative journalism efforts become ever more present, it is critical that government provide data in formats and by means that enable large amounts of data to be digested and presented to the public in an informative way. As the Obama administration recognizes, third-parties such as the media are critical sources of such information and are particularly equipped to help the public better understand and make informed decisions extracted from complex data. Therefore, CMS data should be posted online proactively in open data formats.

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[28] *See* Amanda Zamora, *Crowdsourcing Campaign Spending: What We Learned from Free the Files*, PROPUBLICA, Dec. 12, 2012 available at http://www.propublica.org/article/crowdsourcing-campaign-spending-what-we-learned-from-free-the-files.

[29] *See* Theodoric Meyer, *What We Learned from Free the Files—and How to Make it Better*, PROPUBLICA, Nov. 14, 2012 available at http://www.propublica.org/article/what-we-learned-from-free-the-files-and-how-to-make-it-better.

[30] *See* Derek Willis, *Help Us Review the Sarah Palin E-Mail Records*, N.Y. TIMES, June 9, 2011 available at http://thecaucus.blogs.nytimes.com/2011/06/09/help-us-investigate-the-sarah-palin-e-mail-records/; Ryan Kellett, *Read the Palin E-mails*, WASHINGTON POST, June 9, 2011 available at http://www.washingtonpost.com/blogs/the-fix/post/help-analyze-the-palin-emails/2011/06/08/AGZAaHNH_blog.html.

[31] *See MPs' Expenses–What You've Discovered*, THE GUARDIAN, Dec. 16, 2009 available at http://www.theguardian.com/politics/2009/dec/16/mps-expenses-what-we-learned.

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Question 3: The form in which CMS should release information about individual physician payment, should CMS choose to release it (e.g., line item claim details, aggregated data at the individual physician level)

Data granularity is yet another focal point of the Obama administration's open data initiative and given the powerful statistical analysis CAR allows for, it is critical that the public have access to as many unique data fields as possible that do not directly identify individual patients. The administration has made clear that open data means complete data "with the finest possible level of granularity" including "robust, granular metadata (i.e., fields or elements that describe data), thorough documentation of data elements, data dictionaries, and, if applicable, additional descriptions of the purpose of the collection, the population of interest, the characteristics of the sample, and the method of data collection."[32]

Moreover, the administration has also recognized the limitations inherent in using aggregated, summary data to achieve a more transparent government and providing the means to unlock information living within complex data sets. Noting that "summary disclosure" may be more appropriate for consumers at the "point of decision," the administration has issued a preference for "full disclosure" as the "best method" for encouraging detailed analysis and information dissemination in creative ways that inform public and private decisions.[33]

Access to line item claim details is critical as it enables CAR journalists to track, analyze and cross-reference data across multiple fields. The non-profit investigative reporting outlet *California Watch* would likely never have been able to produce its multi-part series on questionable hospital chain billing procedures, including highly irregular Medicare billings, had it not had access to individual line item billing entries that contained exact per treatment billing and diagnosis codes.[34] Similarly, *ProPublica* would likely not have been able to produce such exact reporting on Medicare Part D prescription data had it received aggregated information that untethered patient age data from

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[32] Burwell, *et al.*, Memorandum for the Heads of Executive Departments and Agencies, *Open Data Policy—Managing Information as an Asset*, at 5.

[33] *See* Sunstein, *Disclosure and Simplification as Regulatory Tools*, at 8. (noting also that "full information" should be made available on the Internet).

[34] *See Decoding Prime*, CALIFORNIA WATCH available at http://californiawatch.org/prime; Lance Williams, *Hospital Chain, Already Under Scrutiny, Reports High Malnutrition Rates*, CALIFORNIA WATCH, Feb. 19, 2011 available at http://californiawatch.org/health-and-welfare/hospital-chain-already-under-scrutiny-reports-high-malnutrition-rates-8786. A related interactive chart detailing unusually high diagnosis rates for relatively rare conditions is available at http://static.apps.cironline.org/prime-health-care/.

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prescription types and frequencies.

Internal granular data collection and analysis even helped the Cleveland Clinic identify excessive costs and make its doctors more cost conscious when directing treatment.[35] While not sacrificing prudent care for cost savings, doctors were tasked with breaking down the exact costs of their top three procedures in detail. They were asked for example "to record the price of sutures, count how many instruments were on the table, tag the devices on the shelf and record how long patients spent in post-anesthesia care."[36] By analyzing this kind of data, the Clinic was able to pinpoint where excessive and unnecessary costs were being incurred, ultimately saving more than $155 million dollars over three years.[37] While this was purely a private effort, it illustrates why granular detail is needed when seeking to fully understand a process or situation. Had doctors been given more general orders to aggregate or summarize data, the exact factors driving higher costs may never have been identified.

The need for access to granular data when analyzing complex issues with multiple variables is self-evident and consistent with the administration's view on why such data should be released in its most complete form. CMS physician data should therefore also be released in granular form if it is to serve the interests of transparency and oversight of the federal health administration system.

We appreciate the opportunity to comment on this important issue for health care transparency and hope you consider our recommendations. If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

The Reporters Committee for Freedom of the Press
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American Society of News Editors
The Associated Press
Bloomberg L.P.
The Center for Public Integrity
The Daily Beast Company LLC

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[35] *See* Dr. Toby Cosgrove, *The Kindest Cut: How One Hospital Lowered Costs by Making Doctors More Budget Conscious*, TIME, Feb. 20, 2013 available at http://healthland.time.com/2013/02/20/the-kindest-cut-how-one-hospital-lowered-costs-by-making-doctors-more-budget-conscious/.

[36] *Id.*

[37] *See id.*

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