

MYTH: Qualified Entities can use Medicare claims data for commercial purposes.**FACT: Qualified Entities are barred from using Medicare claims data for commercial purposes.**

A “Qualified Entity or QE” is an organization approved by the Centers for Medicare & Medicaid Services (CMS) to produce performance reports on the quality and efficiency of health care providers and suppliers. The QE program was authorized by the Patient Protection and Affordable Care Act (ACA) to encourage provider performance measurement and public reporting using Medicare claims data and private payer claims data (e.g. health care billing information that is submitted for reimbursement).¹ Since the program began, approved QEs have combined Medicare data with claims data from other sources (such as Medicaid and private insurance data) to create public reports on the performance of providers in their regions.²

According to the law, a QE may only use Medicare claims data it receives for performance reports on providers and suppliers.³ A final rule issued by CMS on the QE program reiterates that re-use of the Medicare claims data for other purposes would be a violation of the Data Use Agreement that is required in order to participate in the program.⁴ The final rule allows the data to be used to create the performance reports, but does not address the subsequent use of the publicly reported results.⁵ Because commercial use of Medicare data is not clearly delineated as a permitted use of the data under the law, QEs with access to this data are currently barred from using it for commercial purposes. It should be noted that the final rule clearly states that any publicly available reports should not contain beneficiary identifiable information.⁶

Recently, legislation was introduced in the U.S. House of Representatives that would allow QEs to use Medicare data to conduct non-public analyses and provide or sell these analyses to authorized users for non-public use. The bill conforms to the Qualified Entity final rule and also explicitly states that any analysis provided or sold may not contain individually identifiable information.⁷ The bill specifies certain purposes for conducting and/or selling the analyses to users, including assisting providers and suppliers in developing quality and patient care improvement activities and establishing new models of care.⁸ No further legislative action has been taken at this time so QEs continue to be barred from releasing performance reports for commercial purposes.

For More Information:

- [Learn](#) about Resource Use Measurement and Reporting.
- [Learn](#) about Quality Measurement and Reporting.

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¹ Patient Protection and Affordable Care Act Pub. L. No. 111-148 (March 2, 2010) § 10332 (codified at 42 U.S.C. § 1874(e)).

² M. Hostetter and S. Klein, “Quality Matters In Focus: Medicare Data Helps Fill in Picture of Health Care Performance.” Commonwealth Fund (April/May 2013). Available at: <http://www.commonwealthfund.org/Newsletters/Quality-Matters/2013/April-May/In-Focus.aspx>

³ 2 U.S.C. § 1874(e)(4)(D).

⁴ 42 C.F.R. § 401.709.

⁵ Medicare Program; Availability of Medicare Data for Performance Measurement Final Rule, 76 Federal Register 76542 (December 7, 2011) (to be codified at 42 CFR Part 401).

⁶ 76 Fed. Reg. 76556.

⁷ H.R. 4015, *SGR Repeal and Medicare Provider Payment Modernization Act*, Feb. 6, 2014. Available at:

<http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/BILLS-113hr4015ih.pdf>.

⁸ H.R. 4015, *SGR Repeal and Medicare Provider Payment Modernization Act*, Feb. 6, 2014. Available at:

<http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/BILLS-113hr4015ih.pdf>.