

Dated: August 25, 2005.

Michelle Shortt,

*Director, Regulations Development Group,
Office of Strategic Operations and Regulatory
Affairs.*

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[HHS Computer Match No. 0508; CMS
Computer Match No. 2005-05]

Privacy Act of 1974

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

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice establishes a CMP that CMS plans to conduct with the Florida Agency for Health Care Administration (AHCA). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. The Privacy Act requires that CMS provide an opportunity for interested persons to comment on the proposed matching program. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the CMP 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 09/01/2005. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development, Enterprise Databases Group, Office of Information Services, CMS, Mail-stop 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:

Lourdes Grindal Miller, Health Insurance Specialist, Program Integrity Group, Office of Financial Management, CMS, Mail-stop C3-02-16, 7500 Security Boulevard, Baltimore Maryland 21244-1850. The telephone number is 410-786-1022 and e-mail is Lourdes.grindalmiller@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: August 30, 2005.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

CMS COMPUTER MATCH No. 2005-05

NAME:

"Computer Matching Agreement (CMA) Between the Centers for Medicare & Medicaid Services (CMS) and the State of Florida Agency for

Health Care Administration (AHCA) titled "Disclosure of Medicare and Medicaid Information."

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services, and State of Florida Agency for Health Care Administration.

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) § 552a), as amended, (as amended by Public Law (Pub. L.) 100-503), the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A-130, titled "Management of Federal Information Resources" at 65 **Federal Register** (FR) 77677 (December 12, 2000), 61 FR 6435 (February 20, 1996), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This Agreement provides for information matching fully consistent with the authority of the Secretary of the Department of Health and Human Services (Secretary). Section 1816 of the Social Security Act (the Act) permits the Secretary to contract with Fiscal Intermediaries (FI) to "make such audits of the records of providers as may be necessary to insure that proper payments are made under this part," and to "perform such other functions as are necessary to carry out this subsection" (42 U.S.C. 1395h(a)).

Section 1842 of the Act provides that the Secretary may contract with entities known as carriers to "make such audits of the records of providers of services as may be necessary to assure that proper payments are made" (42 U.S.C. 1395u(a)(1)(C)); "assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits" (42 U.S.C. 1395u(a)(2)(B)); and "to otherwise assist * * * in discharging administrative duties necessary to carry out the purposes of this part" (42 U.S.C. 1395u(a)(4)).

Furthermore, § 1874(b) of the Act authorizes the Secretary to contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title (42 U.S.C. 1395kk(b)).

Section 1893 of the Act establishes the Medicare Integrity Program, under

which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing equipment and software technologies that surpass the existing capabilities of FIs and carriers (42 U.S.C. 1395ddd). The contracting entities are called Program Safeguards Contractors.

Pursuant to § 409.902, Florida Statutes (F.S.), AHCA is charged with the administration of the Medicaid program in Florida, and is the single state agency for such purpose. AHCA is required to operate a program to oversee the activities of Florida Medicaid recipients and providers to ensure that fraudulent and abusive behavior occurs to the minimum extent possible (§ 409.913, F.S.).

AHCA's disclosure of the Medicaid data pursuant to this agreement is for purposes directly connected with the administration of the Medicaid program, in compliance with 42 CFR 431.300 through 431.307. Those purposes are the detection, prosecution and deterrence of fraud and abuse (F&A) in the Medicaid program.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which CMS will conduct a computer matching program with AHCA to study claims, billing, and eligibility information to detect suspected instances of Medicare and Medicaid F&A in the State of Florida. CMS and AHCA will provide EDS, a CMS contractor (hereinafter referred to as the "Custodian") with Medicare and Medicaid records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the State of Florida expected to be identified in this matching program: (1) Billing for provisions of more than 24 hours of services in one day, (2) providing treatment and services in ways more statistically significant than similar practitioner groups, and (3) up-coding and billing for services more expensive than those actually performed.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This CMP will enhance the ability of CMS and AHCA to detect F&A by matching claims data, eligibility, and

practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the State of Florida against records of Florida Medicaid beneficiaries, practitioners, providers, and suppliers in the State of Florida.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The data for CMS are maintained in the following Systems of Records: National Claims History (NCH), System No. 09-70-0005 was most recently published in the **Federal Register**, at 67 FR 57015 (September 6, 2002.) NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study the operation and effectiveness of the Medicare program. Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Carrier Medicare Claims Record, System No. 09-70-0501 was published in the **Federal Register** at 67 FR 54428 (August 22, 2002). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Enrollment Database, System No. 09-70-0502 was published in the **Federal Register** at 67 FR 3203 (January 23, 2002). Matched data will be released to AHCA pursuant to the routine use set forth in the system notice.

Intermediary Medicare Claims Record, System No. 09-70-0503 was published in the **Federal Register** at 67 FR 65982 (October 29, 2002). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Unique Physician/Provider Identification Number, System No. 09-70-0525, was most recently published in the **Federal Register** at 69 FR 75316 (December 16, 2004). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Medicare Supplier Identification File, System No. 09-70-0530 was most recently published in the **Federal Register**, at 67 FR 48184 (July 23, 2002). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Medicare Beneficiary Database, System No. 09-70-0536 was published in the **Federal Register** at 67 FR 63392 (December 6, 2001). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

The data for AHCA are maintained in the following data files: Claims File Layouts HIPAA Version, Download File

Record File-Claims, Recipient File Layout, Provider File Layout.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

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

ACTION: Notice of a new System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to create a new SOR titled, "Data Collection Secondary to Coverage Decision (DCSCD) System, HHS/CMS/OCSQ, System No. 09-70-0547." National Coverage Determinations (NCDs) are determinations by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII of the Social Security Act (the Act) § 1869(f)(1)(B). In order to be covered by Medicare, an item or service must fall within one or more benefit categories contained within Part A or Part B, and must not be otherwise excluded from coverage. Moreover, with limited exceptions, the expenses incurred for items or services must be "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member," § 1862(a)(1)(A). CMS has determined that the evidence is adequate to conclude that certain identified diagnoses are reasonable and necessary in several patient groups where certain criteria for these patients have been met. The reasonable and necessary determination requires that patients meet the criteria and are consistent with the trials discussed. Collection of these data elements allows that determination to be made. We are particularly