

obtain any right, title, or interest in any of the data furnished by CMS. The user represents and warrants further that the facts and statements made in any study or research protocol or project plan submitted to CMS for each purpose are complete and accurate. The user shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data disclosed from the system of records to any person. The user agrees that access to the data shall be limited to the minimum number of individuals necessary to achieve the purpose stated in the protocol and to those individuals on a need to know basis only. If CMS determines or has reasonable belief that the user has made an unauthorized disclosure of the data, CMS in its sole discretion may require the user to: (a) Promptly investigate and report to CMS any alleged or actual unauthorized disclosures; (b) promptly resolve any problems identified by the investigation; (c) submit a formal response to any allegation of unauthorized disclosures; (d) submit a corrective action plan with steps to prevent any future unauthorized disclosures; and (e) return data files to CMS. If CMS determines or has reasonable belief that unauthorized disclosures have taken place, CMS may refuse to release further CMS data to the user for a period to be determined by CMS.

The Privacy Act provides criminal penalties for certain violations. The Act provides that "Any officer or employee of an agency, who by virtue of his (or her) employment or official position, has possession of, or access to agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established there under, and who knowing that disclosure of the specific materials is so prohibited, willfully discloses the material in any manner to a person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000" (5 U.S.C. 552a(i)(1)). The Act also provides that "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000" (5 U.S.C. 552a(i)(3)). The agency's contractor and any contractors' employees who are covered by 5 U.S.C. 552a(m)(1) are considered employees of the agency for the purposes of these criminal penalties.

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

Dated: August 8, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

#### **System No. 09-70-1519**

##### **SYSTEM NAME:**

ASPEN Complaints/Incidents Tracking System (ACTS).

##### **SECURITY CLASSIFICATION:**

Level Three Privacy Act Sensitive Data.

##### **SYSTEM LOCATION:**

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244-1850. Federal Servers are located at each State agency. Appendix A lists the location of each State server.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Identifiable information will be retained in the system of records for individuals who are complainants, residents/clients, contacts/witnesses, alleged perpetrators, survey team members, laboratory directors, and laboratory owners.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

ACTS contains information related to allegations of complaints and incidents filed against Medicare, Medicaid or CLIA certified providers or suppliers. The system contains demographic and identifying data, as well as survey and deficiency data. Identifying data includes: Names, title, address, city, state, ZIP code, e-mail address, telephone numbers, fax number, licensure number, social security number, Federal tax identification number, alias names, date of birth, gender, date admitted and/or date discharged.

ACTS maintains Federal complaint information, as well as state licensure complaint information. State licensure information is both relevant and necessary to meet CMS' purposes. CMS uses the help of State health agencies, or other appropriate agencies, when determining whether health care entities meet Federal Medicare standards. The State survey agencies perform both Federal certification and State licensure functions, including the investigation of complaints and entity-reported incidents. The Social Security Act requires that providers/suppliers receive licensure under applicable State and local laws. In order to encourage efficiency in State operations, ACTS permits collection of Federal and State information. ACTS allows users to distinguish between Federal

information and information that is collected for State licensure purposes. ACTS supports the entry of both Federal and state licensure information, thus reflecting the actual business practices of state agencies as they track complaints and incidents. In many areas, ACTS allows entry of both types of information while still maintaining discrete records to support separate and different views, reports and statistics.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 11819(d), 1864, 1865, 1902(a)(9)(A), 1902(a)(33)(B), and 1919(d) of the Social Security Act. Section 353 of the Public Health Service Act (42 U.S.C. 263a), 42 CFR 482.13(f), 42 CFR 483.13, 42 CFR 488.7(a)(2), 42 CFR 488.332, and 42 CFR 488.335.

##### **PURPOSE(S):**

The primary purpose of the system of records is to track and process complaints and incidents reported against Medicare/Medicaid/CLIA providers and suppliers, and to maintain information on laboratory directors and owners.

ACTS provides access to survey and provider/supplier information for data-driven analysis and evaluation. This system will improve CMS's ability to monitor the performance of State Survey Agencies including analyzing program variations and more effectively managing program costs. Information retrieved from this system of records will be used to aid in the administration of the survey and certification of Medicare/Medicaid/CLIA providers and suppliers; support agencies of the State governments to determine, evaluate and assess overall effectiveness and quality of provider/supplier services provided in the State; aid in the administration of Federal and State programs within the State; support constituent requests made to a Congressional representative, support litigation involving the agency, and facilitate research on the quality and effectiveness of care provided.

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

The Privacy Act allows 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. We are proposing to establish the following routine use disclosures of information maintained in the system:

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

(a) The agency or any component thereof; or