



MARK B HORTON, MD, MSPH
Director

State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

Date

Name

Company/Firm

Address

City, State Zip

Re: Case

Dear Mr./Ms. Last Name:

I am writing concerning the subpoena duces tecum dated Month day, year initiated by your firm in the above-captioned matter and received by the Centers for Medicare and Medicaid Services (CMS) on Month day, year. The subpoena seeks a personal appearance by a CMS representative, as well as the production of Medicare records concerning Facility Name.

CMS is an agency of the Department of Health and Human Services (HHS), and HHS regulations instruct that no Department employee:

may provide testimony or produce documents in any proceedings to which this part applies concerning information acquired in the course of performing official duties or because of the employee's official relationship with the Department of Health and Human Services unless authorized by the Agency head pursuant to this part based on a determination by the Agency head, after consultation with the Office of the General Counsel, that compliance with the request would promote the objectives of the Department of Health and Human Services. 45 C.F.R. § 2.3.

Employees of a state agency, such as the California Department of Public Health, when they perform survey, certification, or enforcement functions on behalf of CMS under Title XVIII of the Social Security Act (i.e. Medicare), are considered to be HHS employees for the purpose of this regulation. 45 C.F.R. § 2.2

Section 2.4 of these regulations describes the procedure to be followed in requesting authorization for employee testimony. If you wish to request the voluntary testimony of Mr./Ms. First Name Last Name, please direct your request to:

Steven Chickering
Western Consortium Survey and Certification Officer
Centers for Medicare & Medicaid Services
San Francisco Regional Office
90 7th Street, Suite 5-300 (5W)
San Francisco, CA 94103-6707

We respectfully request that, in light of the regulations cited above, you withdraw your subpoena for a personal appearance.

Section 2.5 of the regulations further provides that where, as here, a subpoena for HHS records has been issued by a tribunal that does not have jurisdiction over the Department, the subpoena is to be considered as a request pursuant to the Federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, and is to be handled according to the rules governing public disclosure established under 45 C.F.R. Part 5.

Therefore, your request for documents concerning Facility has been forwarded to CMS staff to search for the records listed in Attachment 2 of the subpoena. To the extent that CMS has records responsive to your request that are within the authority of the District Office to release, we will send you those documents directly. Any responsive records that are not within our authority to release will be forwarded to the CMS Freedom of Information Officer in our Central Office in Baltimore, MD for review and disposition. We will advise you in writing at the time records are released to you or forwarded to CMS Central Office for review.

If you need the requested records to be certified as true copies in accordance with 42 U.S.C. § 3505, if you have questions or require additional information, please call Name at phone number.

Sincerely,

Name
Position
Company
Regional Office

cc: Dan Hersh, Daniel.Hersh@cms.hhs.gov
Karen Fuller, Karen.Fuller@cms.hhs.gov
CMS Regional Office