DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR titled, ''Medicare Managed Care System (MMCS), No. 09–70–4001.'' MMCS processes beneficiary enrollment and creates beneficiary level payments for the Managed Care Organizations (MCO). We propose to broaden the scope of this system by adding the Medicare Part D Program under Title XVIII. The Medicare+Choices Program has been changed to the Medicare Advantage (MA) Program. The MA was mandated by the Balance Budget Act (BBA) of 1997 (Public Law (Pub. L.) 105–33). To more accurately reflect the changes proposed for this system, we will modify the name to read: ''Medicare Advantage Prescription Drug (MARx) System.'' The enhanced system will continue to perform all current MMCS processing requirements. In addition, MARx will be a stand alone system that will include the processing of all enrollment/disenrollment transactions associated with the Part D Program. MARx will include the following: Health Maintenance Organizations (HMO), Health Care Prepayment Plan (HCPP), Medicare Advantage Organizations (MAO), Medicare Advantage Prescription Drug (MAPD) Plans and Prescription Drug Plans (PDP).

On December 8, 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). MMA amends the Social Security Act (the Act) by adding the Medicare Part D Program under Title XVIII and mandate that CMS establish a voluntary Medicare prescription drug benefit program effective January 1, 2006. Under the new Medicare Part D benefit, the Act allows Medicare payment to MA plans that contract with CMS to provide qualified Part D prescription drug coverage as described in 42 Code of Federal Regulations (CFR) 417 and 422.

We are modifying the language in some of the routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will remain prioritized according to their proposed usage. Information previously retrieved from the Enrollment Database (System No. 09–70–0502) will now be retrieved by the Medicare Beneficiary Database (MBD) (System No. 09–70–0536). We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to maintain a master file of MA and MAPD plan members for accounting and payment control; expedite the exchange of data with MA and MAPD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled MA members; and track participation of the prescription drug benefits provided under private prescription drug plans and Medicare employer plans. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by a contractor or consultant contracted by the Agency; (2) support another Federal or State agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist provider and suppliers of service directly or dealing through contractors, fiscal intermediaries (FI) or carriers for the administration of Title XVIII; (4) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs; (5) assist insurance companies, third party administrators, employers, self-insurers, managed care organizations, and other supplemental insurers; (6) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (7) support constituent requests made to a congressional representative; (8) support litigation involving the Agency, and (9) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 14, 2005. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development (DPCDD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Mary Sincavage, Division Director, Division of Medicare Advantage Appeals and Payment Systems, Information Services Modernization Group, Office of Information Services, CMS, Room N3–16–24, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–1163.

SUPPLEMENTARY INFORMATION: The Medicare Managed Care System (MMCS) is the redesign of the legacy system Group Health Plan (GHP) system. MMCS processes beneficiary enrollment and creates beneficiary level payments for the Managed Care Organizations (MCO). The beneficiary level payments are aggregated to the MCO level and sent to the Automated Plan Payment System (APPS) for additional organization level adjustments before payments are sent to the MCOs. An independent technical evaluation of CMS' managed care system found that without major enhancements, MA provisions could not be supported by existing Medicare systems. Also, the comprehensive review of existing systems was necessary in order to proceed with a development effort that would ensure those future customer service and program management objectives were met.

The CMS has long realized that the Medicare program is in the middle of rapidly changing health insurance industry characterized by an expansion of service delivery models and payment options. The MA provisions of the BBA of 1997 (Pub. L. 105–33) has made the challenge of managing beneficiary

health choices one of the most critical challenges facing CMS and the health industry at large. To be of maximum use, the data must be organized and categorized into a comprehensive system. CMS sought to identify key sources, including both organizations and systems that could provide valid and reliable information. Medicare will no longer exist within an environment characterized by limited health insurance options and standard delivery models.

MARx will recalculate payments due to Part D risk adjustment factor reconciliation. MARx will receive low income subsidy status information from the MBD, including notification of any changes. MARx will calculate adjustments due to any retroactive changes to low income subsidy status. MARx is not responsible for sending Social Security Administration (SSA) the Part D plan data. It is assumed that this will come from the Health Plan Management System (HPMS) (System No. 09–70–4004). Fallback plans will not be paid by MARx. MARx enrollments may be rejected if a beneficiary is currently enrolled in a plan that is part of the retiree drug subsidy (RDS). MARx will notify the RDS of any rejected enrollments due to this situation. Plans will be notified on a weekly basis, if MARx has adjusted the premium or if SSA/Railroad Retirement Board/Office of Personnel Management cannot deduct the premium. Additionally, MARx is a stand alone system that will be processing all enrollment/disenrollment transactions associated with the Part D program.

I. Description of the Modified System of Records

A. Statutory and Regulatory Basis for the System. Authority for maintenance of the system is given under Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended the Title XVIII of the Social Security Act. Authority for maintenance of the system is also given under the provisions of §§ 1833(a)(1)(A), 1860, 1866, and 1876 of Title XVIII of the Act (42 CFR 417 and 422).

B. Collection and Maintenance of Data in the System. The system will include information on recipients of Medicare hospital insurance (Part A) and Medicare medical insurance (Part B) and recipients of the Prescription Drug Benefits Program (Part D) enrolled in the MA Program. The system will also include information about a beneficiary's entitlement to Medicare benefits and enrollment in Medicare Programs, prescription drug coverage and supplementary medical claims information. The system will contact identifying information such as beneficiary name, health insurance claim number, social security number, and other demographic information.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MARx information that can be associated with an individual as provided for under ''Section III. Modified Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of MARx. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; *e.g.,* to maintain a master file of MA and MAPD plan members for accounting and payment control; expedite the exchange of data with MA and MAPD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled MA members; and track participation of the prescription drug benefits provided under private prescription drug plans and Medicare employer plans.

2. Determines that the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

a. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

b. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and;

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Modified Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use. These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MARx without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as

necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require MARx information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require MARx information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system to providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

3. To providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require MARx information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts require MARx information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.,* health maintenance organizations or a competitive medical plan with a Medicare contract, or a Medicare-approved health care prepayment plan), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require MARx information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

MARx data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

7. To a Member of Congress or a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries often request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information tin response to the inquiry.

8. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

9. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program,

or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

10. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs. Other agencies may require MARx information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures. This system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. The protected health information is collected from the Plan during the enrollment process and passed onto the Medicare Beneficiary Database. These elements include the Beneficiary Name, Sex, Date of Birth, and Health Insurance Claim Number. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of MARx. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: October 12, 2005.

Lori Davis,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–4001.

SYSTEM NAME:

''Medicare Advantage Prescription Drug (MARx)'' System HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include information on recipients of Medicare hospital insurance (Part A) and Medicare medical insurance (Part B) and recipients of the Prescription Drug Benefits Program (Part D) enrolled in the Medicare Advantage (MA) Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will also include information about a beneficiary's entitlement to Medicare benefits and enrollment in Medicare Programs, prescription drug coverage and supplementary medical claims information. The system will contain identifying information such as beneficiary name, health insurance claim number, social security number, and other demographic information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under Section 101 of the

Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended the Title XVIII of the Social Security Act. Authority for maintenance of the system is also given under the provisions of §§ 1833(a)(1)(A), 1860, 1866, and 1876 of Title XVIII of the Act (42 CFR 417 and 422).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the SOR is to maintain a master file of MA and MAPD plan members for accounting and payment control; expedite the exchange of data with MA and MAPD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled MA members; and track participation of the prescription drug benefits provided under private prescription drug plans and Medicare employer plans. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by a contractor or consultant contracted by the Agency; (2) support another Federal or State agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist provider and suppliers of service directly or dealing through contractors, fiscal intermediaries (FI) or carriers for the administration of Title XVIII; (4) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs; (5) assist insurance companies, third party administrators, employers, self-insurers, managed care organizations, and other supplemental insurers; (6) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (7) support constituent requests made to a congressional representative; (8) support litigation involving the Agency, and (9) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. Entities Who May Receive Disclosures Under Routine Use. These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MARx without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations or a competitive medical plan with a Medicare contract, or a Medicare-approved health care prepayment plan), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

7. To a Member of Congress or a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

8. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

9. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program,

or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

10. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Circumstances Affecting Routine Use Disclosures. This system contains Protected Health Information as defined by the Department of Health and Human Services (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by name and health insurance claim number of the beneficiary.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. Office of Management and Budget Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 6 years and 3 months. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the Department of Justice.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Medicare Advantage Appeals and Payment Systems, Information Services Modernization Group, Office of Information Services, CMS, Room N3–16–24, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the systems manager who will require the system name, SSN, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Data for this system is collected from MAs and MAPDs (which obtained the data from the individuals concerned), Social Security Administration, and the Medicare Beneficiary Database system of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Notice of Secretary's Advisory Committee Meeting

AGENCY: OPRE, ACF, HHS.

ACTION: Notice of Meeting—Advisory Committee on Head Start Accountability and Educational Performance Measures.

SUMMARY: The Secretary of Health and Human Services, by authority of 42 U.S.C. 9836A, Section 641A(b) of the Head Start Act, as amended (5 U.S.C. Appendix 2), has formed the Advisory Committee on Head Start Accountability and Educational Performance Measures (the Committee). The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2).

The function of the Committee is to help assess the progress of HHS in developing and implementing