

(e) Secure a written statement or agreement from the prospective recipient if the information whereby the prospective recipient attests to an understanding of, and willingness to abide by, the foregoing provisions and any additional provisions that CMS deems appropriate in the particular circumstance.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosure Under Routine Use

The routine use disclosures of identifiable data for ACTS may occur to the following categories of entities. In addition, our policy will be to prohibit release even of non-identifiable data beyond the listed categories, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes.

1. 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 whether 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 the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' 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. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 52a(m).

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system of records. 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 whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

3. To a CMS contractor (including, but not limited to fiscal intermediaries 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 program.

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

4. To a Quality Improvement Organization (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care. QIO's work to implement quality improvement programs; provide consultation to CMS, its contractors, and to State agencies. The QIO's provide a supportive role to health care facilities in their endeavors to comply with Medicare Conditions of Participation; assist State agencies in related monitoring and enforcement efforts; assist CMS in program integrity assessment; and prepare summary information about the nation's health care for release to beneficiaries.

5. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/State program within the State. Data will be released to the State only on those individuals who are either

patients within the State, or are legal residents of the State, regardless of the location of the facility in which the patient is receiving services.

6. To a Federal or State agency (e.g., State Medicaid agencies) to contribute to the accuracy of CMS's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluation and monitoring of care. Data may be released to State agencies such as State Ombudsmen, State Licensing Boards, and Adult Protective Services.

Other Federal or State agencies in their administration of a Federal health program may require ACTS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

7. To another Federal agency (e.g., Office of the Inspector General, General Accounting Office) 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 (e.g., Medicaid Fraud Control Units) may require ACTS information for combating fraud and abuse in such federally funded programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purposes of collecting the information.

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

CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare and Medicaid patients and the policy that governs the care. CMS understands the concerns about the privacy and confidentiality of the release of data for a research use. Disclosure of ACTS data for research and evaluation purposes will usually involve aggregate data rather than individual-specific data.