

Application for Temporary Classification of Government Data

Submission. Government entities can submit this application by mail or email to:

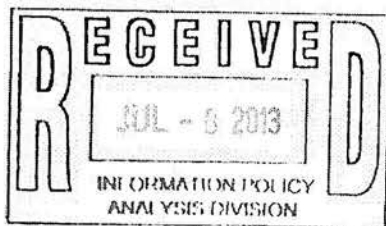
Commissioner of Administration
c/o Information Policy Analysis Division (IPAD)
201 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

info.ipad@state.mn.us

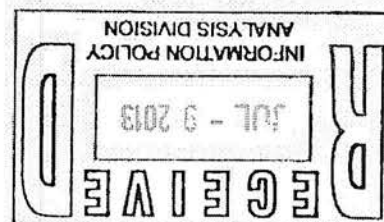
Not public data. Once the Commissioner receives your application, the data are no longer public.

Public data. The application itself is public.

Commissioner's decision. The Commissioner has 45 calendar days to decide whether to grant the temporary classification. The Commissioner has 90 calendar days to make a decision if you request that the temporary classification apply to both your government entity and similar government entities, or the Commissioner decides the classification has statewide implications.



Via email



By Mail

NAME AND TITLE OF RESPONSIBLE AUTHORITY

April Todd-Malmlov, Executive Director

Minnesota Statutes, section 13.06, subdivision 1, requires a government entity's responsible authority to authorize submission of the application.

REQUESTING GOVERNMENT ENTITY'S NAME AND ADDRESS

MNsure

81 Seventh Street East, Suite 300

St. Paul, MN 55101-2211

ADDITIONAL CONTACT INFORMATION

If entity staff or legal counsel helps prepare the application, please include that person's contact information.

NAME: Krista Fink, Privacy and Security Manager

PHONE NUMBER: (651) 539-1322

EMAIL ADDRESS: krista.fink@state.mn.us

TYPE OF APPLICATION

New Application

Amended Application

REQUESTED CLASSIFICATION

Private or nonpublic

Confidential or protected nonpublic

CLASSIFICATION WILL APPLY TO (check one)

Only the requesting government entity

All similar government entities

If applying on behalf of similar entities, identify all entities. You must provide documentation that the other entities agree to participate in the application and to be bound by the classification.

DESCRIBE DATA TO BE CLASSIFIED AS NOT PUBLIC

Describe the data you would like to be classified as not public. Be as specific as possible. Listing each data element is not necessarily required, but try to avoid general descriptions, such as "all files" or "all records maintained by this entity." It may be helpful to submit data collection forms. You should also identify data elements or types of data that are excluded from the temporary classification. If any of the data will become public at some point, describe the circumstances and/or timing. *(Please attach description.)*

CURRENT CLASSIFICATION

Is there a Minnesota statute or federal law that currently classifies these data as not public?

No

Yes *(If you are able to cite a state statute or federal law, there is no need to submit this application.)*

Is there a Minnesota statute or federal law that could be interpreted to forbid classification of these data as not public?

No

Yes

If yes, cite the statute or law and discuss your interpretation. *(Please attach interpretation.)*

DATA SHARING

Will you be legally required to share the data described in this application with persons outside of your entity during the time of the temporary classification?

No

Yes

If yes, describe the required sharing, including statutory authority. *(Please attach description.)*

JUSTIFICATION

You must clearly establish that a compelling need exists for immediate temporary classification of the data as not public, which if not granted could adversely affect the public's health, safety or welfare, or the data subject's well-being or reputation. If relevant, include any past instances where release of the data had an adverse effect on the public or data subject. *(Please attach compelling need justification.)*

In addition to the compelling need justification, you must describe one or more of the following.

1. Establish that data similar to that which the temporary classification is sought are currently classified as not public. Include the Minnesota statute citation to the similar data's current classification. Discuss similarities in the data, in the functions of the entities which maintain similar data, and in the programs/purposes for which the data are collected and used. *(Please attach similar data argument.)*
2. Establish that making the data available to the public would render unworkable a program authorized by law. Describe the program and cite the statute or federal law that authorizes it. If relevant, include past instances where release of the data rendered a program unworkable. *(Please attach render a program unworkable argument.)*

I affirm that all of the above statements are true to the best of my knowledge.

I am aware that a temporary classification expires August 1st of the year following its submission to the Legislature pursuant to Minnesota Statutes, section 13.06, subdivision 7, unless the Legislature takes action on the classification.


Signature of Responsible Authority

7-8-13
Date



July 8, 2013

Commissioner Spencer Cronk
IPAD Division
Department of Administration
200 Administration Building
50 Sherburne Avenue
St. Paul MN 55155

Subject: Application for Temporary Data Classification – MNsure Marketing Theme Information

Dear Commissioner Cronk:

By this letter, MNsure seeks a temporary classification pursuant to Minnesota Statutes, section 13.06 for data maintained by MNsure that is not otherwise classified by law.

As part of its legal obligation to conduct outreach and education activities and to encourage participation in the State's health insurance exchange under 45 C.F.R. § 155.205(e), MNsure has created and will continue to create marketing strategies for the public release of MNsure information, typically through a contract for services with an outside vendor. MNsure has a need for nonpublic classification for certain elements of these marketing strategies as defined below. This specific type of information will become public at the time of release, but prior to that time, MNsure has an interest in protecting it in an effort to preserve economic value for the public and prevent misinformation, exploitation of the public, and improper alignment by non-affiliated groups. Because MNsure is a new entity and will conduct significant marketing, branding and outreach activities in the near future, a temporary data classification is necessary for application to marketing strategy themes and unique concepts that will have phased releases throughout the next few months and over the course of MNsure's first years.

Description of the Data

MNsire seeks to protect as nonpublic data that is comprised of unique, creative marketing themes for its public outreach campaigns, such as the tagline, colors, characters, images, and related materials. This specifically does not include



costs or contracts with vendors related to the creation of the marketing strategy, advertising costs and sources, or the expense of any marketing materials purchased for the campaign. The data to be classified as nonpublic would be defined as proprietary marketing theme data that could cause economic harm to MNSure and waste public funds if released.

One specific example of data sought to be protected is the marketing theme to be used at the Minnesota State Fair. The theme and its associated colors, phrasing, characters, and materials are contained within a concept document. The release of the marketing theme data at the State Fair in August is timed in relation to the opening of MNSure's first enrollment period and is intended to inform and engage the public about MNSure's insurance options.

Analysis

Temporary nonpublic classification for MNSure's proprietary marketing theme data is appropriate and consistent with the requirements of Minnesota Statutes, section 13.06, subdivision 3.

I. Classification as Nonpublic is Not Expressly Allowed or Forbidden by Existing Statutes.

An application for temporary classification of government data shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as not public. Minn. Stat. § 13.06, subd. 3. In this case, proprietary marketing theme data is not classified by statute.

This data would meet the definition of trade secret data if it were supplied by an outside individual or organization, because it is subject to reasonable efforts to maintain its secrecy and it derives independent economic value from not being known or readily ascertainable by proper means. *See* Minn. Stat. § 13.37. However, this data is created or supplied by MNSure itself, which appears to invalidate an argument that it falls within the definition of trade secret data. In 1995, the Information Policy Analysis Division ("IPAD") issued an advisory opinion on the classification of a municipal liquor store's inventory and sales reports in relation to its trade secret competitive value. IPAD Opinion 95-018. IPAD concluded that the language in section 13.37 demonstrated "the Legislature's intent that a claim for trade secret protection for certain data can be made only if the data were supplied to



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the government by an entity outside the government.”¹ *Id.* The question of whether government may generally use trade secret classifications and the resulting concerns about public accountability and transparency is also the subject of several law review articles. David S. Levine, *The People's Trade Secrets?*; 18 Mich. Telecomm. & Tech. L. Rev. 61, 63 (2011); David S. Levine, *Secrecy and Unaccountability: Trade Secrets in Our Public Infrastructure*, 59 Fla. L. Rev. 135 (2007); Eric E. Johnson, *Trade Secret Subject Matter*, 33 Hamline L. Rev. 545, 574 (2010). Thus, it appears that this data cannot be defined by statute as nonpublic trade secret data.

Likewise, the data would be classified as protected nonpublic if it met the definition of security data in Minnesota Statutes, section 13.37, which is government data that would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury if disclosed. While MNSure's concerns about releasing the data are related to the prevention of improper use, fraud, and protecting individuals from misinformation, the themes and concepts will ultimately become public and do not appear to pose substantial jeopardy to individuals, possessions, or property as contemplated in the security data classification.

Accordingly, the data is not otherwise classified as nonpublic and is not explicitly classified as public but for the presumption in Minnesota Statutes, section 13.03, subdivision 1. While the data bears very similar characteristics to data that is classified as nonpublic, it falls shy of these narrow classifications. Classification as nonpublic is not expressly allowed or forbidden under existing statutes.

II. Nonpublic Classification is Appropriate.

The applicant for temporary classification must also establish that data similar to that for which the temporary classification is sought have been classified as not public by other government entities, or that public access to the data would render unworkable a program authorized by law.

¹ The validity of this position is limited in cases where a government entity develops formulas, processes, and products for which it may receive trademarks, patents, and copyrights. See Minn. Stat. § 13.03, subd 5 (enforcement of patents for computer software program).



A similar classification could be drawn from the University of Minnesota's statutory data classifications. "Financial, business, or proprietary data" is protected if it could cause competitive harm to the university or its investments if released. Minn. Stat. § 13.3215, subd. 1(c). MNSure has an economic interest in the value of the unique marketing strategy and the build-up to the public reveal. Additionally, there is a corresponding loss in economic value if the information was known publicly in advance of the reveal, because insurance carriers or other groups would derive economic benefit from aligning themselves with MNSure or copying the MNSure marketing theme.

In another example, government entities participating in competitive solicitations may classify data as private or nonpublic until completion of the selection or evaluation process. Minn. Stat. § 13.591, subd. 5. A competitor or party seeking alignment or association with MNSure would need only to make a data request for this information, and it would invalidate any economic interest held by MNSure in its strategic planning and marketing work done in preparation for phased public campaign themes.

Here, the untimely release of the marketing theme would certainly render unworkable the MNSure program and its role in carrying out the authority of the Patient Protection and Affordable Care Act ("Affordable Care Act") and the MNSure Act, to be codified at Minnesota Statutes, section 62V.01, *et seq.* For example, the timed release of the MNSure marketing theme contained in the State Fair Concept document begins on August 19, 2013, at the onset of the Fair. At that time, the contents are inherently released to the public. Until that time, the marketing concept has great economic value to MNSure and the State and is an important part of informing the public about the Affordable Care Act, MNSure, and the affiliated resources available to MNSure participants.

III. The State Has a Compelling Need for Nonpublic Classification.

Finally, the applicant for a temporary classification must establish that a compelling need exists for immediate temporary classification, which if not granted could adversely affect the health, safety, or welfare of the public, or the data subject's well-being or reputation.

MNSure is required to carry out its functions as the state-based health insurance marketplace for Minnesota, and marketing and outreach are vital components in the effort to effectively carry out its functions. MNSure is a new



entity, and the brand is not widely known among the public. There is widespread misinformation regarding the Affordable Care Act, MNSure, and health insurance exchanges being disseminated at this time and continuing into the next four months until enrollment begins. Furthermore, MNSure has particular concerns that entities may seek to unlawfully charge consumers for information or enrollment that is provided at no cost through the exchange. MNSure seeks to classify key portions of its phased marketing theme as nonpublic in an effort to prevent improper alignment with MNSure by unaffiliated groups, waste of public funds and resources, and the spread of misinformation to the public. In its exhibit at the State Fair for example, MNSure aims to identify itself as the official state health insurance exchange under the Affordable Care Act, distinguish itself from health insurance carriers and political groups, and communicate directly with Minnesotans in a unique, relatable, and beneficial way.

Conclusion

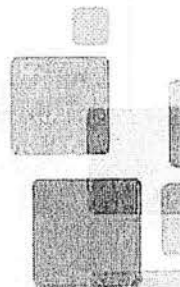
For the above stated reasons, MNSure respectfully requests that its marketing theme data be classified as nonpublic until the time of its release.

Sincerely,

A handwritten signature in black ink, appearing to read "Krista Fink", is written over a faint, larger version of the signature.

Krista Fink
Privacy and Security Manager
MNSure

CC: April Todd-Malmlov, MNSure Executive Director
Michael Turpin, MNSure General Counsel





July 22, 2013

Commissioner Spencer Cronk
IPAD Division
Department of Administration
200 Administration Building
50 Sherburne Avenue
St. Paul MN 55155

Subject: Supplement to Application for Temporary Data Classification – MNSure Marketing Theme Information

Dear Commissioner Cronk:

This letter is a supplement to the Application for Temporary Data Classification submitted by MNSure on July 8, 2013. MNSure seeks temporary classification of marketing theme data as nonpublic to prevent waste of public funds and resources and misrepresentations related to the public release of the MNSure campaign.

With this supplement, MNSure seeks to amend its definition of marketing theme data to be defined as, "unique, creative and proprietary marketing themes for its public outreach campaigns such as tagline, colors, characters, and images that would cause economic harm to MNSure and waste public funds if released. This specifically does not include costs or contracts with vendors related to the creation of the marketing strategy, advertising expenses and sources, or the expense of any marketing materials purchased for the campaign." I have attached the redacted State Fair Concept document that serves as an example of data made available to the public and marketing theme data that deemed nonpublic.

No current data classification exists for this data. Nonpublic classification may apply to certain types of copyrighted material created by a government entity. Minn. Stat. § 13.03, subd. 5 (applying nonpublic classification to government copyrights exclusively for computer software). As a threshold matter, the MNSure marketing theme data would likely not be considered a "computer software program or components of a program." But even if this data could be considered computer software, MNSure has not sought copyright protection for its marketing theme information. Additionally, even if copyright protections applied to government data prior to the time of filing for a copyright, the classification only protects data from being copied or disseminated outside of the controlled and authorized use. An individual or group could inspect the copyrighted material at any time. Op. Atty. Gen. 852 (December 4, 1995). In the case of MNSure marketing theme data, viewing



the data prior to the time of its release would have the same harmful impact upon public resources as dissemination or transfer.

Furthermore, MNsure's request for nonpublic classification finds support in similarly-classified data. In addition to the citations to proprietary business data for the University of Minnesota and competitive bid data among government entities noted in MNsure's July 8 application, several other nonpublic classifications exist for business data. Data collected, received, created or maintained by agencies marketing and promoting city tourism on behalf of the City of St. Paul in the course of responding to bids and proposals is nonpublic until a specified time. Minn. Stat. § 13.55, subd. 4. Legislative budget proposals are protected nonpublic information until after the budget is presented to the Legislature by the agency. Minn. Stat. § 13.605, subd. 1(b). The Data Practices Act recognizes the entity's need to protect information that has a direct impact on its ability to do business, while the public's interest in transparency and access to government data is served by the existence of a certain expiration date to the nonpublic classification.

Thus, for data classified as nonpublic marketing theme data, MNsure will specifically identify the nonpublic classification with an accompanying expiration date, at which time the information would become publicly available. For the State Fair Concept document, the nonpublic marketing theme classification expires on August 22, 2013.

The classification sought by MNsure for marketing theme data is not a novel or trivial request, as it finds support in law in other government classification for similar types of data, and the impact upon public resources would be direct and immediate as government and non-government entities carry out marketing and education campaigns related to MNsure and the Affordable Care Act. MNsure respectfully requests that its marketing theme data be classified as nonpublic for the period specified.

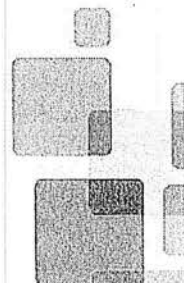
Sincerely,

A handwritten signature in black ink that reads "Krista Fink".

Krista Fink
Privacy and Security Manager
MNsire

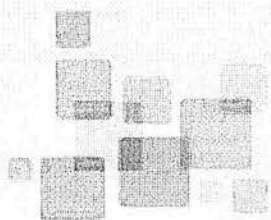
Enclosures

CC: April Todd-Malmlov, MNsure Executive Director
Michael Turpin, MNsure General Counsel



State Fair Concept

6.5.2013



MNSURESM

Where you choose health coverage



Assignment & Overview

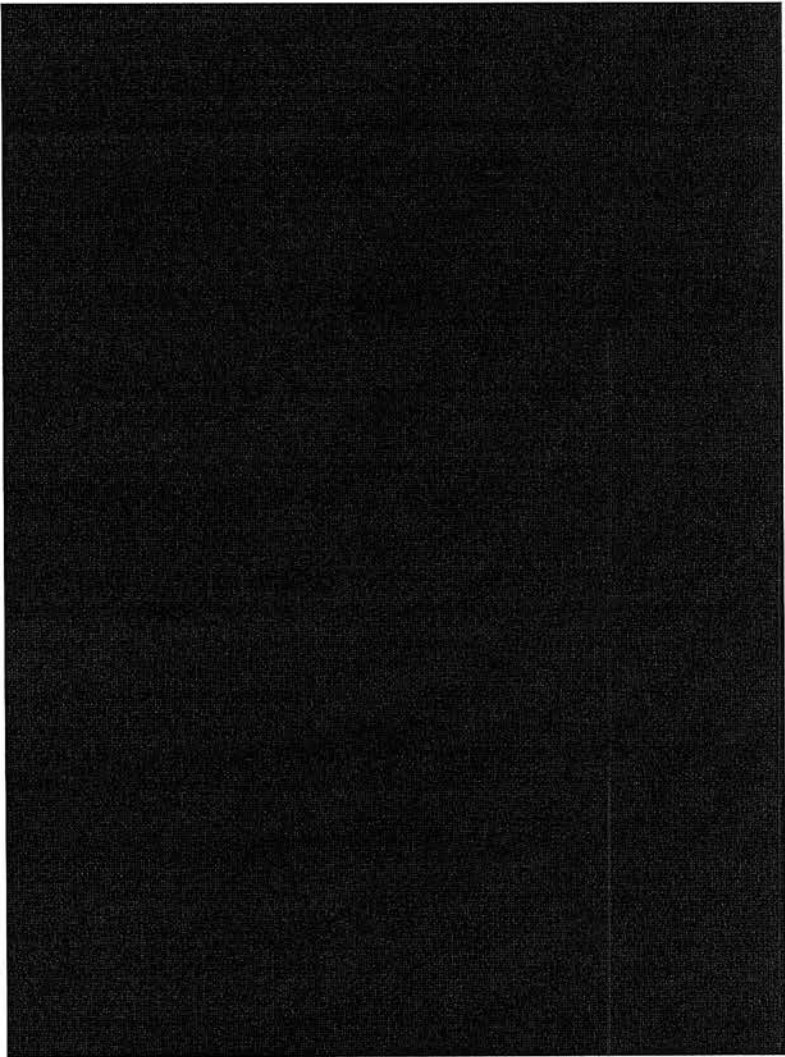
Direction:

Flesh out some more of the detail for the [REDACTED] game idea to help educate State Fair go-ers on how expensive health care costs can be.

Agency recommendation is to include the [REDACTED] theme, but as a teaser to the official launch that will happen later in September.

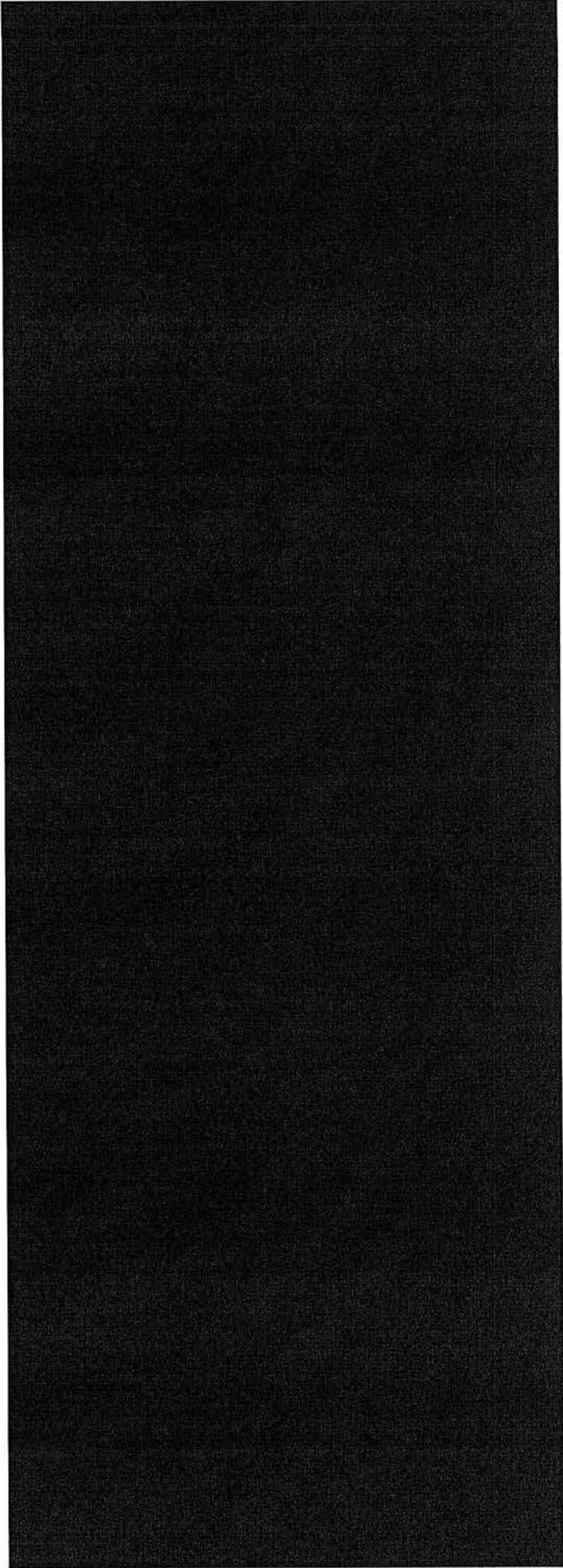
Campaign Idea

Agency recommendation is to include the [redacted] theme, but as a teaser to the official launch that will happen later in September.



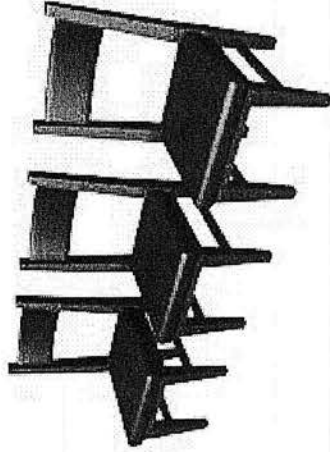
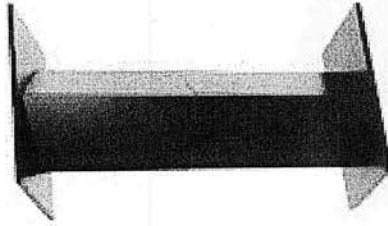
Booth Setting

- Booth Attendants to be dressed [redacted] (or they could wear samples of the prize T-shirt proposed later in the presentation)
- [redacted] and a large banner with the tagline & MNSure logo



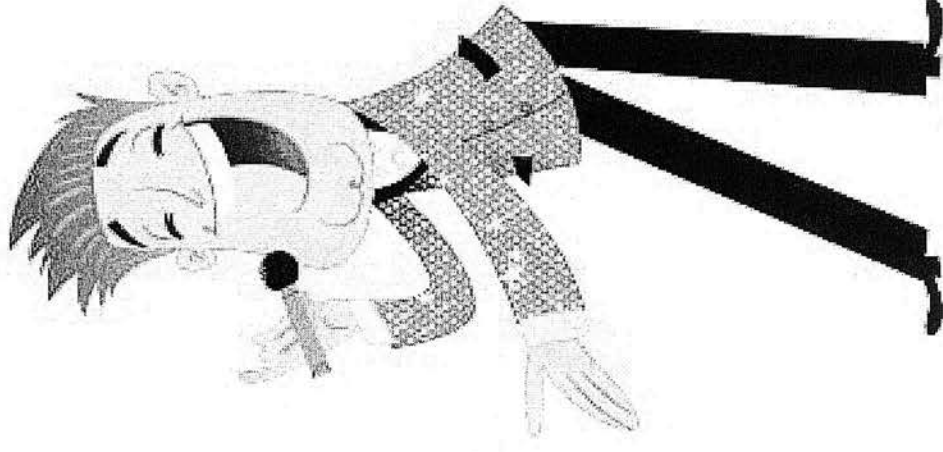
Game Elements

- A stage with 3 seats for the contestants, a podium and microphone for the MC
- A [redacted] to allow contestants to place their bets on average health care costs without insurance



Game Structure / Vision

- An energetic MC is to this game's success. This person will draw attention to the booth and will call passers-by to come play the game
- Ideally, the MC will pick each contestant from a group of 2-4 to help build the audience for each game



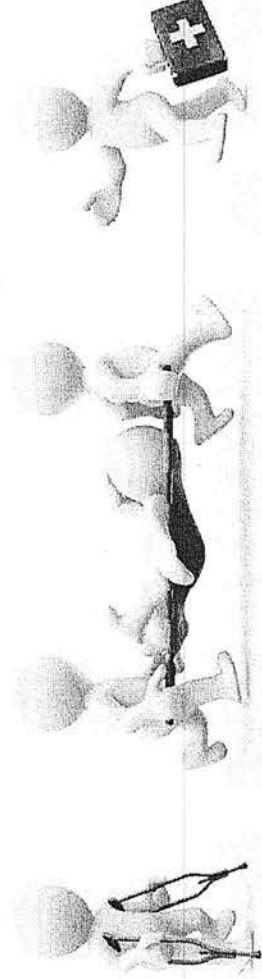
Game Structure / Vision

- The MC will start the first round and ask players to guess the average cost of a common medical need without insurance.

We recommend focusing on the uninsured costs, because these numbers will be most consistent (different levels of coverage can vary the avg. price) We also think the uninsured costs will be more shocking & memorable.

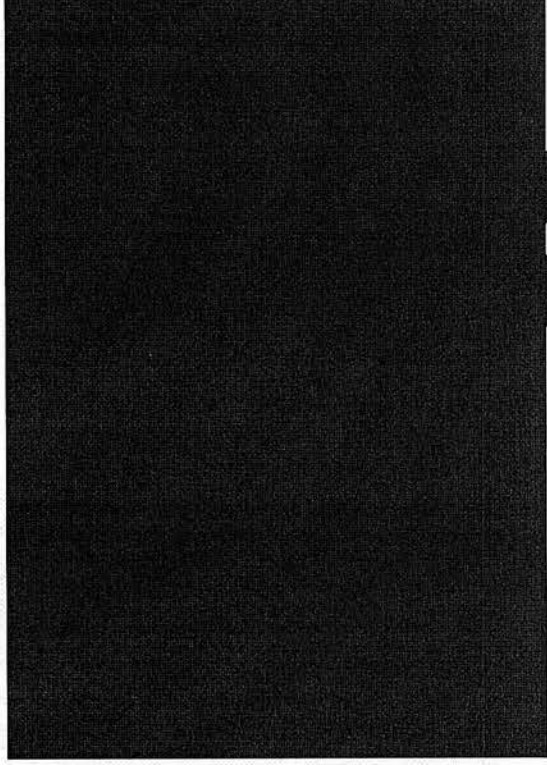
- While the MC is asking about the price of a medical need, an assistant will also be on stage acting it out, adding to the entertainment value and grabbing attention of others passers-by in the area.

The assistant can be doing things like hobbling around on crutches for a sprained ankle, laying on the stage pretending to have a baby, etc.



Game Structure / Vision

- Each player will have a Plexiglas marker/board with pegs on the back to take over to the [REDACTED] and place their bet closest to the cost range that they think fits the situation.
Since nobody is going to be able to guess exact costs, so we wanted to make it easy to guess within a range.
- After all players have placed their bets the MC will hold up a large sign that says the name of the procedure as well as the actual average cost.
- Winner is the player whose bet is closest to the correct cost.



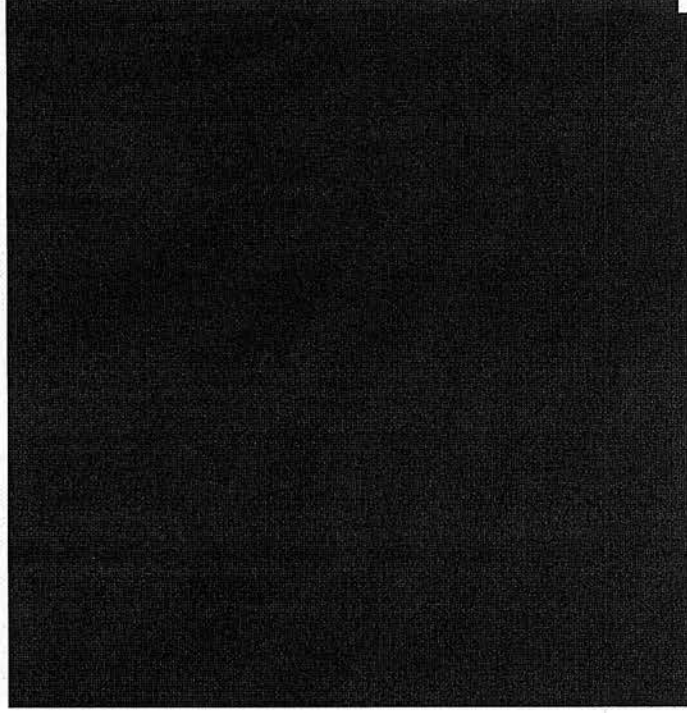
Game Winners & Prizes

- Game will last for 3 rounds with a 15min max for the entire game
- Winner will be determined by best of 3 rounds and then entered in to a raffle for a large prize

Raffle prizes should be something substantial and

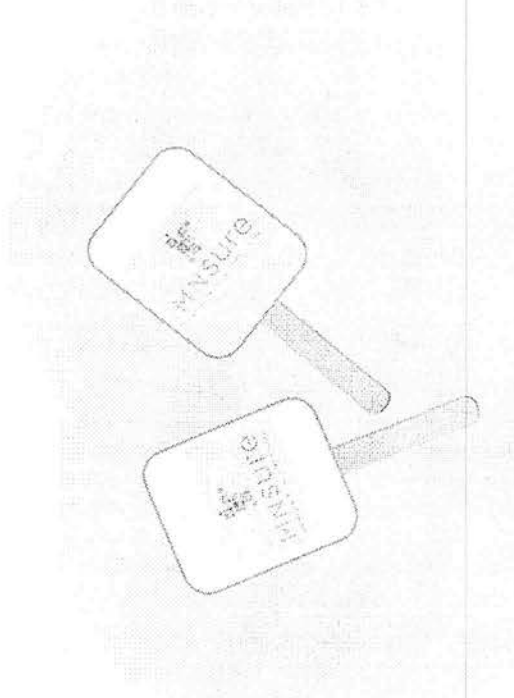
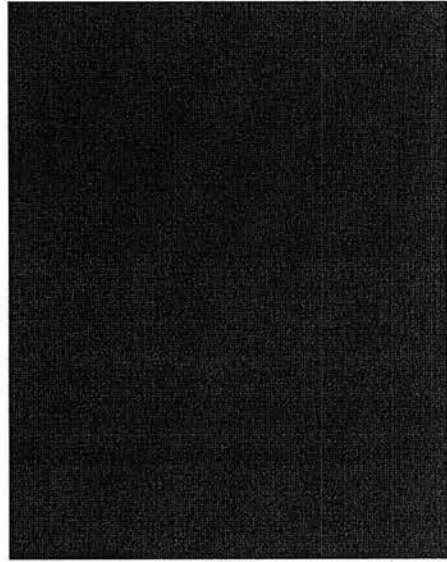


- Everyone who plays the game will get a MNSure t-shirt or they could get things like:
 - mini water bottles, mini flash lights, mini-first aid kits, ponchos or umbrellas



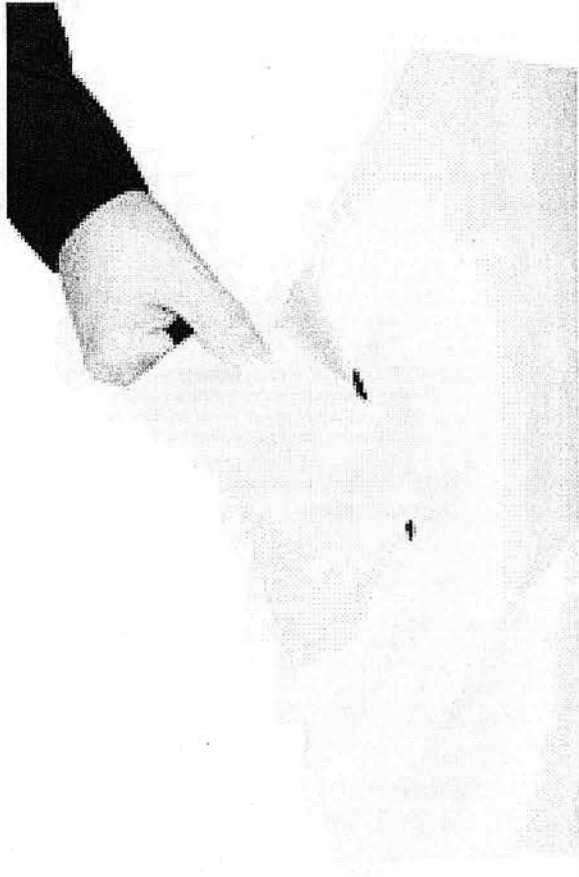
Giveaways

- Paper hats – [REDACTED]
- [REDACTED]
- Downloadable Phone Screen backgrounds with enrollment date and website info
- Screen cleaner for electronics (with MNSure logo and website/phone number)
- Paper fan with MNSure logo and website (Insurance on a stick)



Data Collection

- Ensure there is a place to allow people to opt-in for future MNsure communications.
- Data entry can also qualify them to be entered into a separate raffle or for some of the smaller prize ideas as well.



Ideas for Medical Needs / Costs

Having a Baby
Hernia Operation
Knee Replacement Surgery
Broken Arm
Sprained Ankle
Appendicitis
Hip Replacement
Broken Collar Bone
Vasectomy
Tubal Ligation
Skin Grafts
Gall Stone
Kidney Stone
Ear Tubes
Lyme Disease
Dislocated Shoulder
Pulled Muscle
Kidney Infection
Pneumonia
Shingles
Broken Finger
Ultra Sound
X-Ray
CT Scan
MRI Scan
Routine Physical
Gastric Bypass Surgery
C-Section Surgery

Ideas that are less serious / more routine:

Colonoscopy
Constipation
Strep Test
Pink Eye
Breast Cancer Screening
Skin Cancer Screening
Mole Removal
Wort Removal
Stitches
Mononucleosis
Chicken Pox
Flu Shot
Birth Control
Hearing Test
Poison Ivy
Allergic Reactions
Asthma