



Consumers' Checkbook v. United States Department of HHS, 554 F.3d 1046 (D.C. Cir. 2009)

Topics Covered: Freedom of Information Act, Physician Privacy Rights

Outcome: Very favorable

Issue

The issue in this case was whether the Freedom of Information Act ("FOIA") authorizes the government to release information that could be used to calculate the amounts received by specific physicians under the Medicare program.

AMA Interest

The AMA seeks to protect physicians' privacy interests.

Case Summary

Consumers' Checkbook, a non-profit organization headquartered in Washington, D.C., provided information to consumers. Consumers' Checkbook submitted a FOIA request to the Centers for Medicare and Medicaid Services ("CMS"), requesting disclosure of records for Medicare claims from the United States Department of Health and Human Services ("HHS"). The request sought physician-identifying information linked to each Medicare service or procedure provided to unidentified patients. The information was requested so that Consumers' Checkbook could help consumers determine "(1) whether the government is allowing and paying for Medicare physicians with less-than-optimal levels of experience to perform difficult procedures , (2) whether the government is allowing Medicare physicians with insufficient board certifications, histories of disciplinary actions, or poor scores on independent quality assessments to perform high volumes of difficult procedures for which they may not be qualified , and (3) whether Medicare physicians are exhibiting practice patterns that conform with existing guidelines."

HHS opposed the FOIA request, contending that production of the requested documents would infringe physicians' privacy rights. It also asserted that the document production would violate an injunction that had been entered in a similar lawsuit against the United States Department of Health, Education and Welfare, the predecessor to HHS, and in favor of the Florida Medical Association, the AMA, and a class of physicians. *Florida Medical Association v. Department of HEW*, 479 F. Supp. 1291 (M.D.Fla. 1979).

Following a period of negotiations, Consumers' Checkbook sued HHS, seeking an order to compel production. The district court ordered HHS to produce the requested documents, and HHS appealed.

The United States Court of Appeals for the District of Columbia Circuit, by a split decision, held that physicians could maintain the confidentiality of their payments from Medicare, thus reversing the federal district court. The majority found that the physician interest in the privacy of Medicare payments outweighed the public interest in disclosure. It explicitly stated that it was not considering the effect of the 1979 Florida injunction. Consumers' Checkbook petitioned the Supreme Court for certiorari, but its petition was denied.

AMA and Litigation Center Involvement

The AMA intervened in the appeal in order to protect its adjudicated rights under *FMA v. HEW*. The Litigation Center and several medical associations filed an *amicus curiae* brief seeking reversal of the order that had been entered in favor of Consumers' Checkbook.

AMA brief to the United States Court of Appeals for the District of Columbia Circuit

Litigation Center *amicus* brief to the United States Court of Appeals for the District of Columbia Circuit